

Belgium

Court of Arbitration

Constitution of Belgium

- extracts -

Article 142

For the whole Belgium there is one Court of Arbitration, the composition, competence and functioning of which are determined by statute.

This Court rules, by means of judgments, on:

- 1.the conflicts referred to in Article 141;
- 2.the violation by a statute, a decree or a rule referred to in Article 134, of Articles 10, 11, and 24;
- 3.the violation by a statute, a decree or a rule referred to in Article 134, of such articles of the Constitution which a statute will designate.

Every authority designated by statute and every person who has a justifiable interest, or, by interlocutory appeal, any tribunal, can bring a case before the Court.

The statute referred to in paragraph 1, subparagraph 3 of paragraph 2, and in paragraph 3, are adopted with the majority indicated in the last paragraph of Article 4.

Special Law of 6 January 1989 on the Court of Arbitration

(*Moniteur belge*, 7 January 1989)

Preliminary notice

Article 26 *bis* of the Constitution is currently numbered 134.

Article 6, 6 *bis*, and 17 of the Constitution are currently numbered 10, 11 and 24.

Title I – Jurisdiction of the Court of Arbitration

Chapter I – Actions for annulment

Section I – Proceedings

Article 1

The Court of Arbitration shall rule, by means of judgments, on actions for annulment of all or part of a statute, decree or rule referred to in Article 26 *bis* of the Constitution, which violates:

- 1.the rules established by the Constitution, or pursuant thereto, which determine the respective powers of the State, the Communities and the Regions; or
- 2.Articles 6, 6 *bis* and 17 of the Constitution.

Article 2

The actions referred to in Article 1 may be brought:

- 1.by the Council of Ministers, by the government of a Community or a Region;
- 2.by any natural or legal person who has a justifiable interest; or
- 3.by the presidents of the legislative assemblies, at the request of two-thirds of the membership.

Article 3

- 1.Without prejudice to paragraph 2 and to Article 4, an action for annulment, in full or in part, of a statute, decree or rule referred to in Article 26 *bis* of the Constitution shall not be admissible unless it is brought within six months of the publication of the statute, decree or rule referred to in Article 26 *bis* of the Constitution.
- 2.An action for annulment, in full or in part, of a statute, decree or rule referred to in Article 26 *bis* of the Constitution and pursuant to which a treaty is approved shall not be admissible unless it is brought within sixty days of the publication of the statute, decree or rule referred to in Article 26 *bis* of the Constitution.

Article 4

The Council of Ministers or the government of a Community or a Region shall have an additional six months to bring an action for annulment of a statute, decree or rule referred to in Article 26 *bis* of the Constitution in the event that:

1. an action is brought against a provision having the same subject-matter and enacted by a legislator other than that which enacted the statute, decree or rule referred to in Article 26 *bis* of the Constitution. The new six-month period shall commence on the date of publication of the notice referred to in Article 74;

2. the Court, ruling on a preliminary issue, has found that the statute, decree or rule referred to in Article 26 *bis* of the Constitution violates a rule or article of the Constitution referred to in Article 1. The new six-month period shall commence on the date on which, as the case may be, the Prime Minister or the presidents of the governments are notified of the decision of the Court;

3. the Court has annulled a provision which had, in full or in part, the same subject-matter and was enacted by a legislator other than that which enacted the statute, decree or rule referred to in Article 26 *bis* of the Constitution. The new six-month period shall commence on the date on which, as the case may be, the Prime Minister or the presidents of the governments are notified of the decision of the Court.

Article 5

An action for annulment shall be brought before the Court by an application signed, as the case may be, by the Prime Minister, a government member designated by the Prime Minister, the president of a legislative assembly, a party having a justifiable interest or their lawyer.

Article 6

The application shall be dated. It shall specify the subject-matter of the action and contain a statement of the facts and arguments.

Article 7

The applicant shall attach to the application a copy of the statute, decree or rule referred to in Article 26 *bis* of the Constitution against which the action has been brought and, as necessary, the annexes thereto.

If the action is brought by the Council of Ministers, the government of a Community or a Region or the president of a legislative assembly, the applicant shall also attach to the application a certified copy of the decision to initiate the proceedings.

If the action is brought by a legal person, or if a legal person decides to intervene, that party shall provide, immediately and on first request, documentary evidence, as the case may be, of the publication of its statutes in the annexes of the *Moniteur belge*, or of its decision to initiate or continue the proceedings or to intervene.

Article 8

If the application is well-founded, the Court of Arbitration shall annul, in full or in part, the statute, decree or rule referred to in Article 26 *bis* of the Constitution against which the action has been brought.

If it deems necessary, the Court shall, by means of a general provisions, stipulate those effects of the annulled provision which are to be regarded as definitive or maintained provisionally, for a period of time which it shall determine.

Section II – Effects of judgments of annulment

Article 9

1. Judgments of annulment delivered by the Court of Arbitration shall have the force of *res judicata* commencing from their publication in the *Moniteur belge*.

2. Judgments delivered by the Court of Arbitration which dismiss the action for annulment shall be binding on the courts in respect of questions of law settled by such judgments.

Article 10

In as much as they are based on a provision of a statute, decree or rule referred to in Article 26 *bis* of the Constitution which has subsequently been annulled by the Court of Arbitration, or on a regulation issued pursuant to such a statute, decree or rule referred to in Article 26 *bis* of the Constitution, decisions given by the criminal courts and having the force of *res judicata* may be revoked, in full or in part, by the court which delivered them.

Article 11

The State Counsel's Office shall be empowered to apply for revocation.

An application for revocation may also be brought by:

1. the person convicted;
2. any person in respect of whom a decision to defer sentence has been made;
3. in the event that the person convicted or, as the case may be, the person in respect of whom sentence was deferred, is deceased, is deprived of legal capacity or has been declared missing, his spouse, descendants, ascendants or siblings;
4. the party holding civil responsibility for the person convicted or, as the case may be, for the person in respect of whom sentence has been deferred.

Article 12

1. The competent court shall be seized of the matter either by submissions made by the State Counsel's Office or by an application specifying the grounds for revocation.

The application for revocation shall be brought within six months following the date of publication of the judgment of the Court of Arbitration in the *Moniteur belge*, failing which it shall be null and void.

2. The court to which the submissions or application are made, shall, if the convicted person is deceased, missing or deprived of legal capacity, appoint a legal adviser to represent the person during the revocation proceedings.
3. The State Counsel's Office shall give notice of the application to all parties affected by the decision under challenge. The notice shall contain a summons to appear before the court which gave the decision and shall reproduce the text of Articles 10 to 12 of the present law.

The final ruling on the revocation shall be deemed adversarial in respect of the civil party duly summoned, even if that party has not joined in the revocation proceedings prior to the closure of the hearing.

4. The parties shall have access, for at least fifteen days, to the record in which the grounds for the decision are set forth.
5. If a convicted person is being held pursuant to the decision in respect of which an application for

revocation has been brought, the court applied to may order the provisional release of such person, in conformity with the procedure provided for under Article 7, paragraphs 2, 3 and 4, of the Pre-Trial Detention Act of 20 April 1874.

The court applied to may also, if the arguments invoked appear well-founded and of a nature to support the application for revocation, order the suspension of any measure for the execution or application of the decision against which an application for revocation has been brought.

6. The judge may, at the request of a person referred to in Article 11, paragraphs 1 to 4, order that an extract of the decision to revoke be published in a daily newspaper of his choice.

7. The costs of the proceedings shall be borne by the State.

Article 13

1. Within its scope, the revocation shall nullify any sentences for criminal offences based on a statute, decree or rule referred to in Article 26 *bis* of the Constitution and any decision to defer such sentences.

2. Where the decision under challenge imposed a single sentence in respect of several counts, at least one of which involves violation of a provision which has not been annulled, the judge may, on application by the State Counsel's Office and provided the public right of action is not barred by limitation, either maintain the sentence in full, reduce the sentence, defer sentence, or issue an acquittal.

3. If the facts which gave rise to the revoked judgment remain punishable by virtue of provisions the applicability of which has been restored as a result of the annulment, the judge before whom the application for revocation has been brought may, in response to submissions from the State Counsel's Office and provided the public right of action is not barred by limitation, deliver new judgments without, however, any consequent aggravation of the sentences.

4. The judge shall order the reimbursement of any fines unduly imposed, in addition to any legal interest accrued from the time of imposition. Article 28 of the Pre-Trial Detention Act of 20 April 1874 shall be applicable to any convicted person who has

been unduly imprisoned in execution of the revoked judgment.

- 5.If, as a consequence of the revocation, the judge no longer has jurisdiction to rule on a civil action, he shall refer the case to the competent judge. Articles 660 to 663 of the Judicial Code and Article 16, paragraphs 1 and 2, of the present law shall be applicable to such referral.

Article 14

Applications for revocation in conformity with Articles 10 to 13, may be brought in respect of decisions under the Social Defence Act, pertaining to abnormal persons and habitual delinquents, ordering the confinement of charged or accused persons who are of unsound mind, mentally unbalanced or mentally retarded.

Article 15

By way of derogation from Article 1082, paragraph 2, of the Judicial Code, a second application for judicial review may be brought if it invokes solely the annulment by the Court of Arbitration of a provision of a statute, decree or rule referred to in Article 26 *bis* of the Constitution which provided the grounds for the decision challenged, or of a regulation issued pursuant to such a provision.

Article 16

- 1.In so far as they are based on the provisions of a statute, decree or rule referred to in Article 26 *bis* of the Constitution, which has subsequently been annulled by the Court of Arbitration, or on a regulation issued pursuant to such provisions, decisions having the force of *res judicata* given by the civil courts may be revoked, in whole or in part, upon application by the parties thereto, or those who have been duly summoned.
- 2.Within the scope of the revocation, the court may give a new decision on other grounds or based on a legal classification distinct from the facts invoked as grounds for the decision challenged.
- 3.The application for revocation shall be brought before the court which gave the decision in question and shall contain a statement of the facts, notice of which shall be given to all the parties implicated in the decision, failing which the application shall be null and void.

- 4.The application must be brought within six months following the date of publication of the decision of the Court of Arbitration in the *Moniteur belge*, failing which the application shall be null and void.

Article 17

In so far as a decision of the Council of State is based on the provisions of a statute, decree or rule referred to in Article 26 *bis* of the Constitution, which has subsequently been annulled by the Court of Arbitration, or of any regulation issued pursuant to such provisions, the decision may be revoked in full or in part.

The application must be brought within six months following the date of publication of the decision of the Court of Arbitration in the *Moniteur belge*.

Article 18

Notwithstanding the expiration of any time-limits provided for under specific statutes or regulations, the acts and regulations of various administrative authorities and the decisions of courts other than those referred to in Article 16 of this Law may, if they are based on the provisions of a statute, decree or rule referred to in Article 26 *bis* of the Constitution, which has subsequently been annulled by the Court of Arbitration, or of a regulation issued pursuant to such provisions, be challenged by, as the case may be, administrative or judicial proceedings brought within six months following the date of publication of the judgment of the Court of Arbitration in the *Moniteur belge*.

Section III – Suspension

Article 19

At the request of the applicant, the Court may, by a reasoned decision, suspend in full or in part a statute, decree or rule referred to in Article 26 *bis* of the Constitution against which an action for annulment has been brought.

Article 20

The decision to suspend may be made only where:

1. serious grounds are invoked and provided the immediate enforcement of the statute, decree or rule referred to in Article 26 *bis* of the Constitution against which the action has been brought is likely to occasion serious damage which is not readily redressable;
2. the action is brought against a provision which is identical to a provision which has already been annulled by the Court of Arbitration and which was enacted by the same legislator.

Article 21

The request for suspension may form part of the application for annulment or may constitute a separate act, signed in conformity with Article 5, and attached to the application or filed during the proceedings.

Article 22

The request shall contain a statement of the facts intended to establish that the immediate application of the provision challenged is likely to occasion serious damage which is not readily redressable.

Where it is introduced by a separate act, the request shall be dated and shall specify the provision against which the action for annulment has been brought.

Article 23

Without prejudice to the provisions of Articles 70 to 73, the Court shall rule immediately on the request by a reasoned decision, the parties having been heard.

Article 24

The suspension order shall be drafted in French, Dutch and German. At the request of the registrar, the order shall be published in the *Moniteur belge* within five days of its delivery and shall take effect from the date of its publication.

Article 25

The Court must deliver its judgment in respect of the principal application no later than three months after the suspension has been decided. This time-limit may not be extended.

If the judgment in respect of the principal application is not delivered within the time-limit, the suspension shall immediately cease to have effect.

Chapter II – Preliminary issues**Article 26**

1. The Court of Arbitration shall give preliminary rulings, by way of judgments, on questions relating to:

1. the violation by a statute, decree or rule referred to in Article 26 *bis* of the Constitution of the rules established by the Constitution, or pursuant thereto, which determine the respective powers of the State, the Communities and the Regions;
 2. without prejudice to paragraph 1, any conflict between decrees or between rules referred to in Article 26 *bis* of the Constitution which have been enacted by separate legislators and in so far as such conflict arises from their respective scope;
 3. the violation by a statute, decree or rule referred to in Article 26 *bis* of the Constitution of Articles 6, 6 *bis* and 17.
2. Where such a question is raised before a court, it shall refer the matter to the Court of Arbitration for a ruling.

However, a court is not required to seek a preliminary ruling if it finds the action inadmissible on procedural grounds drawn from provisions which are not themselves the subject of the preliminary question.

Likewise a court against whose decisions an appeal may be brought on points of fact or law, or whose decisions may be set aside by the Council of State, is not required to seek a preliminary ruling:

1. where the Court of Arbitration has already ruled on a question or an application having the same subject-matter;
2. where the court considers that it is not in need of a preliminary ruling in order to deliver its judgment;
3. where the statute, decree or rule referred to in Article 26 *bis* of the Constitution does not expressly violate a rule or article of the Constitution referred to in paragraph 1.

Article 27

1. An application for a preliminary ruling shall be lodged with the Court by sending it an office copy of the referral, signed by the president and the registrar of the court.
2. The referral shall indicate the provisions of the statute, decree or rule referred to in Article 26 *bis* of the Constitution in respect of which a preliminary ruling is being sought; as necessary, it shall also stipulate the relevant articles of the Constitution or special laws. Nevertheless, the Court of Arbitration may reformulate the preliminary issue raised.

Article 28

The court which raised the preliminary issue, and any other court called upon to rule on the same matter, shall, in settling the dispute which gave rise to the questions referred to in Article 26, comply with the ruling of the Court of Arbitration.

Article 29

1. In so far as it has given rise to the referral of a preliminary issue to the Court of Arbitration, the decision of a court is without appeal.
2. The decision by which a court refuses to raise a preliminary issue must indicate the grounds on which the refusal is based. Separate appeal shall not lie against a decision by which a court refuses to raise a preliminary issue.

Article 30

When a preliminary issue is referred to the Court of Arbitration, the proceedings, procedural deadlines and limitation periods shall be suspended, from the date of the referral to the date on which the Court of Arbitration gives notice of its judgment to the court which raised the preliminary issue. A copy of the judgment shall be sent to the parties.

Title II – Organisation of the Court of Arbitration

Chapter I – The judges of the Court of Arbitration

Article 31

The Court of Arbitration shall be composed of twelve judges: six French-speaking judges forming the French linguistic group of the Court and six Dutch-speaking judges forming the Dutch linguistic group of the Court.

Membership of a judge of the Court of Arbitration in the French or Dutch linguistic group shall be determined, in respect of the judges referred to in Article 34, paragraph 1, 1°, by the language of their diploma, and in respect of the judges referred to in Article 34, paragraph 1, 2°, by the linguistic parliamentary group to which they most recently belonged.

Article 32

Judges shall be appointed for life by the King on the basis of a dual list submitted alternately by the Chamber of Representatives and the Senate. The list shall be adopted by a two-thirds majority of the members present.

Nominations may not be made until at least fifteen days have elapsed from the date of the publication of the vacancy announcement in the *Moniteur belge*. The vacancy announcement may be published, at the earliest, three months before the vacancy arises.

Each nomination shall be published in the *Moniteur belge*; the appointment may be made, at the earliest, fifteen days following the date of publication.

Article 33

French-speaking judges and Dutch-speaking judges of the Court of Arbitration shall each choose, from among the members of their own linguistic group, a French-speaking president and a Dutch-speaking president.

Article 34

1. To be appointed a judge of the Court of Arbitration, candidates must be at least forty years of age and must fulfil one of the following requirements:

1. have held the post, in Belgium and for at least five years of:
 - a. judge, attorney-general, principal advocate-general, or advocate-general at the Court of Cassation;
 - b. senior member of the Council of State, auditor-general, deputy auditor-general, senior auditor or senior legal secretary at the Council of State;
 - c. legal secretary at the Court of Arbitration;
 - d. professor of Law (ordinary professor, extraordinary professor, professor or associate professor) at a Belgian university;
2. have been, for at least five years, a member of the Senate, the Chamber of Representatives, or a Community or Regional Council.
2. The Court shall have, among its French-speaking judges and Dutch-speaking judges, a number of judges meeting the requirements under paragraph 1, 1°, equal to the number meeting the requirements under paragraph 1, 2°.

Among those judges meeting the requirements under paragraph 1, 1°, at least one judge must meet the conditions stipulated in paragraph a or the conditions stipulated in paragraph b, and at least one judge must meet the conditions stipulated in paragraph d.

3. A candidate whose nomination is based on the requirements under paragraph 1, 1° may not be nominated on the basis of the requirements under paragraph 1, 2°.

A candidate whose nomination is based on the requirements under paragraph 1, 2° may not be nominated on the basis of the requirements under paragraph 1, 1°.

4. At least one judge, among those meeting the requirements under paragraph 1, 1°, must demonstrate an adequate knowledge of German. The King shall determine the manner in which such knowledge is to be verified.

Chapter II – Legal secretaries

Article 35

The Court of Arbitration shall be assisted by a maximum of fourteen legal secretaries, half of whom shall be French-speaking and half of whom shall be Dutch-speaking, according to the language of their diploma and who have demonstrated an adequate knowledge of the second national language before a panel set up by the Permanent Secretary for Recruitment.

At least one French-speaking legal secretary and one Dutch-speaking legal secretary must demonstrate an adequate knowledge of German before a panel set up by the Permanent Secretary for Recruitment.

Article 36

Legal secretaries must be at least 25 years of age and hold a doctorate or degree in law.

Appointments may not take place until the post has become vacant and at least 15 days following the announcement of the vacancy in the *Moniteur belge*. This announcement may be published, at the earliest, three months before the vacancy arises.

Article 37

The candidates shall be ranked, for the purpose of their appointment, by means of a competitive examination for which the Court shall establish the conditions and constitute the panel.

One half of the panel shall be composed of judges of the Court and the other half of persons outside the Court, with due regard for linguistic parity.

The results of the competition shall remain valid for three years.

The competitive examination shall, in respect of its effects, be equivalent to the examination required by the State administration and public entities for access to the post of jurist-administrative secretary.

Article 38

Legal secretaries shall be appointed by the Court for a probationary period of three years, on the basis of the rank attained in the examination referred to in Article 37.

At the end of the three years, the appointment shall become permanent provided that the Court has not ruled to the contrary during the third year of the probationary period.

Article 39

The post of legal secretary at the Court of Arbitration shall be regarded as equivalent to a judicial post in respect of the conditions of appointment provided for under Articles 70 and 71 of the Consolidated Law on the Council of State of 12 January 1973, and Articles 187 *et seq.* of the Judicial Code.

The years spent as a legal secretary at the Court of Arbitration shall be taken into consideration in the calculation of seniority for any administrative or judicial post, or for any post in the Council of State or the Court of Arbitration that a legal secretary may subsequently hold.

Chapter III – Registrars

Article 40

1. The King shall appoint two registrars on the basis of two lists, each containing two candidates, one list to be submitted by the French linguistic group and the other by the Dutch linguistic group of the Court of Arbitration.

Article 32, paragraphs 2 and 3, shall be applicable to these nominations.

2. The language of the registrar shall correspond to that of the linguistic group of the Court of Arbitration which has nominated him.

Article 41

In order to be appointed a registrar of the Court of Arbitration, the candidate must be at least thirty-five years of age, hold a doctorate or degree in law and have, for at least two years, held the post of legal secretary at the Court of Arbitration, of deputy auditor, deputy legal secretary or registrar at the Council of State, of magistrate or registrar in a court or in a tribunal.

In addition, the French-speaking candidate must demonstrate an adequate knowledge of Dutch and the Dutch-speaking candidate must demonstrate an adequate knowledge of French, by passing one of the examinations as provided under Articles 43 *quinquies* and 53, paragraph 6, of the Languages in Judicial Matters Act of 15 June 1935 and Article 73, paragraph 2, subparagraph 5, of the Consolidated Law on the Council of State of 12 January 1973.

Chapter IV – Administrative staff

Article 42

The Court of Arbitration shall have its own staff. It shall determine in respect of its staff the organisational hierarchy and linguistic framework, having due regard for linguistic parity at each level. The Court shall appoint and dismiss members of its staff.

The King shall approve the organisational and linguistic arrangements referred to in paragraph 1.

Barring any decision by the Court to the contrary, necessitated by the proper functioning of its services and fixed by staff regulations approved by royal decree, the staff shall be governed by the legal and statutory rules applicable to permanent employees of the State.

Article 43

The Court shall determine the duties and responsibilities, reasons for non-attendance, replacements, absences, leave and holiday arrangements in respect of administrative staff.

The Court may delegate all or part of that power to a staff committee, composed of the two presidents, two judges of the French linguistic group and two judges of the Dutch linguistic group, appointed by the Court for a

period of four years. Members of the committee may be reappointed.

Chapter V – Incompatibilities

Article 44

The posts of judge, legal secretary and registrar are not compatible with judicial posts, the exercise of a public mandate conferred by election, any public office or duties of a political or administrative nature, the post of notary or bailiff, the profession of barrister, military duties or the post of minister of a recognised religion.

Exceptions to paragraph 1 may be made by the King, following a favourable and reasoned opinion from the Court, as follows:

- 1.in the case of the exercise of the functions of professor, lecturer, senior lecturer or assistant in a higher educational establishment, provided that such duties do not exceed five hours weekly and two half-days per week;
- 2.in the case of the exercise of the functions of a member of a board of examiners;
- 3.in the case of participation in a commission, council or consultative committee, provided that the number of remunerated duties or posts is limited to two and that the total remuneration does not exceed one tenth of the annual gross salary of the principal post at the Court.

Article 45

Presidents, judges, legal secretaries and registrars may not be called for public service, with the exception of those cases provided for by law.

Article 46

Presidents, judges, legal secretaries and registrars may not:

- 1.act in the defence of the interested parties, either orally or in writing, or provide advice to them;
- 2.engage in remunerated arbitration;
- 3.either personally or through another party, engage in any professional or commercial activity, act as business agent, or participate in the management,

administration or oversight of businesses or industrial or commercial enterprises.

Article 47

The posts of president, judge or legal secretary may not be held simultaneously by relatives and relations by marriage, up to and including those three times removed, without special permission from the King.

Article 48

- 1.Article 44, paragraph 1, and Article 46, paragraphs 1 and 2, shall be applicable to the administrative staff of the Court of Arbitration.
- 2.Exemptions may be granted to administrative staff members by the Court where, under the provisions applicable to public employees, they or their spouses are entitled to engage in certain additional activities.

Chapter VI – Disciplinary measures

Article 49

Presidents or judges who have failed to uphold the dignity of their position or to fulfil the duties incumbent upon them may be dismissed or suspended by a judgment delivered by the Court of Arbitration.

Article 50

- 1.Legal secretaries and registrars who fail to fulfil the duties incumbent upon them shall be warned or reprimanded by the president, suspended or dismissed by the Court of Arbitration. The individual under suspension shall cease to receive a salary, with all the consequences this entails, both in the matter of pensions and the granting of subsequent rises in salary.
- 2.No sanction may be imposed before the individual concerned has been heard or duly summoned.
- 3.Where a legal secretary or registrar is prosecuted for a serious or ordinary offence or in the case of disciplinary proceedings, such individual may, where the interest of the service so requires, be suspended from his post by the Court of Arbitration as a disciplinary measure, during the proceedings and until such time as a final judgment is delivered.

The suspension shall have effect for one month and may be renewed on a monthly basis until such time as the final judgment is delivered. The Court of Arbitration may decide that such a measure shall include, for all or part of its duration, the provisional, total or partial withholding of salary.

Chapter VII – Miscellaneous provisions

Article 51

1. Presidents and judges shall, before the King, take the oath prescribed under Article 2 of the Decree of 20 July 1831.
2. Legal secretaries and registrars shall take the same oath before the president.
3. They must take the oath in the month following the day on which they are notified of their appointment; otherwise the post may be filled by a replacement.
4. The oath shall be taken in French or in Dutch depending on the language spoken by the individual concerned.

Article 52

The King shall determine the attire to be worn during hearings and official ceremonies by those holding posts at the Court of Arbitration.

He shall determine the order of precedence and the formalities to be observed.

Article 53

The King shall create a concordance service attached to the Court of Arbitration.

Title III – Functioning of the Court of Arbitration

Article 54

The presidency shall be held by each president in turn for a term of one year.

The term shall commence on the first day of September of each year.

Article 55

Without prejudice to Article 56, the Court of Arbitration shall, for the purpose of its hearings, its deliberations and the delivery of its judgments, be composed of seven judges, three of whom shall be French-speaking and three of whom shall be Dutch-speaking, and the president or, in his absence, the most senior judge or, if need be, the eldest of the judges belonging to the same linguistic group.

Among the seven judges referred to in the first paragraph, at least two must fulfil the requirements under Article 34, paragraph 1, 1°, and at least two must fulfil the requirements under Article 34, paragraph 1, 2°.

In the event that the Court must deal with a case in a language which is different from the linguistic group to which he belongs, the president shall delegate his powers to the other president or, in his absence, the most senior judge or, if need be, the eldest judge of the other linguistic group.

All decisions shall be made by majority vote.

Article 56

The full Court of Arbitration shall meet to take decisions pursuant to Articles 37, 38, 42, 43, 44, 49, 50, 100 and 122.

Each president, if he deems it necessary, may bring a case before the full Court. The president is bound to do so when, among the seven judges who, in accordance with Article 55, make up the bench, two judges so request.

At least ten judges, an equal number of them being French-speaking and Dutch-speaking, must be present for the full Court to rule. Failing that, the most recently appointed judge or, if need be, the youngest judge of the linguistic group having the larger number of members must abstain for each decision.

The president shall have a casting vote in the event of an equal vote in a full Court ruling. If the president is absent or unavailable, he shall be replaced by the most senior judge or, if need be, the eldest judge of the same linguistic group.

Article 57

Article 258 of the Penal Code relating to the denial of justice shall be applicable to the judges of the Court of Arbitration.

Article 58

On the first of September of each year, each president shall establish, for the needs of the service, a list of judges from his linguistic group. A judge appointed on the basis of Article 34, paragraph 1, 2° shall be at the head of the list, if the president has been appointed on the basis of paragraph 1, 1°, or vice versa. Next on the list shall follow, alternately, judges appointed on the basis of paragraph 1, 1° and judges appointed on the basis of paragraph 1, 2°.

Article 59

The presidents shall sit in all cases.

For each case, the presiding judge shall appoint the judges of the bench according to the following rules. From his own list he shall select:

- for the first case, the first, second and third names;
 - for the second case, the fourth, fifth and first names, continuing in the same manner.
- From the list drawn up by the other president, he shall select:
- for the first case, the first and second names;
 - for the second case, the third and fourth names;
 - for the third case, the fifth and first names, continuing in the same manner.

The order in which cases are heard is stipulated in Article 67.

Article 60

In the event that a judge other than the president is absent or unavailable, he shall be replaced by the judge who, appointed on the basis of the same provision, is next on the list; if last on the list, he shall be replaced by the first name on the list.

Article 61

The Court shall be assisted by the registrar having the same language as that of the proceedings.

Title IV – Use of languages**Chapter I –Use of languages before the Court of Arbitration****Article 62**

Cases shall be brought before the Court of Arbitration in French, Dutch or German.

In respect of documents and statements:

- 1.the Council of Ministers shall use French or Dutch in conformity with the rules laid down in Article 17, paragraph 1 of the Consolidated Act of 18 July 1966 relating to the use of languages in administrative matters;
- 2.the governments shall use their administrative language;
- 3.the courts shall use the language or languages in which their judgments must be drafted;
- 4.the presidents of the legislative chambers, the president of the Council of the Brussels-Capital Region and the president of the joint assembly of linguistic groups of the Council of the assemblies, Brussels-Capital Region shall use French and Dutch;
- 5.the presidents of the Council of the French Community and of the Walloon Regional Council shall use French, the president of the Council of the German-speaking Community shall use German, and the president of the Flemish Council shall use Dutch;
- 6.persons having a justifiable interest may use the language of their choice, unless they are subject to the legislation on the use of languages in administrative matters, in which case they shall use the language stipulated under the Consolidated Act of 18 July 1966 relating to the use of languages in administrative matters.

The Court shall establish of its own motion the nullity of any document or statement of the Council of Ministers,

governments, presidents of the legislative assemblies or persons subject to the legislation on the use of language in administrative matters which is not submitted or addressed to the Court in the language prescribed under paragraph 2.

Article 63

1. Except as stipulated in paragraphs 2 and 3, the pre-hearing investigation shall be conducted in the language of the application.
2. If the case is brought in German, or simultaneously in French and Dutch, the Court shall decide if the pre-hearing investigation is to be conducted in French or Dutch.
3. Without prejudice to paragraph 2, the pre-hearing investigation shall be conducted in the language of the linguistic region in which the applicant is domiciled, provided that the application is lodged by a person having a justifiable interest and domiciled in a municipality or group of municipalities for which the law neither prescribes nor permits the use of a language other than that of the region in which it is located.

Joint proceedings shall be conducted in the language of the first case to be brought.

4. Case files for use by the Court shall be translated into French or Dutch, as the case may be.

Article 64

Statements made during the hearing shall be in French, Dutch or German and shall have the benefit of simultaneous interpretation.

Article 65

The judgments of the Court shall be drafted and delivered in French and in Dutch. They shall be published in the *Moniteur belge* as provided for under Article 114, accompanied by a translation into German.

Nevertheless, judgments shall be drafted, delivered and published in French, Dutch and German:

1. if the judgment concerned is being delivered in respect of an action for annulment;
2. if the case was brought in German.

Chapter II –Use of languages in the services of the Court of Arbitration

Article 66

The administrative work of the Court of Arbitration and the organisation of its services shall be governed by the provisions of the legislation on the use of languages in administrative matters applying to services whose activities are of a national character.

Title V – Procedure before the Court of Arbitration

Chapter I –Entering of cases in the Court register and appointment of reporting judges

Article 67

The registrar shall enter cases in the Court register, in the order of their reception.

Article 68

For each case, the reporting judge shall be the first judge on each list referred to in Article 59.

The reporting judge shall be responsible for investigating the case and presenting a report of his findings at the hearing.

Chapter II –Preliminary procedure

Article 69

A chamber of the president and two reporting judges shall be established.

Article 70

On receipt of an application for annulment or a referral, the reporting judges shall examine the application or referral to determine whether it is manifestly inadmissible or without foundation or clearly falls outside the jurisdiction of the Court of Arbitration.

Article 71

If the action for annulment or the preliminary issue appears to be manifestly inadmissible or to fall clearly outside the jurisdiction of the Court, the reporting judges shall so inform the president within no more than thirty days following the receipt of the application or the referral; if an application for suspension of the provision challenged has also been lodged, the time-limit shall be reduced and may not exceed ten days.

The registrar shall give notice to the parties of the conclusions of the reporting judges within the time-limit stipulated in the first paragraph. The parties shall have fifteen full days from the time of receipt of the notice to submit a defence.

The chamber may then decide, by consensus, to end its consideration of the case, without any further judicial proceedings, by means of a judgment in which the application or referral is deemed inadmissible or in which it is established that the Court does not have jurisdiction.

If it has decided not to deliver a judgment of inadmissibility or lack of jurisdiction, the chamber shall so establish by order.

Article 72

If the application for annulment or the preliminary issue is manifestly without foundation, the reporting judges shall so inform the Court within no more than thirty days following, as the case may be, the receipt of the application or the referral; if an application for suspension of the provision challenged has also been lodged, the time-limit shall be reduced and may not exceed ten days.

The registrar shall give notice to the parties of the conclusions of the reporting judges within the time-limit stipulated in the first paragraph. The parties shall have fifteen full days from the receipt of the notice to submit a defence.

The Court may then decide to end its consideration of the case, without any further judicial proceedings, by means of a judgment in which the application or referral, whichever the case may be, is declared to be without foundation.

If it decides not to deliver a judgment declaring the case to be without foundation or a judgment of immediate reply, the Court shall so establish by order.

Article 73

The parties shall be informed of the judgments referred to in Article 71, paragraph 3, and Article 72, paragraph 3.

Chapter III –Publication and notification of applications and preliminary issues**Article 74**

In the event that Articles 71 or 72 are not applied, and pursuant to the order referred to in Article 71, paragraph 4, or the order referred to in Article 72, paragraph 4, the registrar shall publish in the *Moniteur belge*, in French, Dutch and German, a notice specifying the applicant and the provision against which the application for annulment has been brought or in respect of which the preliminary issue has been raised.

The proceedings shall be conducted in conformity with the provisions which follow.

Article 75

The Court may appoint counsel of its own motion. The appointment shall be considered null if the party concerned chooses his own counsel.

The King shall determine the assistance arrangements.

Article 76

1. The registrar shall give notice of any application for annulment lodged by the Council of Ministers to the regional and Community governments and the presidents of the legislative assemblies.
 2. The registrar shall give notice of any application for annulment lodged by a regional or Community government to the Council of Ministers, the other governments and the presidents of the legislative assemblies.
 3. The registrar shall give notice of any application for annulment lodged by the president of a legislative assembly to the Council of Ministers, the regional
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and Community governments and the presidents of the other legislative assemblies.

4. The registrar shall give notice of any application for annulment lodged by an individual having a justifiable interest to the Council of Ministers, the regional and Community governments and the presidents of the legislative assemblies.

Article 77

The registrar shall give notice of any referrals to the Council of Ministers, the regional and Community governments, the presidents of the legislative assemblies, and to the parties to the proceedings before the court which raised the preliminary issue.

Article 78

Where the same provision is the subject of an application for annulment and of an earlier referral for a preliminary ruling, the registrar shall give notice of the application for annulment to the parties to the proceedings before the court which raised the preliminary issue. The notice shall indicate the period of time within which the parties may file a memorial, as provided under Article 85.

Provided Article 100 does not apply, the Court shall rule first on the action for annulment.

Chapter IV – The pre-hearing investigation

Article 79

The pre-hearing investigation shall be conducted in writing.

Article 80

Notice to the Council of Ministers shall be made through the office of the Prime Minister.

Notice to the regional and Community governments shall be made through the office of the president of the government.

Notice to the presidents of the legislative assemblies shall be made through the secretariat of each assembly.

Article 81

All parties, with the exception of public authorities, shall, in the application or memorial, provide information in respect of their domicile or headquarters in Belgium or elected domicile in Belgium.

In the absence of such information, the registry shall not be bound to notify and the proceedings shall be deemed adversarial.

All notices by the registry shall be made to the headquarters or domicile indicated, even where the party is deceased.

Article 82

All documents relating to the proceedings shall be sent to the Court by registered mail.

The Court shall send all notices, summonses and other documents by registered mail with return receipt. The time-limit for the parties shall commence on the date of reception of the registered letter. If the addressee refuses to accept the letter, the time-limit shall commence on the date of such refusal.

The date of the postmark shall be authoritative in respect of both the sending and the reception or refusal of documents.

Article 83

Ten copies certified correct by the signatory shall be attached to each application or memorial.

Additional copies may be requested.

Article 84

Applications and memorials filed with the Court shall contain a list of the supporting documents.

Each case record transmitted shall contain a list of the documents contained therein.

Article 85

Within forty-five days of the receipt of the notices made by the registrar pursuant to Articles 76, 77 and 78, the Council of Ministers, governments, presidents of the legislative assemblies and other persons to whom such notices have been sent may file a memorial with the Court.

In the case of an action for annulment, the memorial may put forward additional legal arguments. The parties may not subsequently invoke any further arguments.

The time-limit referred to in the first paragraph may be shortened or extended by reasoned order of the president.

Article 86

Memorials referred to in Article 85 which are not filed within the prescribed time-limit shall be disallowed from the proceedings.

Article 87

1. Where the Court of Arbitration makes preliminary rulings on the questions referred to in Article 26, any person having a justifiable interest in the case before the court which ordered the referral may file a memorial with the Court within thirty days of the publication provided for under Article 74. In so doing, the person shall be regarded as party to the proceedings.
2. Where the Court of Arbitration rules on an action for annulment referred to in Article 1, any person having a justifiable interest may file a memorial with the Court within thirty days of the publication provided for under Article 74. In so doing, the person shall be regarded as party to the proceedings.

Article 88

Any person who, pursuant to Articles 85 and 87, files a memorial with the Court shall attach to it the file in his possession.

Article 89

At the end of the period stipulated in Articles 85 and 87, the registrar shall transmit a copy of the memorials filed to any other party who has lodged an application or filed a memorial. The parties shall then have thirty days from the date of receipt to file a counter-memorial with the registry.

Article 90

At the end of the period stipulated in Article 89, the Court, having heard the reporting judges, shall decide whether the case is ready for hearing.

The order by which the Court establishes that the case is ready for hearing shall set the date for the hearing.

The order by which the Court establishes that the case is not ready for hearing shall set forth the tasks to be accomplished by the reporting judges or registrars, shall mention any arguments which, as the case stands, the Court finds it useful to examine of its own motion and shall invite the parties to file a memorial in this regard within a specified time. Once those tasks have been accomplished, the Court shall proceed as provided under paragraphs 1 and 2.

The order shall be communicated to the parties.

Article 91

The Court shall have the widest possible powers of inquiry and investigation.

It may, in particular:

1. correspond directly with the Prime Minister, the presidents of the legislative assemblies and the governments and with any other public authority;
 2. hear parties on both sides and request them and any public authorities to communicate to it all documents and information having to do with the case;
 3. take evidence from any person whose testimony it deems useful in that regard;
 4. establish facts on site;
 5. appoint experts.
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The Court may, by means of an order, delegate to the reporting judges specific powers of inquiry and investigation, which it shall determine.

Article 92

The Court may rule that the persons referred to in Article 91, 3°, shall be heard under oath, the parties and their lawyers having been summoned.

In such a case, the person shall take the following oath:

«Je jure en honneur et conscience de dire toute la vérité, rien que la vérité»,

or

«Ik zweer in eer en geweten dat ik de gehele waarheid en niets dan de waarheid zal zeggen»,

or

«Ich schwöre auf Ehre und Gewissen, die ganze Wahrheit und nur die Wahrheit zu sagen»,

(“I swear in honour and in conscience to tell the whole truth, and nothing but the truth”).

Any person summoned shall be bound to appear and fulfil the obligations of the notice. Any refusal to appear, to take oath or to testify shall be punished by a fine of twenty-six to one hundred francs.

A report of failure to appear or refusal to testify under oath shall be prepared and sent to the royal prosecutor in the district in which the person was to be heard.

The provisions of the Penal Code relating to false evidence in civil cases and to subornation of perjury shall be applicable to the inquiry provided for under the present article.

The record of the hearing shall be signed by the president or by the judges of the Court before whom the hearing took place, by the registrar and by the person heard.

Article 93

In the event of visits on site, the parties and their lawyers shall be summoned to appear.

Article 94

The Court shall establish by order the mandate of the experts it appoints and shall set the time-limit for the filing of their reports. The registrar shall give notice of the order to the experts and the parties. Articles 966 to 970 of the Judicial Code shall be applicable to the experts appointed.

In the eight days following the notice referred to in paragraph 1, the experts shall inform, by registered mail, each of the parties of the commencement of their operations, indicating the day, time and place.

The necessary documents shall be provided to the experts; the parties may make such declarations or pleadings as they deem appropriate; and mention of these shall be made in the report, which shall be transmitted to the parties.

The report shall be signed by all the experts, except where an expert is unavailable to do so, due note of which shall be taken by the registrar at the time of filing of the report. The signature of the experts shall be preceded by the oath:

«Je jure que j'ai rempli ma mission en honneur et conscience, avec exactitude et probité»,

or

«Ik zweer dat ik in eer en geweten, nauwgezet en eerlijk, mijn opdracht heb vervuld»,

or

«Ich schwöre, daß ich den mir erteilten Auftrag auf Ehre und Gewissen, genau und ehrlich erfüllt habe»,

(“I swear that I have fulfilled my mission in honour and in conscience, with exactitude and probity”).

The original of the report shall be deposited with the registry. The registrar shall so inform the parties.

The Court may, on serious grounds and by a reasoned decision, withdraw the experts' mandate and provide for their replacement after having heard them. The registrar shall notify the experts and the parties of any decision in that regard.

Chapter V – Interlocutory matters

Section I – Falsification proceedings

Article 95

Where a party enters a plea of forgery in respect of written evidence which has been submitted, the Court shall instruct the party which has submitted it to state immediately whether he still intends to invoke such evidence.

If the party fails to comply with the request or states that he does not intend to invoke it, the evidence is dismissed.

If the party states that he intends to invoke the evidence and maintains that it is vital to the settlement of the dispute, the Court shall stay proceedings until the competent court, which shall rule immediately, delivers a judgment in this regard. If the matter is not brought before another court, the Court of Arbitration shall assess the probative value of the evidence.

If a ruling can be made without it, the contested evidence may be disregarded.

Section II – Resumption of proceedings

Article 96

If, before the closure of the hearing, the death occurs of a person having a justifiable interest and having lodged an application for annulment, or of any party referred to in Article 87, the proceedings shall continue without any resumption.

Article 97

If, before the closure of the hearing, the death occurs of one of the parties to the case before the court which raised the preliminary issue, the proceedings before the Court of Arbitration shall be suspended.

The Court of Arbitration may resume proceedings when the court which raised the preliminary issue so notifies the Court.

Section III – Withdrawal of an action

Article 98

The Council of Ministers, the regional and Community governments, and the presidents of the legislative assemblies may withdraw their action for annulment.

The Council of Ministers and the regional and Community governments shall attach a certified copy of their decision to this effect to the notice by means of which they inform the Court.

If need be, the Court itself may order the withdrawal of an action, the other parties having been heard.

Article 99

If an application for withdrawal has been accepted by a court which raised a preliminary issue, the proceedings before the Court shall cease.

The court shall forward an office copy of its decision to the Court of Arbitration.

Section IV – Related proceedings

Article 100

The full Court of Arbitration may join applications for annulment or referrals which relate to the same provision, on which a ruling may be given by means of a single judgment. Such cases shall be heard by the chamber to which application was first made.

The registrar shall inform the parties of the decision to join the applications or referrals.

Where two or more cases have been joined, the reporting judges shall be those who, in conformity with Article 68, are appointed for the case which was first brought before the Court.

Section V – Challenges

Article 101

The judges of the Court may be challenged on the grounds stipulated in Articles 828 and 830 of the Judicial Code.

The fact that a judge of the Court participated in the drafting of a statute, decree or rule referred to in

Article 26 *bis* of the Constitution, against which an application for annulment has been lodged or in respect of which a referral has been made, does not in itself constitute grounds for challenge.

A judge of the Court is bound to inform it of any personal ground for challenge, in response to which the Court shall rule on whether the judge concerned must withdraw.

Article 102

Any party who wishes to challenge a judge must do so as soon as he becomes aware of the grounds for challenge.

Challenge for cause shall be initiated by application to the Court.

A ruling on the challenge shall be given immediately, the petitioner and the challenged judge having been heard.

The challenged judge shall be replaced by another judge, as provided under Article 55, paragraph 1, Article 56 or Article 60, as the case may be.

Chapter VI – Hearings

Article 103

Parties who have lodged an application or filed a memorial, their representatives and their lawyers shall be informed of the date of the hearing fifteen days in advance.

During that period, they shall have access, in the registry, to the case record.

Article 104

The hearing in Court shall be public, unless a public hearing would jeopardise public order or morality; in such cases, the Court may so declare by a reasoned judgment.

Article 105

Persons attending a hearing shall be bare-headed and must be respectful and silent.

Any orders which may be issued by the president for the purpose of maintaining order shall be carried out promptly and immediately.

The same rules shall be applicable in respect of any premises where the judges exercise their judicial functions.

Article 106

At the hearing, the reporting judge belonging to the linguistic group corresponding to the language of the pre-hearing investigation shall summarise the facts of the case and indicate the points of law which must be settled by the Court.

The reporting judge belonging to the other linguistic group may, should the need arise, make an additional report.

Should the need arise, the Court shall hear such persons as it deems appropriate and take evidence from experts.

Only those parties who have lodged an application or filed a memorial, and their lawyers, shall be admitted to the hearing and such persons shall be limited to oral statements.

The president shall then declare the hearing closed and the judges shall withdraw to deliberate.

Chapter VII – Reopening of the hearing

Article 107

The Court may of its own motion order the reopening of the hearing. It must do so before considering a defence or argument which the parties have not had the opportunity to explain.

The Court shall indicate the time-limit within which the parties must file a final memorial in that regard.

Chapter VIII – Judgments

Article 108

The deliberations of the Court shall be secret.

Article 109

Without prejudice to Article 25, judgments shall be delivered within six months of the lodging of the application for annulment or the receipt of the referral.

Nevertheless, if the case cannot be decided by the end of the specified period, the Court may, by a reasoned decision, add to that period as much extra time as necessary. The extension may be renewed, if need be, provided that the total length of the extensions does not exceed one year.

Article 110

All judgments shall be delivered in open court.

If a judge of the Court cannot, for legitimate reasons, be present for the delivery of a judgment arising from deliberations in which he took part, the president in office may appoint a judge to replace him at the time the judgment is delivered.

Article 111

The judgment shall comprise the grounds and the terms of the judgment. It shall make reference to:

- 1.the name, domicile, residence or headquarters of each party and, as appropriate, the name and title of persons representing them;
- 2.the applicable provisions on the use of languages;
- 3.the attendance notices issued to the parties and their lawyers and their presence, if such was the case, at the hearing;
- 4.the delivery of the judgment in open court, the date of the delivery and the names of the judges who participated in the deliberations.

Article 112

Judgments shall be signed by the president and the registrar.

Article 113

The registrar shall give notice of the judgment to the following:

- 1.the Prime Minister and the presidents of the governments;
- 2.the presidents of the legislative assemblies, of the Council of the French Community, of the Walloon Regional Council, of the Flemish Council, of the Council of the German-speaking Community and

of the legislative assemblies of the Region of Brussels-Capital;

3.the parties;

4.the court which raised the preliminary issue.

Article 114

Judgments delivered in respect of actions for annulment shall be published in full and those delivered in respect of preliminary issues shall be excerpted in the *Moniteur belge*, according to arrangements to be made by the registrar. The excerpt shall contain the preamble and the terms of the judgment.

The Court shall ensure their publication in an official compendium.

It shall furnish a copy to any court so requesting.

Article 115

Every judgment shall be enforceable in itself. The King shall ensure the enforcement of the judgments. The registrar shall affix to the office copy, following the terms of the judgment, and as the case may be, one of the following enforcement clauses:

«Les Ministres, les membres des gouvernements de région et de Communauté et les autorités administratives, pour ce qui les concerne, sont tenus de pourvoir à l'exécution du présent arrêt. Les huissiers de justice à ce requis ont à y concourir en ce qui concerne les voies de droit commun.»

«De Ministers, de leden van de Gemeenschaps- en Gewestregeringen en de administratieve overheden zijn, wat hen betreft, gehouden te zorgen voor de tenuitvoerlegging van dit arrest. De daartoe aangezochte gerechtsdeurwaarders zijn gehouden hun medewerking te verlenen wat betreft de dwangmiddelen van gemeen recht.»

«Die Minister, die Mitglieder der Gemeinschafts- und Regionsregierungen und die Verwaltungsbehörden haben, was sie anbetrifft, für die Vollstreckung dieses Urteils zu sorgen. Die dazu angeforderten Gerichtsvollzieher haben betreffs der gemeinrechtlichen Zwangsmittel ihren Beistand zu leisten.»

(“The Ministers, the members of the regional and Community governments and the administrative

authorities shall, for their part, see to the enforcement of the present judgment. The bailiffs called upon for this purpose shall provide assistance as far as the ordinary enforcement procedures are concerned.”)

The office copies shall be issued by the registrar who shall sign them and affix to them the seal of the Court, the form of which shall be determined by the King.

Article 116

The judgment of the Court is final and without appeal.

Article 117

1. Except as provided in Article 118, errors of writing or calculation or clear inaccuracies may be rectified by the Court, either of its own motion or at the request of a party, within two weeks of the date of notification of the judgment.
2. The parties, duly informed by the registrar, may submit written observations within the time-limit established by the president.
3. The Court shall decide in chambers.
4. The original order prescribing the rectification shall be attached as an annex to the original rectified judgment. Mention of the order shall be made in the margin of the original rectified judgment.

Article 118

The Court, on application by the parties to the action for annulment or the court which referred the preliminary issue to it, shall interpret the judgment. The application for interpretation shall be brought in accordance with Article 5 or Article 27, as the case may be. It shall be communicated to all the parties to the action.

For the remainder, the procedure stipulated for the action for annulment or the preliminary issue shall be applicable.

The original of the interpretative judgment shall be attached as an annex to the original of the judgment interpreted. Mention of the interpretative judgment shall be made in the margin of the judgment interpreted.

Chapter IX – General provisions

Article 119

The date of an act which serves as the commencement of a time period shall not be included in the time period.

The day on which the time period ends shall be included in the period.

Nevertheless, when that day falls on a Saturday, Sunday or legal holiday, the time period shall end on the next working day.

Article 120

Time-limits shall be applicable to minors, persons deprived of legal capacity and other incompetent persons. Nevertheless, the Court may exempt such persons from the deadline, where it has been established that their representation may not be ensured before the end of the time-limit.

Article 121

The registry shall be open daily, with the exception of Saturdays, Sundays and legal holidays.

The King shall establish the registry hours.

Article 122

The Court shall draw up its rules of procedure and ensure their publication in the *Moniteur belge*.

Title VI – Final provisions

Article 123

1. The funds necessary for the functioning of the Court of Arbitration shall be allocated under the allocations budget.
2. The Council of Ministers shall deliberate on any royal decrees in respect of the Court of Arbitration.

Title VII – Transitional provisions

Article 124

Cases pending before the Court of Arbitration at the time of the entry into force of this Law shall be governed by the provisions of the Act on the organisation, competence and functioning of the Court of Arbitration of 28 June 1983.

Article 124 *bis*

For the application of Articles 1 and 26, paragraph 1, the following shall be considered as rules referred to in paragraph 1 of these two provisions: the consultation, association, transmission of information, notices, approvals, agreements, mutual agreements and proposals provided for under the Special Law on Institutional Reforms of 8 August 1980, with the exception of the co-operation agreements referred to in Article 92 *bis* of said law, and under the Special Law on the Financing of the Communities and Regions, or under any other law enacted pursuant to Articles 59 *bis*, 59 *ter*, 107 *quater*, 108 *ter* and 115 of the Constitution.

Article 125

The appointment of legal secretaries recruited by the Court of Arbitration on the basis of the Act of 28 June 1983 on the organisation, competence and functioning of the Court of Arbitration shall be definitive.

Article 126

The provision of Article 41, paragraph 1, concerning the requirement of a doctorate or degree in law, shall not be applicable to registrars exercising their functions at the time of entry into force of the present law.

Article 127

The following shall be abrogated:

1. In the Judicial Code:

a. Article 1082, paragraph 2, amended by the Act of 10 May 1985, the words "except where the second application invokes exclusively the annulment by the Court of Arbitration of the provision of a statute or decree which has served as grounds for the provision challenged";

b. Title VIII of Book III and Article 1147 *bis*, inserted by the Act of 10 May 1985;

2. Article 31 *bis* of the Consolidated Act of 12 January 1973 on the Council of State, inserted by the Act of 10 May 1985;

3. The Act of 28 June 1983 on the organisation, competence and functioning of the Court of Arbitration, as amended by the Act of 31 December 1983, with the exception of Articles 31 to 34 and 112;

4. Article 5 of the Act of 2 February 1984 relating to the salaries of the members, legal secretaries and registrars of the Court of Arbitration, to their nomination and appointment, and to insulting behaviour and violence towards members of the Court;

5. The Act of 10 May 1985 relating to the effects of judgments of annulment delivered by the Court of Arbitration.

Cyprus

Supreme Court

Introductory Note

Under the Constitution of the Republic of Cyprus its judicial power is exercised by the Supreme Constitutional Court and the High Court of Justice and such inferior courts as may be provided by law (see relevant Articles of the Constitution).

Owing to the events that occurred after 21 December 1963, the functioning of the two superior courts envisaged by the Constitution, namely the Supreme Constitutional Court and the High Court of Justice, was rendered impossible. Hence necessity arose to sustain the efficacy of the judicial power which rendered imperative the enactment of the Administration of Justice (Miscellaneous Provisions) Law 1964 (Law 33/64), whereby the aforesaid two superior courts of the country were amalgamated into one court created thereby, the Supreme Court of Cyprus.

Constitution

- extracts -

Part IX – The Supreme Constitutional Court

Article 133

1.1. There shall be a Supreme Constitutional Court of the Republic composed of a Greek, a Turk and a neutral judge. The neutral judge shall be the President of the Court.

2. The President and the other judges of the Supreme Constitutional Court shall be appointed jointly by the President and the Vice-President of the Republic:

Provided that in the case of a vacancy solely in the post of either the Greek or the Turkish judge the proposal of the President or the Vice-President of the Republic to whose Community the judge to be appointed shall belong shall prevail if the President and the Vice-President of the Republic do not agree on the appointment within a week of such proposal.

2. The seat of the Supreme Constitutional Court shall be in the capital of the Republic.

3. The neutral judge shall not be a subject or a citizen of the Republic or of the Kingdom of Greece or of the Republic of Turkey or of the United Kingdom and the Colonies.

4. The Greek and the Turkish judge of the Supreme Constitutional Court shall be a citizen of the Republic.

5. The President and the other judges of the Supreme Constitutional Court shall be appointed from amongst lawyers of high professional and moral standard.

6.1. The President of the Court shall be appointed for a period of six years.

2. The remuneration and other conditions of service of the President of the Court shall be laid down in the instrument of his appointment.

3. The conditions of service of the President of the Court to be laid down in the instrument of his appointment as provided in sub-paragraph 2 of this paragraph shall include:

a. provision for his retirement on the same grounds as those on which the Greek or the Turkish judge may be retired under sub-paragraph 3 of paragraph 7 of this Article; and

b. provision for his dismissal on the same grounds as those on which such Greek or Turkish judge may be dismissed under sub-paragraph 4 of paragraph 7 of this Article.

7.1. The Greek and the Turkish judge of the Court shall be permanent members of the judicial service of the Republic and shall hold office until they attain the age of sixty-eight.

2. Without prejudice to any retirement pension, gratuity or any other like benefit he may have acquired under the provisions of any law, the Greek or the Turkish judge of the Court may at any time resign his office by writing under his hand addressed to the President and the Vice-President of the Republic.

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3. The Greek or the Turkish judge of the Court shall be retired on account of such mental or physical incapacity or infirmity as would render him incapable of discharging the duties of his office either permanently or for such period of time as would render it impracticable for him to continue in office. A judge so retired shall be entitled to all benefits and emoluments provided by any law in force for the time being.
 4. The Greek or the Turkish judge of the Court may be dismissed on the ground of misconduct.
 - 8.1. There shall be established a Council consisting of the President of the High Court as Chairman and the senior in appointment Greek judge and the Turkish judge of the High Court as members.
 2. This Council shall have exclusive competence to determine all matters relating to:
 - a. the retirement, dismissal or otherwise the termination of the appointment of the President of the Court in accordance with the conditions of service laid down in the instrument of his appointment;
 - b. the retirement or dismissal of the Greek or the Turkish judge of the Court on any of the grounds provided in sub-paragraphs 3 and 4 of paragraph 7 of this Article.
 3. The proceedings of the Council under sub-paragraph 2 of this paragraph shall be of a judicial nature and the judge concerned shall be entitled to be heard and present his case before the Council.
 4. The decision of the Council taken by a majority shall be binding upon the President and the Vice-President of the Republic who shall jointly act accordingly.
 9. In the case of temporary absence or incapacity of the President or of the Greek judge or of the Turkish judge of the Court, the President of the High Court or the senior in appointment of the two Greek judges or the Turkish judge thereof respectively shall act in his place during such temporary absence or incapacity.
 10. No action shall be brought against the President or any other judge of the Court for any act done or words spoken in his judicial capacity.
 11. The remuneration and other conditions of service of the Greek and the Turkish judge of the Court shall be fixed by a law.
 12. The remuneration and other conditions of service of any judge of the Court shall not be altered to his disadvantage after his appointment.
- Article 134**
1. The sittings of the Supreme Constitutional Court for the hearing of all proceedings shall be public but the Court may hear any proceedings in the presence only of the parties, if any, and the officers of the Court if it considers that such a course will be in the interest of the orderly conduct of the proceedings or if the security of the Republic or public morals so require.
 2. When a recourse appears to be *prima facie* frivolous the Court may, after hearing arguments by or on behalf of the parties concerned, unanimously dismiss such recourse without a public hearing if satisfied that such recourse is in fact frivolous.
- Article 135**
- The Supreme Constitutional Court shall make Rules of Court for regulating the practice and procedure of the Court in the exercise of jurisdiction conferred upon it by this Constitution, for prescribing forms and fees in respect of proceedings in the Court and for prescribing and regulating the composition of its registry and the powers and the duties of the officers thereof.
- Article 136**
- The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on all matters as provided in the ensuing Articles.
- Article 137**
1. The President and the Vice-President of the Republic, either separately or conjointly, shall have a right of recourse to the Supreme Court under the provisions of this Article on the ground that any law or decision of the House of Representatives or any provision thereof discriminates against either of the two Communities.
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2.A recourse under paragraph 1 of this Article shall be made within seventy-five days of the promulgation of any such law or decision.

3.Notice of the filing of such a recourse shall be published in the official Gazette of the Republic by the President and the Vice-President of the Republic within a period of twenty-four hours from such filing. Upon the publication of such notifications in the official Gazette of the Republic the operation of such law or decision shall be suspended from the day following such publication until the Supreme Constitutional Court determines such recourse.

4.Upon such recourse the Court may confirm or annul such law or decision or any provision thereof or return it to the House of Representatives for reconsideration, in whole or in part:

Provided that in the case of annulment of a law or decision or any provision thereof such annulment shall operate from the date of the publication of the decision of the Supreme Constitutional Court under paragraph 5 of this Article without prejudice to anything done or left undone under such law or decision or provision thereof.

5.The decision of the Court shall be notified forthwith to the President and the Vice-President of the Republic and to the President and the Vice-President of the House of Representatives and shall be published forthwith by the President and the Vice-President of the Republic in the official Gazette of the Republic.

Article 138

1.Where on the adoption of the Budget by the House of Representatives the President and the Vice-President of the Republic, either separately or conjointly, has or have exercised his or their right to return it to the House of Representatives on the ground that in his or their judgment there is a discrimination and the House has persisted in its decision, the President and the Vice-President of the Republic, either separately or conjointly, as the case may be, shall have a right of recourse to the Supreme Constitutional Court on such ground.

2.Such recourse shall be made within the period fixed by this Constitution for the promulgation of the laws or decisions of the House of Representatives.

3.Upon such a recourse the Court may annul or confirm the Budget or return it to the House of Representatives, in whole or in part.

4.The decision of the Court shall be notified forthwith to the President and the Vice-President of the Republic and to the President and the Vice-President of the House of Representatives and shall be published forthwith by the President and the Vice-President of the Republic in the official Gazette of the Republic.

Article 139

1.The Supreme Constitutional Court shall have jurisdiction to adjudicate finally on a recourse made in connection with any matter relating to any conflict or contest of power or competence arising between the House of Representatives and the Communal Chambers or any one of them and between any organs of, or authorities in, the Republic:

Provided that nothing in this paragraph contained shall apply to any conflict or contest between any courts or judicial authorities in the Republic, which conflict or contest shall be decided by the High Court.

For the purpose of this paragraph the expression "courts or judicial authorities in the Republic" does not include the Supreme Constitutional Court.

2.Where any question arises as to the competence of the Supreme Constitutional Court regarding any matter, such question shall be determined by the Supreme Constitutional Court.

3.Recourse to the Court under paragraph 1 of this Article may be made by

- a.the President or the Vice-President of the Republic; or
- b.the House of Representatives; or
- c.one of, or both the Communal Chambers; or
- d.any other organ of, or authority in, the Republic, if involved in such conflict or contest.

4.Such recourse shall be made within thirty days of the date when such power or competence is contested.

5. Upon such a recourse the Court may declare that the law or the decision or the act, the subject or the recourse, is void, either from the time when the conflict or contest arose or *ab initio*, and without any legal effect whatsoever, either in whole or in part, on the ground that such law or decision or act was made or taken or done without power or competence, and in either case the Court may give directions as to the effect of anything done or left undone under such law or decision or act.
6. Any decision of the Court upon such recourse shall be forthwith notified to the parties concerned and to the President and the Vice-President of the Republic who shall forthwith publish it in the official Gazette of the Republic.
7. Upon a recourse under this Article the Court may order that the operation of the law or decision or act, as the case may be, which is the subject matter of such recourse, shall be suspended until the determination of the recourse; such order shall be published forthwith in the official Gazette of the Republic.

Article 140

1. The President and the Vice-President of the Republic acting jointly may, at any time prior to the promulgation of any law or decision of the House of Representatives, refer to the Supreme Constitutional Court for its opinion the question as to whether such law or decision or any specified provision thereof is repugnant to or inconsistent with any provision of this Constitution, otherwise than on the ground that such law or decision or any provision thereof discriminates against either of the two Communities.
2. The Supreme Constitutional Court shall consider every question referred to it under paragraph 1 of this Article and having heard arguments on behalf of the President and the Vice-President of the Republic and on behalf of the House of Representatives shall give its opinion on such question and notify the President and the Vice-President of the Republic and the House of Representatives accordingly.
3. In case the Supreme Constitutional Court is of the opinion that such law or decision or any provision thereof is repugnant to or inconsistent with any provision of this Constitution such law or decision

or such provision thereof shall not be promulgated by the President and the Vice-President of the Republic.

Article 141

1. The President and the Vice-President of the Republic may, at any time prior to the promulgation of any law imposing any formalities, conditions or restrictions on the right guaranteed by Article 25, refer to the Supreme Constitutional Court for its opinion the question as to whether such formality, condition or restriction is not in the public interest or is contrary to the interests of his Community.
2. The Supreme Constitutional Court shall consider such question and having heard arguments on behalf of the President or the Vice-President of the Republic, as the case may be, on behalf of the House of Representatives shall give its opinion and notify the President and the Vice-President of the Republic and the House of Representatives accordingly.
3. In case the Supreme Constitutional Court is of opinion that such formality, condition or restriction is not in the public interest or is contrary to the interests of such Community such law or any provision thereof prescribing such formality, condition or restriction shall not be promulgated by the President and the Vice-President of the Republic.

Article 142

1. The President of the Republic with regard to any law or decision of the Greek Communal Chamber and the Vice-President of the Republic with regard to any law or decision of the Turkish Communal Chamber, may, at any time prior to the publication of such law or decision, refer to the Supreme Constitutional Court for its opinion the question as to whether such law or decision or any specified provision thereof is repugnant to or inconsistent with any provision of this Constitution.
2. The Supreme Constitutional Court shall consider every question referred to it under paragraph 1 of this Article and having heard arguments on behalf of the President or the Vice-President of the Republic, as the case may be, and on behalf of the Communal Chamber concerned, shall give its opinion on such question and notify accordingly the President or the Vice-President of the

Republic, as the case may be, and the Communal Chamber concerned.

3. In case the Supreme Constitutional Court is of the opinion that such law or decision or any provision thereof is repugnant to or inconsistent with any provision of this Constitution such law or decision or such provision thereof shall not be published by the President or the Vice-President of the Republic, as the case may be.

Article 143

1. The President or the Vice-President of the Republic or Representatives consisting of at least one-fifth of the total number of a newly-elected House of Representatives shall have a right of recourse to the Supreme Constitutional Court on the question whether there exist such urgent and exceptional unforeseen circumstances as to justify a House of Representatives which continues to be in office until the assumption of office of a newly-elected House to make any laws or take any decisions as in Article 68 provided.
2. Such recourse, if made by the President or the Vice-President of the Republic shall be made within the period provided by this Constitution for the promulgation of the laws and decisions of the House of Representatives, and if made by such Representatives shall be made within fifteen days of the date when the new House first meets.
3. The decision of the Court shall be notified forthwith to the President and the Vice-President of the Republic and to the President and the Vice-President of the House of Representatives and shall be published forthwith by the President and the Vice-President of the Republic in the official Gazette of the Republic.

Article 144

1. A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court.

2. The Supreme Constitutional Court, on a question so reserved, shall, after hearing the parties, consider and determine the question so reserved and transmit its decision to the Court by which such question has been reserved.

3. Any decision of the Supreme Constitutional Court under paragraph 2 of this Article shall be binding on the court by which the question has been reserved and on the parties to the proceedings and shall, in case such decision is to the effect that the law or decision or any provision thereof is unconstitutional, operate as to make such law or decision inapplicable to such proceedings only.

Article 145

The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on any election petition, made under the provisions of the Electoral Law, with regard to the elections of the President or the Vice-President of the Republic or of members of the House of Representatives or of any Communal Chamber.

Article 146

1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.
2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.
3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.
4. Upon such a recourse the Court may, by its decision
 - a. confirm, either in whole or in part, such decision or act or omission; or

b. declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or

c. declare that such omission, either in whole or in part, ought not to have been made and whatever has been omitted should have been performed.

5. Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned.

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.

Article 147

The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a motion made by the Attorney-General and the Deputy Attorney-General of the Republic, in accordance with the provisions of paragraph 3 of Article 44, with regard to the question of the existence of such permanent or temporary incapacity, or absence, otherwise than temporary, of the President or the Vice-President of the Republic, as would prevent him to perform effectively his duties as in sub-paragraph d of paragraph 1 of Article 44 provided.

Article 148

Subject to the provisions of paragraph 3 of Article 144, any decision of the Supreme Constitutional Court on any matter within its jurisdiction or competence shall be binding on all courts, organs, authorities and persons in the Republic.

Article 149

The Supreme Constitutional Court shall have exclusive jurisdiction

a. to determine any conflict between the two texts of this Constitution by reference to the text of the draft of this Constitution signed in Nicosia on 6 April, 1960, in the Joint Constitutional Commission together with the schedule of amendments thereto signed on 16 August, 1960, by representatives of the Kingdom of Greece, the Republic of Turkey and the Greek and Turkish Cypriot communities, due regard being had to the letter and spirit of the Zurich Agreement dated 11 February, 1959, and of the London Agreement dated the 19 February, 1959;

b. to make, in case of ambiguity, any interpretation of this Constitution, due regard being had to the letter and spirit of the Zurich Agreement dated 11 February, 1959, and of the London Agreement dated the 19 February, 1959.

Article 150

The Supreme Constitutional Court shall have jurisdiction to punish for contempt of itself.

Article 151

1. Notwithstanding anything in the foregoing provisions of this Part, the Supreme Constitutional Court shall have exclusive competence to decide finally on a reference made to it by the Public Service Commission under sub-paragraph 2 of paragraph 3 of Article 125.

2. Nothing in this Article contained shall preclude any recourse to the Supreme Constitutional Court under Article 146 on a complaint concerning any decision, act or omission of the Public Service Commission.

Part X – The High Court and the subordinate courts

Article 152

1. The judicial power, other than that exercised under Part IX by the Supreme Constitutional Court and under paragraph 2 of this Article by the courts provided by a communal law, shall be exercised by a High Court of Justice and such inferior courts as may, subject to the provisions of this Constitution, be provided by a law made thereunder.
2. The judicial power with respect to civil disputes relating to personal status and to religious matters which are reserved under Article 87 for the Communal Chambers shall be exercised by such courts as a communal law made under the provisions of this Constitution shall provide.

Article 153

- 1.1. There shall be a High Court of Justice composed of two Greek judges, one Turkish judge and a neutral judge. The neutral judge shall be the President or the Court and shall have two votes.
2. The President and the other judges of the High Court shall be appointed jointly by the President and the Vice-President of the Republic:

Provided that in the case of a vacancy solely in the post of either a Greek judge or the Turkish judge the proposal of the President or the Vice-President of the Republic to whose Community the judge to be appointed shall belong shall prevail if the President and the Vice-President of the Republic do not agree on the appointment within a week of such proposal.

2. The seat of the High Court shall be in the capital of the Republic.
3. The neutral judge shall not be a subject or a citizen of the Republic or of the Kingdom of Greece or of the Republic of Turkey or of the United Kingdom and the Colonies.
4. The Greek judges and the Turkish judge of the High Court shall be citizens of the Republic.

5. The President and the other judges of the High Court shall be appointed from amongst lawyers of high professional and moral standard.

- 6.1. The President of the High Court shall be appointed for a period of six years.

2. The remuneration and other conditions of service of the President of the High Court shall be laid down in the instrument of his appointment.

3. The conditions of service of the President of the High Court to be laid down in the instrument of his appointment as provided in sub-paragraph 2 of this paragraph shall include:

- a. provision for his retirement on the same grounds as those on which a Greek or the Turkish judge may be retired under sub-paragraph 3 of paragraph 7 of this Article; and
- b. provision for his dismissal on the same grounds as those on which such Greek or Turkish judge may be dismissed under sub-paragraph 4 of paragraph 7 or this Article.

- 7.1. The Greek judges and the Turkish judge of the High Court shall be permanent members of the judicial service of the Republic and shall hold office until they attain the age of sixty-eight.

2. Without prejudice to any retirement pension, gratuity or any other like benefit he may have acquired under the provisions of any law, any Greek judge or the Turkish judge of the High Court may at any time resign his office by writing under his hand addressed to the President and the Vice-President of the Republic.

3. Any Greek or the Turkish judge of the High Court shall be retired on account of such mental or physical incapacity or infirmity as would render him incapable of discharging the duties of his office either permanently or for such period of time as would render it impracticable for him to continue in office. A judge so retired shall be entitled to all benefits and emoluments provided by any law in force for the time being.

4. A Greek or the Turkish judge of the High Court may be dismissed on the ground of misconduct.

8.1. There shall be established a Council consisting of the President of the Supreme Constitutional Court as Chairman and the Greek and the Turkish judge of the Supreme Constitutional Court as members.

2. This Council shall have exclusive competence to determine all matters relating to:

a. the retirement, dismissal or otherwise the termination of the appointment of the President of the High Court in accordance with the conditions of service laid down in the instrument of his appointment;

b. the retirement or dismissal of any Greek judge or the Turkish judge of the High court on any of the grounds provided in sub-paragraphs 3 and 4 of paragraph 7 of this Article.

3. The proceedings of the Council under sub-paragraph 2 of this paragraph shall be of a judicial nature and the judge concerned shall be entitled to be heard and present his case before the Council.

4. The decision of the Council taken by a majority shall be binding upon the President and the Vice-President of the Republic who shall jointly act accordingly.

9. In the case of temporary absence or incapacity of the President of the High Court or of one of the Greek judges or of the Turkish judge thereof the President of the Supreme Constitutional Court or the Greek judge or the Turkish judge thereof respectively shall act in his place during such temporary absence or incapacity:

Provided that if it is impracticable or inconvenient for the Greek or the Turkish judge of the Supreme Constitutional Court to act, the senior in office Greek or Turkish judge in the judicial service of the Republic shall so act respectively.

10. No action shall be brought against the President or any other judge of the High Court for any act done or words spoken in his judicial capacity.

11. The remuneration and other conditions of service of the Greek judges and of the Turkish judge of the High Court shall be fixed by a law.

12. The remuneration and other conditions of service of any judge of the High Court shall not be altered to his disadvantage after his appointment.

Article 154

The sittings of the High Court for the hearing of all proceedings shall be public but the court may hear any proceedings in the presence only of the parties, if any, and the officers of the court if it considers that such a course will be in the interest of the orderly conduct of the proceedings or if the security of the Republic or public morals so require.

Article 155

1. The High Court shall be the highest appellate court in the Republic and shall have jurisdiction to hear and determine, subject to the provisions of this Constitution and of any Rules of Court made thereunder, all appeals from any court other than the Supreme Constitutional Court.

2. Subject to paragraphs 3 and 4 of this Article the High Court shall have such original and revisional jurisdiction as is provided by this Constitution or as may be provided by law:

Provided that where original jurisdiction is so conferred, such jurisdiction shall, subject to Article 159, be exercised by such judge or judges of the High Court as the High Court shall determine:

Provided further that there shall be a right of appeal to the High Court from their decision.

3. The High Court shall, to the exclusion of any other court, determine the composition of the court which is to try a civil case where the plaintiff and the defendant belong to different Communities and of the court which is to try a criminal case in which the accused and the injured party belong to different Communities. Such court shall be composed of judges belonging to both the Greek and the Turkish Communities.

4. The High Court shall have exclusive jurisdiction to issue orders in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*.

Article 156

The following offences in the first instance shall be tried by a court composed of such judges belonging to both Communities as the High Court shall determine presided over by the President of the High Court:

- a. treason and other offences against the security of the Republic;
- b. offences against the Constitution and the constitutional order:

Provided that in the appeal from any decision of such court the High Court shall be presided over by the President of the Supreme Constitutional Court in the place of the President of the High Court and in such a case the President of the Supreme Constitutional Court shall have all the powers vested in the President of the High Court.

The administration of justice (miscellaneous provisions) Law

Law No. 33 of 1964, 9th July 1964

A Law to remove certain difficulties, arising out of recent events, impeding the administration of justice and to provide for other matters connected therewith.

Whereas recent events have rendered impossible the functioning of the Supreme Constitutional Court and of the High Court of Justice and the administration of justice in some other respects:

And whereas it is imperative that justice should continue to be administered unhampered by the situation created by such events and that the judicial power hitherto exercised by the Supreme Constitutional Court and by the High Court of Justice should continue to be exercised:

And whereas it has become necessary to make legislative provision in this respect until such time as the people of Cyprus may determine such matters:

Now, therefore, the House of Representatives enacts as follows:

Part I – Preliminary

Article 1

This Law may be cited as the Administration of Justice (Miscellaneous Provisions) Law, 1964.

Article 2

1. In this Law, unless the context otherwise requires:

“Court” means the Supreme Court established under section 3;

“High Court” means the High Court of Justice established under Article 153 of the Constitution;

“Judge” means the President or any other Judge of the Court;

“law” means the Constitution or any Law and includes a public instrument;

“proceedings” includes civil and criminal proceedings;

“Supreme Constitutional Court” means the Supreme Constitutional Court established under Article 133 of the Constitution.

2. Expressions not otherwise defined in this Law shall, unless the context otherwise requires, have the meaning assigned to such expressions by the Courts of Justice Law, 1960.

Part II – Supreme court

Article 3

1. For the purpose of having the jurisdiction hitherto exercised by the Supreme Constitutional Court and the High Court continued to be exercised, there shall be established in the Republic a Supreme Court to exercise, subject to the provisions of this Law, such jurisdiction.

2. The Court shall consist of five or more, but not exceeding seven, Judges one of whom shall be the President.

3. Any member of the Supreme Constitutional Court and of the High Court holding office on the date of the coming into operation of this Law shall, as from that date, be a member of the Court and shall hold

office under the same terms and conditions as were applicable to him before that date.

4.The senior member of the Court shall be the first President of the Court and thereafter in case of vacancy or temporary incapacity or absence of the President of the Court, the President of the Republic shall designate the President of the Court from amongst its members.

5.All the Judges shall, save as in this Law otherwise expressly provided, have in all respects equal power, authority and jurisdiction and shall be addressed in the manner formerly customary in addressing the Judges of the Supreme Constitutional Court and of the High Court.

6.The President of the Court shall take precedence over all the Judges of the Court and the Judges shall rank among themselves according to their seniority.

7.For the purposes of this Law seniority shall be determined as follows:

a.in the case of Judges who become members of the Court under subsection 3 their seniority shall be determined by the date of the publication of their appointment as Judges of the Supreme Constitutional Court or the High Court, as the case may be, in the *official Gazette* of the Republic:

Provided that if the publication of their appointment was made on the same date, their seniority shall be determined by reference to their respective length of service in the judicial service of Cyprus, and in the case of persons who had held no judicial office before their appointment their seniority shall be determined by the priority of the instrument of their appointment;

b.in any other case, seniority shall be determined by the date of the publication of his appointment as a Judge in the *official Gazette* of the Republic.

Article 4

1.Whenever the office of a Judge is vacant a new Judge shall be appointed by the President of the Republic to fill the vacancy.

2.The office of a Judge shall be vacant when no one is appointed to that office or on the death, retirement, resignation, removal from or refusal to act in the office of its holder.

3.Any appointment under this section shall be made in consultation with the Court.

4.Any appointment under this section shall be made on the same terms and conditions as are applicable to a Judge under subsection 3 of section 3.

Article 5

1.No person shall be appointed as a Judge unless he is a qualified lawyer with at least twelve years' practice and of high moral standard.

2.For the purposes of subsection 1 "practice" shall include service in the permanent judicial or legal service of Cyprus.

Article 6

A Judge shall be a permanent member of the judicial service of the Republic.

Article 7

1.The President of the Republic shall, if advised by the Court that it is expedient, owing to an existing vacancy and until the office is filled, or to the temporary incapacity or absence of a Judge, that a temporary appointment should be made, appoint a person having the appropriate qualifications provided by section 5 to be a Judge for such time as may be specified in the instrument of his appointment.

2.Any person appointed under subsection 1 shall, whilst so acting, have all the powers and may perform all the duties of a Judge.

3.A person appointed under this section may be allowed as remuneration an amount not exceeding the amount provided for the office to which he is so appointed and such remuneration shall be a charge on the Consolidated Fund of the Republic.

Article 8

Any Judge, appointed under section 4 or 7 shall, before assuming the duties of his office, make and subscribe before the President of the Republic the affirmation of faith to the Republic and the judicial oath in the form prescribed by the Schedule to the Courts of Justice Law, 1960.

Part III – Jurisdiction and powers

Article 9

There shall be invested in the Court:

- a. the jurisdiction and powers, which have been hitherto vested in, or capable of being exercised by, the Supreme Constitutional Court and the High court;
- b. the competence and the powers vested in, and exercised by, a Council for determining all matters relating to the retirement, dismissal or otherwise of a Judge of the Supreme Constitutional Court or of the High Court on account of such mental or physical incapacity or infirmity as would render him incapable of discharging the duties of his office either permanently or for such period of time as would render it impracticable for him to continue in office or on the ground of misconduct.

Article 10

1. The Supreme Council of Judicature for the exercise of the competence and the powers in respect of appointments, promotions, transfers, termination of appointments, dismissals and disciplinary matters of judicial officers shall be composed of:
 - a. the Attorney-General of the Republic;
 - b. the President and the two senior Judges of the Court;
 - c. the senior President of a District Court and the senior District Judge; and
 - d. a practising advocate of at least twelve years' practice elected at a general meeting, convened for the purpose, of Cyprus Bar Association for a period of six months and not being eligible for re-election for the next five years:

Provided that in case of absence or temporary incapacity of the President or a Judge of the Court or of a President of the District Court, or the senior District Judge, the Judge or President of a District Court, or District Judge, as the case may be, next in seniority shall act as a member of the Council:

Provided further that in case of absence or temporary incapacity of the practising advocate provided by paragraph d of this subsection the practising advocate elected as an alternate member of the Council at the same meeting of the Bar Association shall act.

2. The Supreme Council of Judicature shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any member thereof.
3. For the purposes of this section seniority of Judges shall be determined in accordance with the provisions of subsection 7 of section 3 and seniority of a President of a District Court or a District Judge shall be determined by seniority in that office.
4. The Supreme Council of Judicature may make rules regulating its own procedure.

Article 11

1. Any jurisdiction, competence or powers vested in the Court under section 9 shall, subject to subsections 2 and 3 and to any Rules of Court, be exercised by the full Court.
2. Any original jurisdiction vested in the Court under any law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority as being contrary to the law in force or in excess or abuse of power, may be exercised, subject to any Rules of Court, by such Judge or Judges as the Court shall determine:

Provided that, subject to any Rules of Court, there shall be an appeal to the Court from his or their decision.

3. Any appellate jurisdiction vested in the Court shall, subject to any Rules of Court, be exercised by at least three Judges nominated by the Court.

Each such nomination shall be made in respect of a period of four months at the beginning of such period.

Part IV – Miscellaneous

Article 12

1. Any Court, established by the Courts of Justice Law, 1960, or any other Law shall, in the exercise of its civil or criminal jurisdiction under such Law, be composed of such judge or judges, irrespective of the community to which the parties to the proceedings belong, as the Court may direct.

2. Any judge of a District Court may hear and determine any case falling within his jurisdiction irrespective of the community to which the parties to the proceedings belong.

Article 13

1. The Court shall have and use, as occasion requires, a seal bearing the style of the Court and such device as may be approved by the Minister of Justice.

2. The Court may have as many duplicates of the seal of the Court as may be required, not exceeding one duplicate for each member of the Court.

3. The Court shall direct in whose custody every duplicate of the seal of the Court shall be kept.

Article 14

The sittings of the Court shall be held at Nicosia in such building as the Minister of Justice shall from time to time assign as a Court House for that purpose.

Article 15

For any reference in any law in force to the Supreme Constitutional Court or the High Court or any Judge thereof respectively a reference to the Court or a Judge, as the case may be, shall be substituted and where there is any conflict between the provisions of this Law and of any other Law, the provisions of this Law shall prevail.

Article 16

The Court shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any member thereof.

Article 17

The Court may make Rules (in this Law referred to as “Rules of Court”) to be published in the *official Gazette* of the Republic for the better carrying out of this Law into effect:

Provided that any Rules of Court duly made and in force on the date of the coming into operation of this Law shall, until revoked or amended by any new Rules made under this Law, continue to be in force.

Article 18

Any proceedings pending on the date of the coming into operation of this Law before the Supreme Constitutional Court or the High Court shall be transferred at the stage they have reached to be heard and determined, under the provisions of this Law, by the Court.

Finland

Supreme Court

Supreme Administrative Court

The Constitution Act of Finland

(17 July 1919/94)

- extracts -

I – General Provisions

Article 2

Sovereign power in Finland shall belong to the people, represented by Parliament convened in session.

Legislative power shall be exercised by Parliament in conjunction with the President of the Republic.

Supreme executive power shall be vested in the President of the Republic. In addition, for the general government of the State there shall be a Council of State comprising the Prime Minister and the requisite number of Ministers.

Judicial power shall be exercised by independent courts of law, at the highest instance the Supreme Court and the Supreme Administrative Court.

II – Fundamental Rights

Article 16

(17.7.1995/969) Everyone shall have the right to have his affairs considered appropriately and without undue delay by a lawfully competent court of justice or other public authority as well as the right to have a decision concerning his rights and obligations reviewed by a court of justice or other independent judicial organ.

The publicity of proceedings and the right to be heard, to receive a decision with stated grounds and to appeal against the decision as well as other guarantees of a fair trial and of good public administration shall be secured by act of Parliament.

III – Legislation

Article 18

Both the President and Parliament shall have the right to propose a new Act of Parliament or that an existing Act be amended, expounded or repealed.

The President shall exercise his right of initiative by submitting bills to Parliament with accompanying legislative proposals. The draft bills shall be prepared by the Council of State. A statement concerning any such draft bill may be obtained, depending on the nature of the matter, either from the Supreme Court or from the Supreme Administrative Court or from both.

The exercise by Parliament of its right of initiative shall be prescribed in the Parliament Act.

Article 19

When an act has been approved by Parliament, it shall be submitted for ratification to the President, who may request a statement concerning the Act either from the Supreme Court or from the Supreme Administrative Court or from both, depending from the nature of the matter.

An Act shall be ratified in the form in which Parliament approved it within three months of the date when it was submitted to the President for ratification. If the President fails to ratify an Act, it shall be returned to Parliament. An act which has not been ratified shall nevertheless enter into force if Parliament, in the first regular session following that during which the Act was submitted for ratification, reapproves the Act in an unamended form in the sense prescribed in the Parliament Act. A returned Act which is not re-approved shall be deemed to have lapsed. (26.6.1987/575)

Paragraph 3 was repealed by the Act of 26 June 1987/575.

V – Courts of Law

Article 53

The Supreme Court shall exercise highest jurisdiction in general legal proceedings and shall, in addition, supervise the administration of justice by the judiciary and by execution authorities.

Article 54

The Supreme Court shall comprise a President and the requisite number of Supreme Court Justices.

Matters of judicial administration assigned to the Supreme Court by specific provisions shall be prepared by that Ministry of the Council of State to which matters of judicial administration have been assigned. The Minister of Justice shall participate in the consideration of these matters in the Supreme Court.

Five members of the Supreme Court shall constitute a *quorum* unless a greater or lesser number of members is separately prescribed by Act of Parliament. (3.3.1995/267)

Article 55

Provisions on general courts of appeal and of first instance shall be prescribed by law.

Article 56

With certain separately prescribed exceptions, the Supreme Administrative Court shall exercise the highest appellate jurisdiction in the field of administrative law and shall oversee the exercise of judicial authority by lower officials in the sphere of administrative law.

Article 57

The Supreme Administrative Court shall comprise a President and the requisite number of Supreme Administrative Court Justices. The provisions of section 54, paragraph 3 regarding the Supreme Court shall apply to a *quorum* in this Court.

Article 58

It shall be the task of the Supreme Court or the Supreme Administrative Court, when they consider it necessary that an Act of Parliament or a Decree be amended or expounded, to propose to the President that such legislation be initiated.

Article 59

(21.12.1990/1221) If charges for proceeding in an unlawful manner in an official act are brought against a member of the Council of State, the Supreme Court or the Supreme Administrative Court or against the Chancellor of Justice, the Assistant Chancellor of Justice, or his deputy, or against the Parliamentary Ombudsman, the Assistant Parliamentary Ombudsman or his deputy, then the matter shall be heard in a special court, the High Court of Impeachment, which shall be governed by a separate Constitutional Act of Parliament.

If Parliament has decided to have charges brought against a member of the Council of State, the Chancellor of Justice, the Assistant Chancellor of Justice or his deputy, the charges shall be prosecuted by the Parliamentary Ombudsman. Charges against the Parliamentary Ombudsman, the Assistant Parliamentary Ombudsman or his deputy shall be prosecuted by a person appointed by Parliament.

Article 60

Provisions on special courts other than that referred to in section 59 shall be prescribed by law.

No temporary courts shall be established.

Supreme Court Act

22 July 1918/74

Article 1

Supreme jurisdiction in legal matters shall in Finland be exercised by the Supreme Court.

The Supreme Court shall also oversee the application of the law by judges and enforcement authorities.

Article 2

(22.12.1949/804) The Supreme Court shall have a President and as members at least fifteen Justices. The President of the Republic shall appoint as the President and, on the recommendation of the Supreme Court, as members and Justices persons who are of high intellectual integrity and qualified in law, and who have skill and experience from service in the judiciary. (30.12.1992/1694)

If, in view of the number of cases that have not been decided or for other reasons, it is considered necessary to appoint extraordinary Justices, the President of the Republic may appoint, on the recommendation of the Supreme Court, at most fourteen persons who have the qualifications mentioned in paragraph 1 as members of the Supreme Court for a term not exceeding three years. The persons who are so appointed shall not be considered to have resigned from their previous office as a result of the appointment. (25.1.1991/197)

The extraordinary justices shall be assigned to the various sections on an equal basis.

Article 3

The Supreme Court shall examine and decide as the final instance

- 1.all litigation which according to law or special decrees may have been brought before the judicial department of the Senate of Finland;
- 2.appeals against the decisions and actions of authorities, which until now have been subject to appeal to the judicial department of the Senate;
- 3.appeals against the judgments and decisions of the Land Court;
- 4.charges for misconduct in office committed by the President or a member of a court of appeal in the performance of his duties; and
- 5.applications for the restoration of lapsed time and for the annulment of a final judgement.

Article 4

The Supreme Court shall also consider

- 1.matters relating to appointment, leave of absence and substitution of officials in courts of appeal lower courts, where these are not to be decided by a lower authority;
- 2.other matters relating to the administration of justice which could be entrusted to the Supreme Court;
- 3.questions on whether a case or matter is to be examined by a general court, a special court or an administrative authority; and

- 4.the issue of a statement regarding pardons.

Separate provisions have been enacted on the preparation of matters relating to judicial administration and on the participation in the consideration of the same by the member of the Government in charge of judicial administration matters.

Article 5

The Supreme Court shall give to the Government its statement on questions related to the enactment, amendment, interpretation or repeal of Constitutional Acts and acts in the field of civil or criminal legislation.

It is incumbent on the Supreme Court, when it considers the amendment or interpretation of an act or decree to be necessary, to make a proposal to the Government on the undertaking of such a legislative measure.

Article 6

Separate provisions have been enacted on those matters which until now were to be dealt with by the judicial department of the Senate and which are transferred to the Supreme Administrative Court.

Article 7

(2.2.1979/106) The Supreme Court shall consider and decide matters divided in sections.

Matters relating to judicial administration, questions of legislative proposals and, when the Supreme Court considers it necessary, the giving of a statement on legislative questions shall be considered in a plenary session. The Supreme Court may stipulate that another matter or a certain question that is a part thereof be also considered in plenary session.

Article 7a

(2.2.1979/106) Five members of the Supreme Court shall constitute a *quorum*.

Matters relating to the granting of leave to appeal shall be considered and decided by sections of at least two and at most three members, unless the question of the granting of leave to appeal in a case referred to in chapter 30, Article 3, paragraph 2 of the Code of Judicial Procedure has been transferred for a decision in connection with the consideration of the appeal. (3.3.1995/268)

Appeals against the judgments of the Insurance Court may be considered and decided by sections of three members. However, the matter shall be transferred to a full section if, after presentation of the proposed decision, the members of the section are not unanimous on the decision. (23.12.1981/971)

Matters relating to extraordinary means of appeal may also be considered and decided by a section of three members, unless the application pertains to a decision of the Supreme Court. A matter relating to an extraordinary means of appeal and considered by a section of three members shall be transferred to a full section, unless after the presentation of the proposed decision, a decision is made on an interim measure or unless the application is rejected or dismissed by the unanimous decision of a section of three members. (25.3.1983/330)

A section of one member may take a decision on a matter relating to the prohibition or interruption of enforcement. (3.12.1995/268)

The *quorum* in courts martial shall be determined in accordance with the separate provisions enacted thereon. (25.3.1983/330)

A matter considered by a section of two members shall be transferred for decision to a section of three members, unless the members of the section are unanimous on the decision. (3 March 1995/268)

Article 8

(25.4.1930/149) The Supreme Court shall have the necessary number of auxiliary judges who shall be appointed by the President of the Republic on the recommendation of the Supreme Court, and other officials who shall be appointed by the Supreme Court itself. The persons appointed to these offices, with the exception of clerical and archival positions, shall be qualified in law and have skill and experience from service in the judiciary.

Article 9

The Chancellor of Justice shall exercise the authority and fulfil the functions in the Supreme Court that until now he has had in the judicial department of the Senate.

Article 10

The right, guaranteed by the Constitution Act to all judges, not to be dismissed from office without a legal examination and judgement, shall apply also to the President and members of the Supreme Court and to the auxiliary judges.

Article 11

Repealed by the Act of 24 October 1986/756

Article 12

The President and members of the Supreme Court may, on charges by the Chancellor of Justice for misconduct in office, be brought before the special court that shall consider charges against members of the Government for unlawful actions in the performance of their duties.

Article 13

The provisions in chapter 30 of the Code of Judicial Procedure and in separate decrees on procedure in the final instance shall be applied in proceedings before the Supreme Court.

Article 14

(21.1.1994/60) The Supreme Court shall issue its Rules of Procedure. In the Rules of Procedure the Supreme Court may relieve the members mentioned in Article 2, paragraph 2 from considering the questions referred to in Article 4, paragraph 1, subparagraphs 1 to 3 and in Article 5, paragraph 2 as well as the financial and administrative questions concerning the Supreme Court.

Article 15

The more detailed provisions that are necessary for the implementation of this Act shall be issued by Decree.

Article 16

This Act shall enter into force on 1 October 1918, on which day the judicial department of the Senate shall be disbanded and its officials transferred to corresponding duties in the Supreme Court. Prior to this the Government shall appoint the members to the Supreme Court.

Cases and matters which are to be dealt with by the Supreme Court and which on the day in question are pending before the judicial department of the Senate shall be transferred to the Supreme Court.

The Act on the Supreme Administrative Court

A;22.7.1918, SK: 74B/1918

Article 1

Subject to the exclusions listed below, the highest authority for hearing administrative-law appeals shall be the Supreme Administrative Court.

The Supreme Administrative Court shall also supervise the application of the law by lower authorities in the field of administrative law.

Article 2

(A:22.12.1949, SK:805/1949) The Supreme Administrative Court shall have a President and at least 15 members, referred to as Administrative Counsellors. The President of the Republic shall appoint as the President and, on the recommendation of the Administrative Court, as members and Administrative Counsellors persons who are of high moral integrity and qualified in law, and with competence and experience of the legal and administrative profession. At least half the members of the Supreme Administrative Court shall have qualifications for the post of judge. (V:1.1.1993 M, A:30.12.1992, SK:1695/1992)

If, in view of the number of cases that have not been decided or for other reasons, it is considered necessary to appoint extraordinary administrative counsellors, the President of the Republic may appoint, on the recommendation of the Supreme Administrative Court, at most 12 persons who have the qualifications mentioned in paragraph 1 as members of the Supreme Administrative Court for a term not exceeding three years. These extraordinary administrative counsellors shall not be regarded to have resigned from their previous office as a result of their appointment. (V:1.7.1991 M, A:25.1.1991, SK:198/1991)

The extraordinary administrative counsellors shall be assigned to the various sections on an equal basis.

Article 3

The Supreme Administrative Court shall examine and decide as the final instance:

1. such administrative-law appeals as have hitherto been resolved in the economic department of the Senate, subject to the exceptions listed in Articles 4 and 5;
2. matters on which appeals are submitted to the Supreme Administrative Court in pursuance of certain acts and regulations or which are otherwise referred to it, as well as applications for the recovery of time lost and for the setting aside of a legally binding decision in such administrative matters as fall within the jurisdiction of this Court or the Government.

Paragraph 2 was repealed by Act V:1.9.1994 K, A:2.8.1994, SK:692/1994.

Article 4

(V:1.12.1994 M, A:2.8.1994, SK:692/1994) Appeals concerning appointments shall be dealt with by the Council of State. Likewise, the Council of State shall deal with appeals concerning matters which, according to the law, have been subjected to investigation by the Council of State.

Article 5

If the Supreme Administrative Court considers that an appeal concerns an issue, the solution of which depends on an assessment of the appropriateness of the decision or action, the matter shall be subjected to a decision by the Government.

If the matter referred to in paragraph 1 also involves the question of whether the decision or measure is contrary to the law, the Supreme Administrative Court shall express its opinion thereon.

The action or opinion of the Supreme Administrative Court referred to in this article shall be final.

Article 6

If an appeal is appended to an application for an administrative action relating to the same matter, the Supreme Administrative Court shall deal with the appeal and leave the rest of the matter to be settled by the Government.

Article 7

The Supreme Administrative Court shall provide the Government with opinions on legislative issues concerning administration.

When the Supreme Administrative Court considers it necessary to amend or explain an Act or regulation concerning administration, it shall be the responsibility of the Supreme Administrative Court to make a proposal thereon to the Government.

Article 8

Five members of the Supreme Administrative Court shall constitute a *quorum*, unless it is specifically prescribed by law that a decision on certain matters requires the presence of fewer or more members.

Three members of the Supreme Administrative Court may discuss and decide on:

- 1.a matter concerning the grant of an appeal, with the exclusion of matters related to water;
- 2.a matter concerning the prohibition or discontinuation of enforcement; and
- 3.a matter where an appeal or an application has been cancelled or which concerns the question of whether or not the appeal has been made within the required time-limits or in compliance with the prescribed form. (V:1.9.1994 L, A:2.8.1994, SK:692/1994)

Article 9

(A:12.1.1979, SK:12/1979) The Supreme Administrative Court may be provided with the following staff: referendary counsellor, senior and junior administrative secretary, registrar, dispatcher, department secretary, senior porter, typist and porter.

In addition, the Supreme Administrative Court may be provided with extraordinary posts, temporary

employees and staff hired under employment contracts.

Article 10

The Chancellor of Justice shall have the same jurisdiction and duties as he had in the judicial department of the Senate.

Article 11

The right, guaranteed by the Constitution Act to all judges, not to be dismissed from office without a legal examination and judgment, shall apply also to the President and members of the Supreme Administrative Court and to the auxiliary judges.

Article 12

Repealed – See Valtion virkamieslain voimaannpan L 3 § 12 k., C 2 (Act on the Implementation of the Act on Government Employees).

Article 13

In the event of their misconduct, the President and the Administrative Counsellors of the Supreme Administrative Court shall be brought before the Supreme Court.

Article 14

Repealed by the Act of 26 July 1996 (587/96), entry into force on December 1, 1996.

Article 15

Paragraph 1 is repealed by the Act of 26 July 1996 (587/96), entry into force on December 1, 1996.

The Supreme Administrative Court may decide that an oral hearing and examination shall be conducted by one or more members and auxiliary judges of the Court.

Article 16

Repealed by the Act of 26 July 1996 (587/96), entry into force on December 1, 1996.

Article 16a

Repealed by the Act of 26 July 1996 (587/96), entry into force on December 1, 1996.

Article 16b

Repealed by the Act of 26 July 1996 (587/96), entry into force on December 1, 1996.

Article 16c

(A:12.1.1979, SK:12/1979) In matters where confidentiality applies, the oral hearing and the hearing of an interested party, witness or expert shall be conducted in private. The Supreme Administrative Court may decide that the oral hearing and the hearing of an interested party, witness or expert may also be conducted in private in other matters, if a public hearing is liable to cause particular harm to an interested party.

In an oral hearing and in the hearing of an interested party, witness or expert, the provisions of the Act on the Publicity of Judicial Proceedings (945/84) shall otherwise apply. (A:21.12.1984, SK:948/1984)

Article 17

The more detailed provisions necessary for the implementation of this Act shall be issued by Decree.

Article 18

Repealed by Act A:12.1.1979, SK:12/1979.

Hungary

Constitutional Court

Constitution

- extracts -

Chapter IV – The Constitutional Court**Article 32/A**

1. The Constitutional Court shall review the constitutionality of laws and statutes and shall perform the tasks assigned to it by law.
2. In the case of determining unconstitutionality, the Constitutional Court shall annul the laws and other statutes.
3. The proceedings of the Constitutional Court in cases determined by law may be initiated by anyone.
4. The eleven Members of the Constitutional Court shall be elected by the National Assembly. The Members of the Constitutional Court shall be nominated by a nominating committee composed of one Member of each of the groups of representatives of the parties having seats in the National Assembly. For the election of the Members of the Constitutional Court, the votes of two-thirds of the National Assembly representatives shall be required.
5. The Members of the Constitutional Court shall not be members of any party and shall not engage in any political activity besides the tasks arising from the authority of the Constitutional Court.
6. To pass an Act on the organisation and functioning of the Constitutional Court, the vote of two-thirds of the National Assembly representatives shall be required.

Act No. XXXII of 1989 on the Constitutional Court

Amended by Act LXXVIII of 1994

In order to develop a constitutional state, to protect the constitutional order and the fundamental rights set out in the Constitution, to promote the separation of powers and to create their mutual equilibrium as well as to set up the highest organ of constitutional protection, Parliament enacts – for the enforcement of Article 32/A, section 6 of the Constitution – the following Act:

Chapter I – Competence of the Constitutional Court

Article 1

The competence of the Constitutional Court shall comprise the following:

- a. the preliminary examination of the unconstitutionality of Bills, of Acts of Parliament, enacted but not yet promulgated, of the Standing Order of Parliament and of international treaties;
- b. the examination of the unconstitutionality of legal rules as well as other legal means of State control;
- c. the examination of the conformity of legal rules as well as other legal means of State control with international treaties;
- d. the adjudication of constitutional complaints submitted because of alleged violations of constitutional rights;
- e. the elimination of unconstitutionality manifesting itself in omission;
- f. the elimination of a conflict in connection with the sphere of authority arising between several State organs, a self-government and other State organs (bodies), or self-governments;
- g. the interpretation of the provisions of the Constitution;
- h. proceedings in all cases referred to its competence by an Act.

Article 2

The Constitutional Court shall draw up its own budget and shall submit it, as part of the State Budget, for approval to Parliament.

Chapter II – Organisation of the Constitutional Court

Article 3

The seat of the Constitutional Court shall be in Esztergom.

Article 4

1. The Constitutional Court shall have eleven Members, among them the President and the Vice-President.
2. From among its Members, the Constitutional Court shall elect its President and the Vice-President for three years; they may be re-elected to that office. A re-election shall not affect the term of mandate as a Member of the Constitutional Court.

Article 5

1. Any Hungarian citizen with a law degree who has no prior conviction, and is over 45 may be elected as a Member of the Constitutional Court.
2. The Members of the Constitutional Court shall be elected by Parliament from among outstanding theoretical legal experts, university professors, or Doctors of Political Sciences and Laws, or lawyers with at least twenty years of practice in the field. Practice in the field shall be in a field which requires a degree in Political Sciences and Laws.
3. No person who, in the four years preceding the election, has been a Member of the Government, or employee of a Party, or an executive in State administration shall be a Member of the Constitutional Court.

Article 6

A nomination committee composed of Members of Parliament designated by party fractions shall nominate the candidates for Constitutional Court Members.

Article 7

The candidates shall be heard by the Legal, Administrative and Judicial Committees of Parliament.

Article 8

1. The Members of the Constitutional Court shall be elected by Parliament, taking into consideration the opinion of the Legal, Administrative and Judicial Committees of Parliament.
2. If the candidates were not elected by Parliament, the nomination committee provided in Article 6 shall submit another proposal in the course of the same session but at the latest within fifteen days.
3. The Members of the Constitutional Court shall be elected for nine years. Any Member of the Constitutional Court may be re-elected once.
4. The new Member of the Constitutional Court shall be elected within three months prior to the expiry of the term of mandate of his/her predecessor. If Parliament was dissolved previously, the election shall take place within one month subsequent to the first sitting of the newly Parliament elected.

Article 9

1. The Member of the Constitutional Court shall neither be a Member of Parliament, a Member of the Local Self-Government nor hold office at any State organ or be an executive at an organisation for the representation of interests and shall not be the member of any Party.
2. The Member of the Constitutional Court shall not pursue any political activity other than those arising out of the competence of the Constitutional Court, and shall make no political statement.
3. Except for scientific, educational, literary or artistic activity, the Member of the Constitutional Court shall not pursue any gainful occupation.

Article 10

1. The person elected to be a Member of the Constitutional Court shall, if there exist any cause for incompatibility as provided in Article 9, terminate that within ten days subsequent to his/her election. The person elected to be a Member of the Constitutional Court shall not exercise his/her sphere of authority arising out of his/her office until he/she complied with his/her obligation.
2. If the Member of the Constitutional Court does not comply with his/her obligation within the time prescribed in section 1, his/her membership shall be terminated by a resolution of a full session of the Constitutional Court.

Article 11

When assuming his/her office, the Member of the Constitutional Court shall take an oath before Parliament pledging the unconditional observance of the Constitution and the conscientious exercise of his/her duties.

Article 12

The Members of the Constitutional Court shall be independent, and shall base their decision solely on the Constitution and other Acts.

Article 13

The remuneration of the President of the Constitutional Court shall be equal to that of the Prime Minister, while the remuneration of the other Members of the Court – including the Vice-President – shall be equal to that of the Ministers.

Article 14

1. The Members of the Constitutional Court shall enjoy an immunity identical to the immunity granted to the Members of Parliament.
2. Without the consent of the full session of the Constitutional Court, the Member of the Constitutional Court may not be arrested or prosecuted, or subjected to coercive measures of the police, except if caught in the act.
3. If the full session of the Constitutional Court suspends the immunity of a Member, his/her right

to provide for his/her duties shall also be suspended concurrent. Such a suspension may take place also if criminal proceedings have been instituted against a Member of the Court caught in the Act.

- 4.No Member of the Constitutional Court shall be answerable for his/her opinion set out, or vote given, in the course of providing for his/her duties.

Article 15

- 1.Membership in the Constitutional Court shall be terminated upon:

- a.turning 70 years old;
- b.expiry of the term of the mandate (Article 8, section 3);
- c.death;
- d.resignation;
- e.establishing incompatibility;
- f.discharge;
- g.expulsion.

- 2.The termination of the membership in the Constitutional Court in cases under section 1, point a to d shall be established and published by the President of the Constitutional Court. In cases under section 1, points e, f and g the full session of the Constitutional Court shall decide.

- 3.The Member of the Constitutional Court who has turned 70 shall retire.

- 4.The resignation shall be submitted in writing to the President of the Constitutional Court; the President shall be obliged to accept that.

- 5.The Member of the Constitutional Court shall, if any cause of incompatibility in connection with his/her person (Article 9) in the course of his/her activities arises, cease that activity. Failing to do so within ten days from the date of the Constitutional Court's session stating incompatible, his/her membership in the Constitutional Court shall be declared as terminated in a resolution of the full session of the Court. From the date of the resolution establishing incompatibility, the Member of the Constitutional

Court shall not exercise his/her duties related to his/her office until a new resolution on the same matter is passed by the full session of the Constitutional Court.

- 6.The mandate may be terminated by discharge if the Member of the Constitutional Court, for a reason not immutable to him/her, is unable to provide for his/her duties from his/her mandate.

- 7.The mandate may be terminated by expulsion if the Member of the Constitutional Court, for a reason immutable to him/her, does not provide for his/her duties of his/her mandate, or if he/she committed a criminal offence as stated by a final judgement or became unworthy of the office in some other way and, therefore, the full session of the Constitutional Court excludes him/her from among its Members. The Member who has not taken part in the work of the Constitutional Court for one year shall be excluded.

Article 16

- 1.If the mandate of a Member of the Constitutional Court terminates on the basis of Article 15, section 1, point a or b, the new Member of the Constitutional Court shall be elected according to the provisions of Article 8, section 4. If the mandate terminates in cases in Article 15, section 1, points c to g, the vacant position shall be filled within two months.

- 2.The vacant position shall be filled up in accordance with the provisions of Articles 5 to 11.

Article 17

- 1.The President of the Constitutional Court:

- a.coordinates the activities of the Constitutional Court,
- b.convokes, and presides over the full sessions of the Constitutional Court,
- c.represents the Constitutional Court before Parliament and before other organs,
- d.provides for his/her duties prescribed by an Act of Parliament or the rules of the Constitutional Court.

2. The President of the Constitutional Court, if prevented from acting, shall be substituted by the Vice-President.

Article 18

1. The administrative and preparatory tasks shall be provided for by the Office of the Constitutional Court.

2. The rules concerning the organisational structure and the operation of the Office of the Constitutional Court shall be determined in the rules of the Constitutional Court.

Chapter III –Proceedings of the Constitutional Court

Common rules of procedure

Article 19

Unless otherwise provided by this Act or the Rules of the Constitutional Court, the provisions of the Civil Procedure Code shall be applied in issues concerning legal assistance, the ensuring of the use of the native-tongue during the proceedings and the exclusion of judges.

Article 20

The Constitutional Court shall proceed based on the motion submitted by the party entitled submit such a motion.

Article 21

1. Subject to the distinction contained in Articles 33 to 36, the procedure provided in Article 1, point a may be initiated by:

- a. Parliament, its standing committees, or fifty Members of Parliament,
- b. the President of the Republic,
- c. the Government.

2. The procedure provided in Article 1, point b may be initiated by anyone.

3. The procedure provided in Article 1, point c may be initiated by:

a. Parliament, its standing committees or by any Member of Parliament,

b. the President of the Republic,

c. the Government or any of its Members,

d. the President of the State Audit Office,

e. the President of the Supreme Court,

f. the Chief Prosecutor.

4. The procedure provided in Article 1, points d and e may be initiated by anyone.

5. The procedure provided in Article 1, point f may be initiated by organs among whom conflict in the sphere of authority arose.

6. The procedure provided in Article 1, point g may be initiated by:

- a. Parliament or its standing committees,
- b. the Presidium of the Republic,
- c. the Government or any of its Members,
- d. the President of the State Audit Office,
- e. the President of the Supreme Court,
- f. the Chief Prosecutor.

7. The procedure provided in Article 1, points c and e may also be instituted *ex officio*.

8. In addition to those provided in sections 1 to 6 an Act of Parliament may entitled others to initiate the procedure of the Constitutional Court.

Article 22

1. The written motion concerning the institution of proceedings shall be submitted directly to the Constitutional Court.

2. In addition to indicating the reason serving as the basis of the motion, the motion shall also include a specific request.

3. The petitioner may submit a motion with identical contents repeatedly only if the reasons serving as

the basis of the previous motion have changed significantly.

Article 23

- 1.The President of the Constitutional Court shall forward the motion submitted by a party not entitled to submit such a motion to the organ entitled to submit it, while an obviously groundless motion shall be denied by the President of the Constitutional Court.
- 2.Any motion related to a matter not within the competence of the Constitutional Court, shall be forwarded by the Constitutional Court to the competent organ.

Article 24

Everybody shall be obliged to supply the data requested by the Constitutional Court.

Article 25

- 1.The Constitutional Court shall proceed in a full session or in panels composed of three Members.
- 2.The Constitutional Court shall take evidence on the basis of documents at its disposal and if required by granting hearings and involving experts. No other mode and means of taking evidence shall be applied in the proceedings.
- 3.The Constitutional Court shall render its decisions in a closed session generally by the majority of votes, except for cases determined in the Rules of the Constitutional Court. The decision shall be delivered to the petitioner.

Article 26

A Member of the Constitutional Court shall be entitled to attach his/her separate opinion, if any, to the other documents.

Article 27

- 1.The decision of the Constitutional Court may not be appealed.
- 2.The decisions of the Constitutional Court shall be binding on everybody.

Article 28

- 1.Proceedings before the Constitutional Court shall be exempt from fees and expenses.
- 2.The Constitutional Court may charge the petitioner for the costs incurred in the proceedings if the bad faith of the petitioner concerning the submitting of the motion may be established.

Article 29

The detailed rules concerning the structure and the proceedings of the Constitutional Court shall be established in the Rules of the Constitutional Court which is prescribed by Parliament in an Act upon the suggestion of the Constitutional Court.

Article 30

- 1.The full session of the Constitutional Court shall decide in the following cases:
 - a.the preventive control of constitutionality of any contestable provision of a Bill, of an Act of Parliament which has been enacted but not yet promulgated, or of a provision of the Standing Order of Parliament which is considered contestable;
 - b.the preventive control of constitutionality of any contestable provision of an international treaty;
 - c.the constitutional review of an Act of Parliament;
 - d.the examination of an Act of Parliament conflicting with an international treaty;
 - e.the interpretation of the Constitution;
 - f.the writing of the Bill on the Rules of the Constitutional Court;
 - g.the assent to the arrestation of, to the institution of criminal proceedings or to the application of coercive measures of the police against, any Member of the Constitutional Court, except if he/she is caught in the act;
 - h.the finding of incompatibility in connection with a Member of the Constitutional Court;

- i. the declaration of the termination of the membership of any Member of the Constitutional Court in consequence of not having terminated the cause of incompatibility;
 - j. the discharge of a Member of the Constitutional Court of his/her mandate;
 - k. the exclusion of a Member of the Constitutional Court from among the Members of the Court;
 - l. in any other matters which is suggested by the President or three Members of the Constitutional Court, to be decided in a full session.
2. The full session of the Constitutional Court shall consist of all of the Members of the Constitutional Court.
 3. The full session shall have a *quorum* if attended by at least eight Members of the Constitutional Court, including the President or, if the President is prevented from attending, the Vice-President. In the event of an equality of votes the vote of the President shall decide. If the President is prevented from attending the provision of Article 17, section 2 shall govern.
 4. The Members of the Constitutional Court attending the full session shall have a right to vote. The session may be attended and addressed, until a private sitting is ordered, by the President of the Republic, the Prime Minister, the Speaker of Parliament, the President of the Supreme Court, the Chief Prosecutor, the Minister of the Justice and the petitioner, as well as by any other person invited by the President of the Constitutional Court.

Article 31

1. The panels composed of three Members of the Constitutional Court proceeds in cases under Article 1, points b and c – except for an Act of Parliament – as well as under Article 1, points d to f.
2. The panel shall have a *quorum* if all three Members are present.
3. The sitting of the panel may be attended by any person invited by the Member of the Court presiding over the panel.

Article 32

The Constitutional Court shall have the right to proceed in a full session or in a panel comprising of three Members also in cases referred to its jurisdiction by an Act of Parliament or by the Rules of the Constitutional Court.

Chapter IV – Certain Proceedings

Preventive control of the constitutionality of laws

Article 33

1. Upon the motion of Parliament, its Standing Committee or fifty Members of Parliament the Constitutional Court shall examine the constitutionality of any contestable provision of a Bill.
2. If the Constitutional Court declares the contestable provision of the Bill unconstitutional, Parliament or the person or organ which submitted the Bill shall eliminate the unconstitutionality.

Article 34

1. Parliament, may prior to approval forward its Standing Orders indicating the contestable provision to the Constitutional Court for the examination of conformity with the Constitution.
2. If the Constitutional Court declares the contestable provision of Standing Orders unconstitutional, Parliament shall eliminate the unconstitutionality.

Article 35

1. Upon the motion of the President of the Republic the Constitutional Court shall examine the contestable provision of any Act enacted by Parliament but not yet promulgated.

- 2.If the Constitutional Court declares the contestable provision of the Act unconstitutional, the President of the Republic shall not promulgate the Act until the unconstitutionality is eliminated by Parliament.

Article 36

- 1.Parliament, the President of the Republic and the Government shall have the right prior to the ratification of the treaty to request the examination of constitutionality of a contestable provision of an international treaty.
- 2.If the Constitutional Court declares the contestable provision of the international treaty unconstitutional that shall not be ratified until the unconstitutionality is eliminated by the organ (body) or the person which concluded the treaty.

Constitutional Review

Article 37

The motion initiating a posterior statement of unconstitutionality shall propound to declare the legal rule or other legal means of State control wholly or partly null and avoid.

Article 38

- 1.A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.
- 2.In a petition, anybody considering a legal rule to be applied in his/her pending process unconstitutional, may initiate the action of the judge provided in section 1.

Article 39

If the Public Prosecutor – in his general authority of supervision of legality – lodged a protest against a legal rule of lower level than Governmental or Cabinet-Decree, or another legal means of State control, and the organ which issued that act does not agree with the protest, this organ may submit the protest to the Constitutional Court for decision, and shall notify the Public Prosecutor along with the reasons of the action.

Article 40

If the Constitutional Court finds a legal rule or other means of State control unconstitutional, the Constitutional Court shall declare the legal rule or other legal means of the State control wholly or partly null and void.

Article 41

The Constitutional Court publishes the decision on the annulment in the Official Gazette *Magyar Közlöny* or in the Official Gazette where the other legal means of the State control was published.

Article 42

- 1.In the case provided in Article 40, the legal rule or its provisions and the other legal means of State control or its provision shall be considered as repealed, on the day of the publication of the decision.
- 2.A legal rule which has been published but has not yet come into force shall not come into force if declared unconstitutional.

Article 43

- 1.Any legal rule or other legal means of State control which has been annulled by the decision of the Constitutional Court shall not be applied from the day of the publication of the relevant decision in the Official Gazette.
- 2.The annulment of a legal rule or other legal means of State control shall – except for the case provided in section 3 – affect neither the legal relationships which have developed prior to the publication of the decision nor the rights and duties which derived from them.
- 3.The Constitutional Court shall order the revision of any criminal proceedings concluded by a final decision (without appeal) on the basis of an unconstitutional legal rule or other legal means of State control, if the convict has not yet been relieved of the detrimental consequences, and the nullity of the provision applied in the proceedings would result in the reduction or the putting aside of the punishment or measure, or in the release from, or the limitation of responsibility.

4. The Constitutional Court may determine the date of the abrogation of the unconstitutional legal rule or its applicability in the given case differently from the provision of Article 42, section 1 and Article 43, sections 1 et 2, if justified by a particularly important interest of legal security or of the person who initiated the procedure.

Examination of the Conformity with International Treaties

Article 44

The Constitutional Court shall examine any legal rule or other legal means of State control for its conformity with any international treaty either *ex officio*, or upon the motion of the organs or persons provided in Article 21, section 3.

Article 45

1. The Constitutional Court, if it finds that legal rule of the same or lower level as the legal rule promulgating the international treaty or another legal means of State control violates the international treaty, shall annul wholly or partly the legal rule or other legal means of State control which is inconsistent with the international treaty.
2. The provisions of Articles 41 to 43 shall govern the publication of the decision on the annulment as well as the legal consequences of the annulment.

Article 46

1. If the Constitutional Court finds that a legal rule of higher level than the legal rule which promulgated the international treaty violates that international treaty, the Constitutional Court shall request the organ or person who concluded the international treaty or the legislator – after weighing the circumstances and indicating the deadline – to resolve the contradiction.
2. The organ or person called upon to resolve the contradiction provided in section 1 shall comply with the request within the term appointed.

Article 47

1. If the Constitutional Court finds that legislator failed to comply with its legislative duty derived from the international treaty, the Constitutional Court shall request – appointing a term – the organ in default to provide for its duty.
2. The organ in default shall provide for its legislative duty within the term appointed.

Constitutional Complaint

Article 48

1. Anybody aggrieved by the application of an unconstitutional legal rule who has exhausted all other legal remedies or has no other remedy available, may submit a constitutional complaint to the Constitutional Court because of the violation of his/her constitutional rights.
2. The constitutional complaint may be submitted within sixty days after the receipt of the final decision.
3. Articles 40 to 43 shall govern the proceedings of the Constitutional Court.

Unconstitutionality manifesting itself in omission

Article 49

1. If the Constitutional Court *ex officio* or upon anybody's motion finds that the legislator has failed to comply with its legislative duty deriving from a legal rule and has thus given rise to unconstitutionality, the Constitutional Court shall request – appointing a term – the organ in default to provide for its duty.
2. The organ in default shall provide for its legislative duty within the term appointed.

Conflict of competences

Article 50

- 1.If a conflict in the sphere of authority occurs between State organs – except for courts – furthermore between self-governments or between a self-government and State organ – except for the courts – these organs may propose to the Constitutional Court to eliminate the conflict in the sphere of authority.
- 2.The Constitutional Court shall, without granting a hearing to the petitioner decide which organ has sphere of authority in the case, and designate the organ obliged to proceed.

Interpretation of the Constitution

Article 51

- 1.Upon the motion of anyone listed in Article 21, section 6 the Constitutional Court shall interpret the provisions of the Constitution.
- 2.The Constitutional Court's decision on the interpretation shall be published in the Official Gazette *Magyar Közlöny*.

Chapter V – Final Provisions

Article 52

- 1.This Act shall come into force on the day of its promulgation.
- 2.The Constitutional Court shall commence its operation on January 1, 1990.

Article 53

- 1.Parliament when setting up the Constitutional Court shall ad interim elect only five Members of the Constitutional Court. The Members elected shall elect the Vice-President of the Constitutional Court from among themselves.
- 2.The nomination committee provided in Article 6 shall submit its proposal concerning the Members of the Constitutional Court to Parliament prior to this Act coming into force.

3.The Constitutional Court shall have the right to proceed in cases referred to the competence of the full session of the Court until all of the Members of the Constitutional Court are elected, while the Vice-President shall provide for the duties of the President until the President is elected.

4.In cases referred to the competence of the full session of the Constitutional Court consisting ad interim of five Members shall have a *quorum* only if at least four Members of the Constitutional Court are present. In the event of an equality of votes, the Vice-President shall have the deciding vote.

Article 54

1.Another five Members of the Constitutional Court shall be elected by Parliament after the next Parliamentary election within two months of its inaugural sitting. The ten Members elected shall elect the President of the Constitutional Court from among themselves.

2.In cases to the competence of the full session of the Constitutional Court, the Court consisting ad interim of ten Members shall have a *quorum* only if at least eight Members – including the President, or if prevented from attending, the Vice-President – are present. In the event of an equality of votes the provisions of Article 30, section 3 shall govern.

Article 55

The provision of Article 5, section 3 shall not govern the election of the first ten Members of the Constitutional Court.

Article 56

Another Member of the Constitutional Court shall be elected by Parliament in the fifth year following the set-up of the Constitutional Court.

Article 57

The rights and duties of the Prosecutors as defined by Chapter V of the Act No. V of 1972 on the Prosecutor's Office of the Republic of Hungary shall not be affected by this Act.

Article 58

1. Concurrently with this Act becoming effective Act No. I of 1984 on the Constitutional Council shall become null and void.
2. Motions and constitutional complaints submitted to the Constitutional Council and not decided until this Act coming into force shall be decided by the Constitutional Court.

Article 59

1. Article 13, section 1 of Act No. V of 1972 on the Prosecutor's Office of the Republic of Hungary (hereinafter: Prosecution Act) shall be substituted by the following provision:

“1. The general authority of supervision of legality shall extend to legal rules issued by State administrative organs of a lower level than the Government and to the local self-government and to other legal means of the State control, as well as to the orders of general validity and to the individual decisions made by these organs in the process of law-application. In addition, it shall extend to individual decisions of organs involved in arbitration outside the courts, as well as decisions in connection with labour relations of economic and other organs and the membership in co-operatives, furthermore, measures of general force issued on the basis of the authorization of legal rules.”

2. Article 13, section 2 of the Prosecution Act shall be amended with point a, and concurrently the points a to e shall be changed to points b to f:

“a. shall have the right to lodge a protest against a legal rule or legal means of State control conflicting with the Constitution or with a legal rule of higher level;”

3. The Prosecution Act shall be amended by Article 13/A after the title “The Protest”:

2. The organ shall examine the protest within thirty days. If the organ in question find the protest to be well-founded, it shall abrogate, repeal or amend the legal rule or other legal means of State control, and simultaneously notify the Public Prosecutor of having done so.

“Article 13/A

1. If the Public Prosecutor finds that a legal rule or other legal means of State control issued by an organ subject to his general authority of supervision of legality is in conflict with Constitution or a legal rule of higher level, he/she may lodge a protest with the organ which issued it so as to eliminate the contradiction.

3. If the organ does not agree with the protest, it shall be obliged to submit the protest to the Constitutional Court for adjudging it, within eight days of reviewing the protest, and shall notify the Public Prosecutor of having done so.”

4. The wording “in cases provided by Article 14, section 2 within thirty days” in Article 14, section 2 of the Prosecution Act, as well as in Article 15, section 1, furthermore in its Article 15, section 4 of the Prosecution Act the wording “furthermore by the decrees of the County (Metropolitan) Self Governments” shall be null and void.

Ireland

Supreme Court

Constitution

– extracts –

The State

Article 6

1. All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.
2. These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution.

The President

Article 12

(...)

- 3.1. The President shall hold office for seven years from the date upon which he enters upon his office, unless before the expiration of that period he dies, or resigns, or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five judges.

The National Parliament

Reference of Bills to the Supreme Court

Article 26

This article applies to any Bill passed by both Houses of the *Oireachtas* other than a Money Bill, or a Bill expressed to be a Bill containing a proposal to amend the Constitution, or a Bill the time for the consideration of which by *Seanad Éireann* shall have been abridged under Article 24 of this Constitution.

- 1.1. The President may, after consultation with the Council of State, refer any Bill to which this article applies to the Supreme Court for a

decision on the question as to whether such Bill is or are repugnant to this Constitution or to any provision thereof.

2. Every such reference shall be made not later than the seventh day after the date on which such Bill shall have been presented by the *Taoiseach* to the President for his signature.
3. The President shall not sign any Bill the subject of a reference to the Supreme Court under this article pending the pronouncement of the decision of the Court.
- 2.1. The Supreme Court consisting of less than five judges shall consider every question referred to it by the President under this article for a decision, and, having heard arguments by or on behalf of the Attorney General and by counsel assigned by the Court, shall pronounce its decision on such question in open court as soon as may be, and in any case not later than sixty days after the date of such reference.
2. The decision of the majority of the judges of the Supreme Court shall, for the purposes of this article, be the decision of the Court and shall be pronounced by such one of those judges as the Court shall direct, and no other opinion, whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed.
- 3.1. In every case in which the Supreme Court decides that any provision of a Bill the subject of a reference to the Supreme Court under this article is repugnant to this Constitution or to any provision thereof, the President shall decline to sign such Bill.
2. If, in the case of a Bill to which Article 27 of this Constitution applies, a petition has been addressed to the President under that article, that article shall be complied with.
3. In every other case the President shall sign the Bill as soon as may be after the date on which the decision of the Supreme Court shall have been pronounced.

The courts

Article 34

1. Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.
2. The Courts shall comprise Courts of First Instance and a Court of Final Appeal.
- 3.1. The Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal.
2. Save as otherwise provided by this article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court.
3. No Court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Article 26 of this Constitution, or to question the validity of a provision of a law where the corresponding provision in the Bill for such law shall have been referred to the Supreme Court by the President under the said Article 26.
4. The Courts of First Instance shall also include Courts of local and limited jurisdiction with a right of appeal as determined by law.
- 4.1. The Court of Final Appeal shall be called the Supreme Court.
2. The president of the Supreme Court shall be called the Chief Justice.

3. The Supreme Court shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law.

4. No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.

5. The Decision of the Supreme Court on a question as to the validity of a law having regard to the provisions of this Constitution shall be pronounced by such one of the judges of that Court as that Court shall direct, and no other opinion on such question, whether assenting or dissenting, shall be pronounced, nor shall the existence of any such other opinion be disclosed.

6. The decision of the Supreme Court shall in all cases be final and conclusive.

5.1. Every person appointed a judge under this Constitution shall make and subscribe the following declaration:

"In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me."

2. This declaration shall be made and subscribed by the Chief Justice in the presence of the President, and by each of the other judges of the Supreme Court, the judges of the High Court and the judges of every other Court in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court.

3. The declaration shall be made and subscribed by every judge before entering upon his duties as such judge, and in any case not later than ten days after the date of his appointment or such

later date as may be determined by the President.

4. Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office.

Article 35

1. The judges of the Supreme Court, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President.

2. All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.

3. No judge shall be eligible to be a member of either House of the *Oireachtas* or to hold any other office or position of emolument.

4.1. A judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by resolutions passed by *Dáil Éireann* and by *Seanad Éireann* calling for his removal.

2. The *Taoiseach* shall duly notify the President of any such resolutions passed by *Dáil Éireann* and by *Seanad Éireann*, and shall send him a copy of every such resolution certified by the Chairman of the House of the *Oireachtas* by which it shall have been passed.

3. Upon receipt of such notification and of such resolutions, the President shall forthwith, by an order under his hand and Seal, remove from office the judge to whom they relate.

5. The remuneration of a judge shall not be reduced during his continuance in office.

Article 36

Subject to the foregoing provisions of this Constitution relating to the Courts, the following matters shall be regulated in accordance with law, that is to say:

i. the number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges;

- ii. the number of the judges of all other Courts, and their terms of appointment; and
- iii. the constitution and organisation of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure.

Fundamental rights

Article 40

(...)

- 4.3. Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it.

Courts (Establishment and Constitution) Act, 1961

- extracts -

Article 1

- 1. On the commencement of this Act, the Court of Final Appeal, which in pursuance of Article 34 of the Constitution is to be called *An Chúirt Uachtarach* (The Supreme Court), shall stand established
- 2. The Supreme Court shall be constituted of the following judges:
 - a. the president thereof, namely, *An Príomh-Bhreitheamh* (The Chief Justice), and
 - b. such number (not being less than four) of ordinary judges (each of whom shall be styled "*Breitheamh den Chúirt Uachtarach*" ("Judge of the Supreme Court")) as may from time to time be fixed by Act of the *Oireachtas*.

- 3. The President of the High Court shall be *ex officio* an additional judge of the Supreme Court.
- 4. Where, owing to the illness of a judge of the Supreme Court or for any other reason, a sufficient number of judges of the Supreme Court is not available for the transaction of the business of that Court, the Chief Justice may request any ordinary judge or judges of the High Court to sit on the hearing of any appeal to or other matter cognisable by the Supreme Court, and any judge so requested shall sit on the hearing of such appeal or other matter and be an additional judge of the Supreme Court for such appeal or other matter.

Article 6

- 1. In this section, the expression "judicial office" means an office being
 - a. the office of Chief Justice, President of the High Court, ordinary judge of the Supreme Court, ordinary judge of the High Court, President of the Circuit Court or ordinary judge of the Circuit Court, or
 - b. the office of President of the District Court or justice of the District Court.
- 2. A judicial office held by any person may be vacated by resignation in writing under his hand addressed to the President and transmitted to the *Taoiseach*.
- 3. A judicial office held by any person shall be vacated by his being appointed, with his consent, to another judicial office.
- 4. The office held by each person who, immediately before the commencement of this Act, was a judge or justice of any of the courts of justice mentioned in Article 58 of the Constitution shall be vacated by his being appointed, with his consent, to a judicial office.
- 5. Each of the following Courts, namely, the Supreme Court, the High Court and the Circuit Court, shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any judge of that Court.
- 6. The District Court shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of President or any justice thereof.

7. Where a vacancy occurs in a judicial office, a person may be appointed to fill the vacancy.

Article 7

1. In this section, the expression “the existing courts” means the several courts of justice mentioned in Article 58 of the Constitution.

2. The existing courts shall, on the commencement of this Act, cease to exercise any jurisdiction.

3. When every person who immediately before the commencement of this Act held the office of judge or justice of any of the existing courts has vacated that office

a. the existing courts shall cease to be established,

b. every such office shall stand abolished.

Courts (supplemental provisions) Act, 1961

- extracts -

Part I – Preliminary and general

Article 2

1. In this Act

– “the Act of 1924” means the Courts of Justice Act, 1924;

– “the Act of 1926” means the Court Officers Act, 1926;

– “the Act of 1936” means the Courts of Justice Act, 1936;

– “the Act of 1945” means the Court Officers Act, 1945;

– “the Act of 1946” means the Courts of Justice (District Court) Act, 1946;

– “the Act of 1947” means the Courts of Justice Act, 1947;

– “the Act of 1949” means the Courts of Justice (District Court) Act, 1949;

– “the Act of 1953” means the Courts of Justice Act, 1953;

– “the Circuit Court” means the Court established by section 4 of the Principal Act;

– “the Court of Criminal Appeal” means the Court established by section 3 of the Principal Act;

– “the District Court” means the Court established by section 5 of the Principal Act;

– “the Dublin Metropolitan District” means the district styled and known as the Dublin Metropolitan District under section 64 of the Act of 1936;

– “enactment” includes a charter and any instrument made under an enactment;

– “the existing Chief Justice” means the judge of the existing Supreme Court who, by virtue of section 5 of the Act of 1924, was, immediately before the operative date, president of that Court;

– “the existing Circuit Court” means the Circuit Court of Justice constituted by section 37 of the Act of 1924;

– “the existing Court of Criminal Appeal” means the Court of Criminal Appeal constituted by section 8 of the Act of 1924;

– “the existing District Court” means the District Court of Justice constituted by section 67 of the Act of 1924;

– “the existing High Court” means the High Court of Justice constituted by section 4 of the Act of 1924;

– “the existing President of the Circuit Court” means the judge of the existing Circuit Court who, immediately before the operative date, held the office created by section 9 of the Act of 1947;

– “the existing President of the High Court” means the judge of the existing High Court who, by virtue of section 4 of the Act of 1924, was, immediately before the operative date president at that Court;

– “the existing Supreme Court” means the Supreme Court of Justice constituted by section 5 of the Act of 1924;

-“the High Court” means the Court established by section 2 of the Principal Act;

-“justice of the District Court” includes, except where the context otherwise requires, the President of the District Court;

-“the Minister” means the Minister for Justice;

-“the operative date” means the date on which this Act comes into operation;

-“the Principal Act” means the Courts (Establishment and Constitution) Act, 1961 (No. 39 of 1961);

-“State authority” means any authority being:

a.a Minister of State, or

b.the Commissioners of Public Works in Ireland, or

c.the Irish Land Commission, or

d.the Revenue Commissioners, or

e.the Attorney General;

-“the Supreme Court” means the Court established by section 1 of the Principal Act.

2.Except where the context otherwise requires, any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended, adapted or applied by or under any other enactment, including this Act.

3.The enactment's mentioned in column 2 of the First Schedule to this Act are hereby repealed to the extent mentioned in column 3 of that Schedule, but, without prejudice to subsection 1 of section 21 of the Interpretation Act, 1937, such of those enactments as relate to the pensions of the judges and justices of the courts established by the Act of 1924 shall, notwithstanding the repeal thereof, continue to apply to any person who, having been a judge of the existing Supreme Court, existing High Court or existing Circuit Court or a justice of the existing District Court retired or retires from office before the operative date.

Part II –Supreme Court, High Court, Chief Justice, President of the High Court, Central Criminal Court and Court of Criminal Appeal

Supreme Court and High Court

Article 4

1.The number of ordinary judges of the Supreme Court shall be four.

2.The number of ordinary judges of the High Court shall not be more than six.

Article 5

1.a.The existing Chief Justice shall be qualified for appointment as Chief Justice and, if he is willing to accept office, no other person shall be qualified for appointment as Chief Justice.

b.The existing President of the High Court shall be qualified for appointment as President of the High Court and, if he is willing to accept office, no other person shall be qualified for appointment as President of the High Court.

c.Each of the persons who are ordinary judges of the existing Supreme Court immediately before the operative date shall be qualified for appointment as an ordinary judge of the Supreme Court and, if and so long as there is one or more than one of those persons who is willing to accept office and has not been appointed, no other person shall be qualified for appointment as an ordinary judge of the Supreme Court.

d.Each of the persons who are ordinary judges of the existing High Court immediately before the operative date shall be qualified for appointment as an ordinary judge of the High Court and, if and so long as there is one or more than one of those persons who is willing to accept office and has not been appointed, no other person shall be qualified for appointment as an ordinary judge of the High Court.

e.Paragraphs a, b, c and d of this subsection apply only in relation to the qualification for appointment of the first judges of the Supreme Court and High Court.

f. Subsections 2, 3, 4 and 5 of this section shall have effect subject to the preceding paragraphs of this subsection.

2.a. A person who is for the time being a practising barrister of not less than twelve years' standing shall be qualified for appointment as a judge of the Supreme Court or the High Court.

b. For the purposes of paragraph a of this subsection, service as a judge of the existing Circuit Court or of the Circuit Court shall be deemed practice at the Bar.

3. An ordinary judge of the Supreme Court shall be qualified for appointment as President of the High Court or as Chief Justice.

4. The President of the High Court shall be qualified for appointment as an ordinary judge of the Supreme Court or as Chief Justice.

5. An ordinary judge of the High Court shall be qualified for appointment as an ordinary judge of the Supreme Court or as President of the High Court or as Chief Justice.

Article 6

1. The provisions set out in Part I of the Second Schedule to this Act shall apply to the pensions of judges of the Supreme Court and the High Court.

2. Where a judge of the Supreme Court or High Court is removed from office on account of incapacity, he shall be deemed for the purpose of pension to have vacated his office owing to permanent infirmity.

Article 7

1. The Supreme Court shall be a superior court of record with such appellate and other jurisdiction as is prescribed by the Constitution.

2. There shall be vested in the Supreme Court

a. all jurisdiction which was, immediately before the commencement of Part I of the Act of 1924, vested in or capable of being exercised by the former Court of Appeal in Southern Ireland or any judge or judges thereof and was,

immediately before the operative date, vested in or capable of being exercised by the existing Supreme Court,

b. all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing Supreme Court.

3. Subject to subsection 4 of this section, an appeal to or other matter cognisable by the Supreme Court shall be heard and determined by five judges of the Supreme Court, including judges who are by virtue of subsection 3 or 4 of section 1 of the Principal Act additional judges of the Supreme Court.

4. The Chief Justice or, in his absence, the senior ordinary judge of the Supreme Court for the time being available may determine that an appeal to or other matter cognisable by the Supreme Court, not being a matter so cognisable under Article 12 or Article 26 of the Constitution or a question of the validity of any law having regard to the provisions of the Constitution, is to be heard and determined by three judges and, where such a determination is made, the appeal or matter to which the determination relates shall be heard and determined by three judges of the Supreme Court, including judges who are by virtue of subsection 3 or 4 of section 1 of the Principal Act additional judges of the Supreme Court.

Chief Justice and President of the High Court

Article 10

1. There shall be exercisable by the Chief Justice

a. the jurisdiction in relation to solicitors which, by virtue of subsection 2 of section 19 of the Act of 1924, and subsection 3 of section 14 of the Solicitors Act, 1954, was, immediately before the operative date, vested in or capable of being exercised by the existing Chief Justice,

b. the power of appointing notaries public and commissioners to administer oaths,

c. all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested

in or capable of being exercised by the existing Chief Justice.

2. Whenever the Chief Justice is unable owing to illness or for any other reason to transact the business of his office, all jurisdictions, powers, authorities and functions for the time being vested in him in virtue of his office shall be exercised or performed by the President of the High Court or, in the event of the President of the High Court being unable owing to illness or for any other reason to exercise or perform the said jurisdictions, powers, authorities and functions, by the senior ordinary judge of the Supreme Court who is for the time being available.
3. It shall be the function of the President of the High Court or, where he is not available, the senior ordinary judge of the High Court who is for the time being available to arrange the distribution and allocation of the business of the High Court.
4. Where the Chief Justice is of opinion that the conduct of a justice of the District Court has been such as to bring the administration of justice into disrepute, the Chief Justice may interview the justice privately and inform him of such opinion.
5. There shall be exercisable by the President of the High Court all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing President of the High Court.

Exercise of Jurisdiction

Article 14

1. In this section "rules of court" means rules made under section 36 of the Act of 1924, as applied by section 48 of this Act.
2. The jurisdiction which is by virtue of this Act vested in or exercisable by the Supreme Court, the High Court, the Chief Justice, the President of the High Court, the Central Criminal Court and the Court of Criminal Appeal respectively shall be exercised so far as regards pleading, practice and procedure generally, including liability to costs, in the manner provided by rules of court, and, where no provision is contained in such rules and so long as there is no rule with reference thereto, it shall be exercised as nearly as possible in the same manner as it might have been exercised by the respective

existing courts or judges by which or by whom such jurisdiction was, immediately before the operative date, respectively exercisable.

3. Rules of court may, in relation to proceedings and matters (not being criminal proceedings or matters relating to the liberty of the person) in the High Court and Supreme Court, authorise the Master of the High Court and other principal officers, within the meaning of the Court Officers Acts, 1926 to 1951, to exercise functions, powers and jurisdiction in uncontested cases and to take accounts, conduct inquiries and make orders of an interlocutory nature.

Part V – Miscellaneous provisions

Article 45

1. Justice may be administered otherwise than in public in any of the following cases:
 - a. applications of an urgent nature for relief by way of habeas corpus, bail, prohibition or injunction;
 - b. matrimonial causes and matters;
 - c. lunacy and minor matters;
 - d. proceedings involving the disclosure of a secret manufacturing process.
2. The cases prescribed by subsection 1 of this section shall be in addition to any other cases prescribed by any Act of the *Oireachtas*.
3. Any provision contained in any statute of the Parliament of the former United Kingdom or of the *Oireachtas* of *Saorstát Éireann* which provided for the administration of justice otherwise than in public and which is not in force solely by reason of its being inconsistent with the provisions of the Constitution of *Saorstát Éireann* or the Constitution, as the case may be, shall have full force and effect.

Article 46

1. There shall be paid to the several judges of the Supreme Court and of the High Court the following remuneration:
 - a. to the Chief Justice the sum of £5,335 a year,

b.to the President of the High Court and to each of the ordinary judges of the Supreme Court the sum of £4,070 a year,

c.to each of the ordinary judges of the High Court the sum of £3,575 a year.

2. There shall be paid to the several judges of the Circuit Court the following remuneration:

a.to the President of the Circuit Court the sum of £3,575 a year,

b.to each of the ordinary judges of the Circuit Court the sum of £2,835 a year.

3. There shall be paid to the several justices of the District Court the following remuneration:

a.to the President of the District Court the sum of £2,500 a year,

b.to each Principal Justice of the Dublin Metropolitan District the sum of £2,215 a year,

c.to each other justice of the District Court who is for the time being permanently assigned to the Dublin Metropolitan District the sum of £2,070 a year,

d.to the justice of the District Court who is for the time being permanently assigned to the District court district which comprises or includes the County Borough of Cork the sum of £2,070 a year,

e.to each other justice of the District Court the sum of £1,925 a year.

4. There shall be charged on and payable out of the Central Fund or the growing produce thereof

a.the remuneration payable under this Act to a judge of the Supreme Court, the High Court or the Circuit Court or a justice of the District Court, and

b.the pension payable under this Act to a judge of the Supreme Court, the High Court, the Circuit Court or a justice of the District Court, and

c.the superannuation allowance and additional allowance payable under this Act to a justice of

the District Court to whom paragraph 9 of the Second Schedule to this Act applies, and

d.the gratuity payable under this Act in respect of a justice of the District Court to whom paragraph 9 of the Second Schedule to this Act applies.

5. Not more than one pension shall be payable under this Act to the same person.

6. Where a person in receipt of a pension under this Act is employed in a situation remunerated out of moneys provided by the *Oireachtas* or out of the Central Fund, then

a.such pension shall not be payable in respect of any period during which the remuneration of such person in such situation is equal to or greater than his remuneration in the judicial office in respect of which he is entitled to such pension, and

b.so much only of such pension shall be payable in respect of any period during which the remuneration of such person in such situation is less than his remuneration in the said judicial office as with his remuneration in such situation will amount to his remuneration in the said judicial office.

7. In the application of subsection 5 of this section to a justice of the District Court to whom paragraph 9 of the Second Schedule to this Act applies, references to a pension shall be construed as references to a superannuation allowance and to an additional allowance.

8. In the application of subsection 6 of this section to a justice of the District Court to whom paragraph 9 of the Second Schedule to this Act applies, references to a pension shall be construed as references to a superannuation allowance.

Article 48

1.a. Subject to paragraph b of this subsection, this section applies to the following enactments:

i.any enactment contained in the Courts of Justice Acts, 1924 to 1961, the Court Officers Acts, 1926 to 1961, or the Criminal Justice Act, 1951,

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- ii.any other enactment wherein there is a reference to a court established by the Act of 1924 or to a judge or officer thereof,
 - iii.any instrument (other than rules of court) which is in force immediately before the operative date and was made under any enactment referred to in subparagraph i or ii of this paragraph.
- b.This section does not apply to
- i.any enactment which has been repealed before the operative date or which is repealed by this Act, or
 - ii.subsection 2 of section 19 and sections 77 and 78 of the Act of 1924.
- 2.In the application of this section in relation to the existing District Court and the District Court a reference to a judge shall be construed as a reference to a justice thereof.
- 3.Every enactment to which this section applies shall apply to the courts established by the Principal Act and to the judges and officers thereof as if it were enacted in this Act, with and subject to
- a.the modifications specified in subsection 5 of this section,
 - b.such adaptations and other modifications as may be made by the Minister under subsection 6 of this section.
- 4.Rules of court made under the enactments to which this section applies and in force immediately before the operative date shall be deemed to have been made under those enactments, as applied by subsection 3 of this section, and shall have effect accordingly, but with and subject to the modifications specified in subsection 5 of this section, and any such rules of court may be altered or annulled as if they had been made under those enactments as so applied.
- 5.The following are the modifications referred to in paragraph a of subsection 3 and in subsection 4 of this section:
- a.a reference to the court mentioned in column 2 of Part I of the Seventh Schedule to this Act at a particular reference number shall be construed as a reference to the court mentioned in column 3 of the said Part I at that reference number,
 - b.a reference to a judge of the court mentioned in column of the said Part I at a particular reference number shall be construed as a reference to a judge of the court mentioned in column 3 of the said Part I at that reference number, and
 - c.a reference to the judge mentioned in column 2 of Part II of the Seventh Schedule to this Act at a particular reference number shall be construed as a reference to the judge mentioned in column 3 of the said Part II at that reference number.
- 6.a.The Minister may from time to time by order make such adaptations or modifications (not inconsistent with the modifications effected by subsection 5 of this section) in or of any enactment to which this section applies as are, in his opinion, necessary and proper in order to give effect to the provisions of this Act.
- b.Every order made by the Minister under paragraph a of this subsection shall, where the order so provides, have and be deemed always to have had effect as on and from the operative date.
- 7.“This Act” where it occurs in any enactment applied by this section shall, unless the context otherwise requires, be construed as referring to the Act which includes that enactment.
- 8.Subsection 1 of section 51 of the Act of 1936, as applied by this section, shall have effect as if “ten years’ standing” were substituted for “six years’ standing”.
- 9.Subsection 1 of section 27 of the Act of 1953, as applied by this section, shall have effect as if for the reference therein to section 11 (repealed by this Act) of the Act of 1946 there were substituted a reference to section 40 of this Act.
- 10.a.Paragraph a of subsection 1 of section 2 of the Act of 1961 shall not be taken to refer to a person who, immediately before the passing of the Act of 1961, was a judge of the existing Supreme Court, High Court or Circuit Court or a justice of the existing District Court and is appointed a judge on the operative date.
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- b. The reference in subsections 2, 4 and 5 of section 4 of the Act of 1961 to the Court Officers Acts, 1926 to 1951, shall be deemed to include a reference to this Act.
- c. Section 5 of the Act of 1961 shall have effect as if there were inserted at the end of subsection 2 "or under section 58 of the Courts (Supplemental Provisions) Act, 1961."
- d. In this subsection "the Act of 1961" means the Courts of Justice and Court Officers (Superannuation) Act, 1961.

Article 49

1. The continuity of the administration and enforcement of justice shall not be interrupted by the coming into operation of the Principal Act or this Act.
2. Without prejudice to the generality of subsection 1 of this section
 - a. any act done or proceedings taken before the operative date in respect of any cause or matter in the court mentioned in column 2 of Part I of the Seventh Schedule to this Act at a particular reference number shall be deemed to have been done or taken respectively in the court mentioned in column 3 of the said Part I at that reference number,
 - b. any act done or proceedings taken before the operative date in respect of any cause or matter before the judge mentioned in column 2 of Part II of the Seventh Schedule to this Act at a particular reference number (being reference number 1 or 2) shall be deemed to have been done in that cause or matter before the judge mentioned in column 3 of the said Part II at that reference number,
 - c. any act done or proceedings taken before the operative date in respect of any cause or matter before the existing Cork Circuit Court Judge exercising jurisdiction in admiralty shall be deemed to have been done or taken in the Cork Local Admiralty Court,
 - d. any act done or proceedings taken before the operative date in respect of any cause or matter before the existing Cork Circuit Court Judge exercising jurisdiction in bankruptcy shall be deemed to have been done or taken in the Cork Local Bankruptcy Court.
3. In subsection 2 of this section "the existing Cork Circuit Court Judge" means the judge of the existing Circuit Court for the circuit of the existing Circuit Court consisting of the county and county borough of Cork.

Law Reform Commission Act, 1975

- extracts -

Article 14

1. Where a person who holds judicial office is appointed to be a Commissioner, the following provisions shall have effect;
 - a. in case on being so appointed he is an ordinary judge of the Supreme Court, then for so long as he continues to hold that judicial office
 - i. the number of ordinary judges of the Supreme Court shall not be more than five, and
 - ii. the reference in section 4.1 of the Act of 1961, to four shall be construed as a reference to five,
 - b. in case on being so appointed he is the President of the High Court or an ordinary judge of the High Court, then for so long as he continues to hold the judicial office held by him on so being appointed
 - i. the number of ordinary judges of the High Court shall not be more than eight, and
 - ii. the reference in section 1.1 of the Courts Act, 1973, to seven shall be construed as a reference to eight, and
 - c. in case he is the President of the High Court he may, for so long as he continues to be a Commissioner, from time to time appoint an ordinary judge of the High Court to exercise on his behalf (and which judge is hereby empowered to exercise) all the jurisdiction exercisable by the President of the High Court under section 10.5 of the Act of 1961.
2. When a person who is a barrister is appointed to be either

- a.a Commissioner in a whole-time capacity, or
 - b.a whole-time officer of the Commission,
- then, for the purpose of qualification for appointment
- c.under section 5.2.a of the Act of 1961, as a judge of the Supreme Court or the High Court,
 - d.under section 17.2.a of the Act of 1961, as a judge of the Circuit Court,
 - e.under section 14 of the Act of 1936, to act temporarily as a judge of the Circuit Court,
 - f.under section 29.2 of the Act of 1961, as a justice of the District Court,
 - g.under section 51 (as amended by section 48.8 of the Act of 1961) of the Act of 1936, to act temporarily as a justice of the District Court,

service by him as such a Commissioner or as such an officer of the Commission, as may be appropriate, shall be deemed to be practice at the Bar.

3.For the purpose of qualification for appointment

- a.under section 29.2 of the Act of 1961 as a justice of the District Court,
- b.under section 51 (as so amended) of the Act of 1936, to act temporarily as such a justice,

in subsection 2 of this section, the reference to a barrister shall be construed as including a reference to a solicitor and the reference to practice at the Bar shall be construed as including a reference to practice as a solicitor.

4.In this section

-“the Act of 1936” means the Courts of Justice Act, 1936;

-“the Act of 1961” means the Courts (Supplemental Provisions) Act, 1961.

Courts and Court Officers Bill, 1995

- extracts -

Part I – Preliminary and general

Article 1

- 1.This Act may be cited as the Courts and Court Officers Act, 1995.
- 2.Sections 3.2, 4, 5 and 44 shall come into operation on such day as the Government may fix by order after consultation with the Chief Justice and the President of the High Court.
- 3.The collective citation “the Courts (Supplemental Provisions) Acts, 1961 to 1991”, shall be deemed to include the Courts Act, 1991, and the Courts (Supplemental Provisions) (Amendment) Act, 1991.
- 4.This Act, in so far as it amends or extends the Courts (Supplemental Provisions) Acts, 1961 to 1991, shall be construed as one therewith and those Acts and this Act may be cited together as the Courts (Supplemental Provisions) Acts, 1961 to 1995.
- 5.This Act, in so far as it amends or extends the Court Officers Acts, 1926 to 1991, shall be construed as one therewith and those Acts and this Act may be cited together as the Court Officers Acts, 1926 to 1995.
- 6.Except where the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as amended, extended, adapted or applied by or under any subsequent enactment, (including this Act).

Article 2

In this Act:

- “the Act of 1961” means the Courts (Supplemental Provisions) Act, 1961;
- “Court of Justice” means the Court of Justice of the European Communities;
- “the Minister” means the Minister for Justice.

Article 3

1. The enactments mentioned in column 2 of Part I of the First Schedule to this Act are hereby repealed to the extent mentioned in column 3 of that Schedule.
2. Subject to subsection 3 of this section the enactments mentioned in column 2 of Part II of the First Schedule to this Act are hereby repealed to the extent mentioned in column 3 of that Schedule.
3. Section 44.2 of the Offences Against the State Act, 1939, shall apply and have effect for the purposes of that subsection notwithstanding the repeal of sections 28 and 29 of the Courts of Justice Act, 1924 and section 12 of the Act of 1961.

Part II – Supreme Court

Article 4

1. There shall be vested in the Supreme Court all powers, jurisdiction and functions which, before the coming into operation of an order under section 1.2 of this Act, are vested in or are capable of being exercised by the Court of Criminal Appeal.
2. Any application or other matter that is pending before the Court of Criminal Appeal on or before the coming into operation of an order under section 1.2 of this Act including cases listed for hearing by that Court and any notice of appeal or notice of application for leave to appeal to the Court of Criminal Appeal shall be heard by the Supreme Court.
3. References to the Court of Criminal Appeal in any statute or statutory instrument shall be construed as references to the Supreme Court.

Article 5

1. There shall be vested in the Supreme Court all powers, jurisdiction and functions which, before the coming into operation of an order under section 1.2 of this Act, are vested in or are capable of being exercised by the Courts-Martial Appeal Court.
2. Any application or other matter that is pending before the Courts-Martial Appeal Court, on or before the coming into operation of an order under

section 1.2 of this Act, including cases listed for hearing by that Court and any notice of appeal or notice of application for leave to appeal to the Courts-Martial Appeal Court shall be heard by the Supreme Court.

3. References to the Courts-Martial Appeal Court in any statute or statutory instrument shall be construed as references to the Supreme Court.

Article 6

1. Section 1 of the Courts (Establishment and Constitution) Act, 1961, is hereby amended by the substitution of the following subsection for subsection 2:

“The Supreme Court shall be constituted of the following judges

a. the president thereof, namely, *An Príomh-Bhreitheamh* (The Chief Justice), and

b. not more than seven ordinary judges (each of whom shall be styled “*Breitheamh den Chúirt Uachtarach*” (“Judge of the Supreme Court”)).

2. Section 14.1.a.i of the Law Reform Commission Act, 1975, shall be construed as if “eight” were substituted for “five” in that section.

Article 7

Section 7 of the Act of 1961, is hereby amended by the substitution of the following subsections for subsections 3 and 4:

“3. The Supreme Court may sit in two or more divisions and they may sit at the same time.

4. Subject to subsection 5 of this section, the Chief Justice or, in his or her absence the senior ordinary judge of the Supreme Court for the time being available, may determine that an appeal to or other matter cognisable by the Supreme Court may be heard and determined by a division of five or three judges of the Supreme Court, including judges who are by virtue of subsection 3 or 4 of section 1 of the Principal Act, additional judges of the Supreme Court.

5. An appeal to or other matter cognisable by the Supreme Court under Article 12 or Article 26

of the Constitution or a question of the validity of any law having regard to the provisions of the Constitution shall be heard and determined by not less than five judges of the Supreme Court including judges who are, by virtue of subsection 3 or 4 of section 1 of the Principal Act, additional judges of the Supreme Court.”.

Article 8

Notwithstanding section 18.1.a of the Courts Act, 1981, it shall be the function of the Chief Justice or in his or her absence the senior ordinary judge of the Supreme Court to arrange the distribution and allocation of the business of the Supreme Court.

Part IV – Judicial appointments

Article 12

In this Part

–“the Board” means the Board established under section 13 of this Act;

–“judicial office” means an office being the office of ordinary judge of the Supreme Court, ordinary judge of the High Court, ordinary judge of the Circuit Court or judge of the District Court (other than the President of the District Court).

Article 13

1. For the purposes of identifying persons and informing the Government of the suitability of those persons for appointment to judicial office, there shall be established a body to be known as the Judicial Appointments Advisory Board (in this Part referred to as “the Board”).

2. The Board shall consist of

a.i. the Chief Justice, who shall be the chairperson of the Board,

ii. the President of the High Court,

iii. the President of the Circuit Court,

iv. the President of the District Court,

v. the Attorney General,

b.i.a practising barrister who shall be nominated by the Chairman for the time being of the Council of the Bar of Ireland,

ii.a practising solicitor who shall be nominated by the President for the time being of the Law Society of Ireland,

and

c. not more than three persons appointed by the Minister who shall be persons engaged in, or having knowledge or experience (being knowledge or experience that the Minister considers appropriate) of commerce, finance administration or persons who have experience as consumers of the services provided by the courts that the Minister considers appropriate.

3. A person appointed to be a member of the Board by virtue of the provisions of subsection 2.b and c of this section shall be a member of the Board for a period not exceeding 3 years, and any such person so appointed shall be eligible for re-appointment to the Board.

4. The Board may act notwithstanding a vacancy in its membership.

Article 14

1. The Board may adopt such procedures as it thinks fit to carry out its functions under this Act and may establish sub-committees of the Board to assist it.

2. Without prejudice to the generality of subsection 1 of this section, the Board may

a. advertise for applications for judicial appointment,

b. require applicants to complete application forms,

c. consult persons concerning the suitability of applicants to the Board,

d. invite persons, identified by the Board, to submit their names for consideration by the Board,

e. arrange for the interviewing of applicants who wish to be considered by the Board for appointment to judicial office, and

f.do such other things as the Board considers necessary to enable it to discharge its functions under this Act.

Article 15

- 1.On the death or retirement of the Chief Justice, the senior ordinary judge of the Supreme Court who is for the time being available shall be a member of the Board until the appointment of a Chief Justice.
- 2.On the death or retirement of the President of the High Court, the senior ordinary judge of the High Court who is for the time being available shall be a member of the Board until the appointment of a President of the High Court.
- 3.On the death or retirement of the President of the Circuit Court, the senior judge for the time being available of the judges of the Circuit Court permanently assigned to the Dublin Circuit shall be a member of the Board until the appointment of a President of the Circuit Court.
- 4.On the death or retirement of the President of the District Court, the senior judge of the District Court for the time being available of the judges of the District Court permanently assigned to the Dublin Metropolitan District shall be a member of the Board until the appointment of a President of the District Court.

Article 16

- 1.A person who wishes to be considered for appointment to judicial office shall so inform the Board in writing and shall provide the Board with such information as it may require to enable it to consider the suitability of that person for judicial office, including information relating to education, professional qualifications, experience and character.
- 2.Subject to section 17 of this Act, on a request made by the Minister, the Board shall
 - a.where a judicial office stands vacant, or
 - b.before a vacancy in a judicial office arises,submit to the Minister the name of each person who has informed the Board of his or her wish to be considered for appointment to that judicial office and the Board shall recommend to the Minister at

least seven persons for appointment to that judicial office.

- 3.The Board shall provide the Minister with particulars of the education, professional qualifications, experience and character of the persons whom it recommends under this section.
- 4.Where fewer than seven persons inform the Board of their wish to be appointed to a judicial office or where the Board is unable to recommend to the Minister, pursuant to subsection 2 of this section, at least seven persons, the Board shall submit to the Minister the name of each person who has informed the Board of his or her wish to be considered for appointment to judicial office and the Board shall recommend to the Minister for appointment to that office such of those persons as it considers suitable for appointment.
- 5.Where more than one judicial office in the same court stands vacant, or in advance of more than one vacancy arising in the same court, at the request of the Minister, the Board shall submit to the Minister the name of each person who has informed the Board of his or her wish to be considered for appointment to judicial office and shall recommend to the Minister the names of at least seven persons in respect of each vacancy or such lesser number of names as the Minister shall specify following consultation with the Board.
- 6.In advising the President in relation to the appointment of a person to a judicial office the Government shall firstly consider for appointment those persons whose names have been recommended to the Minister pursuant to this section.
- 7.The Board shall not submit or recommend the name of a person to the Minister under this section unless the person satisfies the requirements of section 5.2 (as amended by this Act) of the Act of 1961 (in the case of an appointment to the Supreme Court or High Court), section 17.2 (as amended by this Act) of the Act of 1961 (in the case of an appointment to the Circuit Court) or section 29.2 and 3 of the Act of 1961 (in the case of an appointment to the District Court), as regards the proposed appointment, and the Board shall not recommend the name of a person to the Minister unless, in the opinion of the Board, the person

- a.has displayed in his or her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned,
 - b.is suitable on grounds of character and temperament,
 - c.is otherwise suitable, and
 - d.complies with the requirements of section 19 of this Act.
- 8.Notice of an appointment to judicial office shall be published in the *Iris Oifigiúil* and the notice shall, if it be the case, include a statement that the name of the person was recommended by the Board to the Minister pursuant to this section.

Article 17

Where the Government proposes to advise the President to appoint to judicial office a person who is for the time being a judge of the High Court, Circuit Court, District Court or who is eligible for appointment to the Supreme or the High Court under the provisions of paragraphs c and d of section 5.2 (as inserted by section 28 of this Act) of the Act of 1961, the provisions of section 16 of this Act shall not apply.

Article 18

- 1.Subject to subsections 2 and 3 of this section, the Board shall not submit to the Minister the names of any of its own members or recommend for appointment to judicial office any of its own members.
- 2.The Board may recommend the Attorney General for appointment to judicial office.
- 3.Where the Attorney General wishes to be considered for appointment to judicial office, he or she shall withdraw from any deliberations of the Board concerning his or her suitability for judicial office.
- e.Notwithstanding paragraphs a and b of this subsection, a judge of the Circuit Court of four years standing shall be qualified for appointment as a judge of the Supreme Court or the High Court."

Article 19

A person who wishes to be considered for appointment to judicial office shall undertake in writing to the Board his or her agreement, if appointed to judicial office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the court to which that person is appointed.

Article 23

Where the Government proposes to advise the President on an appointment to the office of Chief Justice, President of the High Court, President of the Circuit Court or President of the District Court it shall have regard first to the qualifications and suitability of persons who are serving at that time as judges in courts established in pursuance of Article 34 of the Constitution.

Part VII – Qualification of judges

Article 28

Subsection 2 of section 5 of the Act of 1961 is hereby amended by the insertion of the following paragraphs:

- "c.For the purposes of paragraph a of this subsection, service as a judge of the Court of Justice, a judge of the Court of First Instance attached thereto or as an Advocate-General of the Court of Justice shall be deemed practice at the Bar.
- d.A judge of the Court of Justice, a judge of the Court of First Instance attached thereto or an Advocate-General of the Court of Justice shall on vacating any of those offices be qualified for appointment as a judge of the Supreme Court or the High Court: provided he or she has been a practising barrister of not less than 12 years standing by virtue of paragraph c of this subsection or otherwise.

Article 44

An appeal shall not lie to the Supreme Court from a decision of the Central Criminal Court to acquit a person, other than an appeal under section 34 of the Criminal Procedure Act, 1967.

Article 47

1. Subject to subsections 2 and 3 of this section, the age of retirement of a judge of the Supreme Court and the High Court shall be 70 years.
2. The age of retirement of a judge of the Supreme Court and the High Court who holds office at the time of the coming into operation of this section shall be 72 years.
3. The age of retirement shall be 72 years for a person who holds office on or before the coming into operation of this section as a judge of the High Court, the Circuit Court, the District Court, the Court of Justice, the Court of First Instance attached thereto or an Advocate-General of the Court of Justice and who is subsequently appointed to be a judge of the Supreme Court or High Court.

Article 48

The Minister may, with the consent of the Minister for Finance, provide funds for the training and education of judges.

Article 49

A barrister or a solicitor when appearing in any court shall not be required to wear a wig of the kind heretofore worn or any other wig of a ceremonial type.

Lithuania

Constitutional Court

Constitution

- extracts -

Chapter 8**Article 102**

The Constitutional Court shall decide whether the laws and other legal acts adopted by the *Seimas* are in conformity with the Constitution and legal acts adopted by the President and the Government, do not violate the Constitution or laws.

The status of the Constitutional Court and the procedure for the execution of powers thereof shall be established by the Law on the Constitutional Court of the Republic of Lithuania.

Article 103

The Constitutional Court shall consist of 9 judges appointed for an unrenovable term of 9 years. Every three years, one-third of the Constitutional Court shall be reconstituted. The *Seimas* shall choose 3 candidates for Constitutional Court judges from the candidates nominated by the President of the Republic of Lithuania, 3 candidates from those nominated by the Chairperson of the *Seimas*, and 3 candidates from those nominated by the Chairperson of the Supreme Court; the *Seimas* shall appoint the candidates that they choose as judges.

The *Seimas* shall appoint the Chairperson of the Constitutional Court from among the judges thereof and on the nomination of the President of the Republic of Lithuania.

Citizens of the Republic of Lithuania who have an impeccable reputation, who are trained in law, and who have served, for at least 10 years, in the legal profession or in an area of education related to his or her qualifications as a lawyer, shall be eligible for appointment as judges of this Constitutional Court.

Article 104

In fulfilling their duties, judges of the Constitutional Court shall act independently of any other State institution, person or organisation, and shall observe only the Constitution of the Republic of Lithuania.

Before entering office, judges of the Constitutional Court shall, in the *Seimas*, swear to be faithful to the Republic of Lithuania and the Constitution.

The restrictions on work and political activities which are imposed on court judges shall also apply to judges of the Constitutional Court.

Judges of the Constitutional Court shall have the same rights concerning the inviolability of their person as shall members of the *Seimas*.

Article 105

The Constitutional Court shall consider and adopt decisions concerning the conformity of laws of the Republic of Lithuania and legal acts adopted by the *Seimas* with the Constitution of the Republic of Lithuania.

The Constitutional Court shall also consider the conformity with the Constitution of:

1. legal acts of the President; and
2. legal acts of the Government.

The Constitutional Court shall present conclusions concerning:

1. the violation of election laws during presidential elections or elections to the *Seimas*;
2. whether the President of the Republic of Lithuania's health is not limiting his or her capacity to continue in office;
3. the conformity of international agreements of the Republic of Lithuania with the constitution; and
4. the compliance with the Constitution of concrete actions of *Seimas* members or other State officers against whom impeachment proceedings have been instituted.

Article 106

The Government, no less than one-fifth of the members of the *Seimas*, and the courts shall have the right to address the Constitutional Court concerning legal acts specified in part 1 of Article 105.

No less than one-fifth of the members of the *Seimas* and the courts shall have the right to address the Constitutional Court concerning the conformity of acts of the President with the Constitution and the laws.

No less than one-fifth of the members of the *Seimas*, the courts, and the President of the Republic of Lithuania shall have the right to address the Constitutional Court concerning the conformity of an act of the Government with the Constitution and the laws.

Upon the proposal of the president or the decision of the *Seimas* to investigate the conformity of an act with the Constitution, the applicability of the act shall be suspended.

The *Seimas* may request a conclusion from the Constitutional Court, and in cases concerning *Seimas* elections and international agreements, the President of the Republic of Lithuania may also request a conclusion.

The Constitutional Court shall have the right to refuse to accept cases for investigation or to prepare conclusions if the appeal is not based on legal motives.

Article 107

Laws (or parts thereof) of the Republic of Lithuania or any other acts (or parts thereof) of the *Seimas*, acts of the President of the Republic of Lithuania, and acts (or parts thereof) of the Government may not be applied from the day of official promulgation of the decision of the Constitutional Court that the act in question (or part thereof) is inconsistent with the Constitution of the Republic of Lithuania.

The decision of the Constitutional Court on issues assigned to its jurisdiction by the Constitution shall be final and may not be applied.

On the basis of the conclusions of the Constitutional Court, the *Seimas* shall have a final decision on the issues set forth in part 3 of Article 105 of the Constitution.

Article 108

The powers of a judge of the Constitutional Court shall be terminated:

1. on the expiration of the term of office;
2. upon the death of the judge;
3. upon voluntary resignation;
4. when the judge is incapable to fulfil his or her duties for health reasons; and
5. upon being removed from office by the *Seimas* according to the impeachment proceedings.

Law on the Constitutional Court of the Republic of Lithuania

Law Nr. I-67 of 3 February 1993, as amended by the Law Nr. I-1475 of 11 July 1996

Chapter I – The Status of the Constitutional Court

Article 1 -The Constitutional Court – a Court Institution

The Constitutional Court of the Republic of Lithuania shall ensure the supremacy of the Constitution of the Republic of Lithuania in the legal system as well as constitutional legality by deciding, according to the established procedure, whether the laws and other legal acts adopted by the *Seimas* are in conformity with the Constitution, and whether the acts adopted by the President or the Government of the Republic correspond with the Constitution and laws.

In cases provided in the Constitution and this Law, the Constitutional Court shall present conclusions to the *Seimas* and the President of the Republic.

The Constitutional Court shall be an independent court which executes judicial power according to the procedure established by the Constitution of the Republic of Lithuania and this Law.

Article 2 -Laws on the Constitutional Court

The Constitution of the Republic of Lithuania and this Law shall establish the objectives, powers, and work procedure of the Constitutional Court.

Article 3 -Rules of the Constitutional Court

Internal questions of the Constitutional Court, the rules of professional conduct of judges, the structure of the Court apparatus, clerical work, and other issues shall be regulated by the Rules of the Constitutional Court, as approved by the Constitutional Court.

Article 4 -Composition and Procedure of Formation of the Constitutional Court

The Constitutional Court shall consist of 9 judges appointed for an unrenovable term of nine years.

Every three years, one-third of the Constitutional Court shall be reconstituted. The *Seimas* shall appoint an equal number of judges to the Constitutional Court from the candidates nominated by the President of the Republic of Lithuania, the Chairperson of the *Seimas*, and the Chairperson of the Supreme Court; the procedure shall also be used upon the renewal of the composition of the Court. The expiration of the judges' term of office shall be the 3rd Thursday of March of the corresponding year. State officials who nominate candidature of the Constitutional Court judges in accordance with the Constitution must no later than 3 months before the expiration of judges' ordinary term of office present the *Seimas* new candidatures of judges. Newly appointed judges of the Constitutional Court shall swear in the *Seimas* on the last working day before their term of office commences. In case the new judge was not appointed on the fixed time, the judge whose term of office has expired shall act for him until the new judge is appointed and put under oath.

Upon the premature vacancy of the position of the judge, a new judge shall be appointed into the vacant position in accordance with general procedure. In case this judge has held office up to the period of 6 years, then he may hold another term of office of the judge of the Constitutional Court upon the expiration of 3 years' interval.

The *Seimas* shall appoint the Chairperson of the Constitutional Court from among the judges thereof who are nominated by the President of the Republic of Lithuania.

Article 5 -Constitutional Court Judge Candidates

Citizens of the Republic of Lithuania who have an impeccable reputation, who are trained in law, and who have served, for at least 10 years, in the legal profession or in an area of education related to his or her qualifications as a lawyer, shall be eligible for appointment to Constitutional Court judge.

Names of candidates to Constitutional Court judge shall be announced through the press prior to the consideration thereof in the *Seimas*.

The State and Law Committee of the *Seimas* shall, at a closed sitting, consider the candidates nominated to the *Seimas* to the post of Constitutional Court judge, and shall then present their conclusions to the *Seimas*.

Article 5-1 -The Guarantees of Activities for the Constitutional Court

The Constitutional Court freedom and independence from other institutions shall be ensured by financial, material-technical as well as organisational guarantees secured by law.

The Constitutional Court shall be financed from the State budget by ensuring the possibility to the Constitutional Court to independently and properly perform the functions of constitutional supervision. The estimate of expenditure shall be approved by the Constitutional Court which shall also independently dispose of the means that are allocated to it.

The buildings and other possessions which are used by the Constitutional Court shall be State property transferred into possession, use and disposal of for the Constitutional Court on trust. These possessions may not be seized or transferred to other subjects without the consent of the Constitutional Court.

The Constitutional Court shall also freely and independently implement informational and organisational procurement for its activities.

Restrictions of legal, organisational, financial, informational, material-technical, and other conditions of Constitutional Court activities provided by this Law shall be prohibited.

Chapter 2 – The Status of Constitutional Court Judges

Article 6 -Requirements for Constitutional Court Judges

Judges of the Constitutional Court may not hold any other elected or appointed office, and may not be employed in any business, commercial or other private institution or company, with the exception of educational or creative work. They shall also be prohibited from receiving any remuneration other than the salary established for judges and payment for educational or creative activities.

Constitutional Court judges may not participate in the activities of political parties or other political organisations.

Constitutional Court judges may not be defense counsels or representatives of any company, institution, organisation or person.

Article 7 -The Oath of the Constitutional Court Judge

Before beginning office, persons appointed to Constitutional Court judge shall take an oath in a sitting of the *Seimas*.

The established text of the oath shall be:

“I, (name, surname), Swear to be faithful to the Republic of Lithuania; Swear to honestly and conscientiously discharge the duties of the office of Constitutional Court judge; Swear to defend the Constitutional order of the independent State of Lithuania and to protect the supremacy of the Constitution, obeying only the Constitution of the Republic of Lithuania. So help me God!”

The last sentence may be omitted from the oath. The oath shall be administered by the Chairperson of the *Seimas* in a sitting of the *Seimas*.

The oath shall be administered in keeping with the regulations established for the procedure of administering the oath of *Seimas* members.

Constitutional Court judges who either do not take the oath in the manner prescribed by law, or who take a conditional oath, shall lose the powers of judge. The

Seimas shall adopt a corresponding resolution thereon.

Article 8 -Immunity of Constitutional Court Judges

The person of a Constitutional Court judge shall be inviolable.

Constitutional Court judges may not be found criminally or administratively responsible, may not be arrested, and may not be subjected to any other restriction of personal freedom without the consent of the Constitutional Court. Questions of consent to institute criminal proceedings against a Constitutional Court judge shall be considered only upon the motion of the Prosecutor-General.

Constitutional Court judges who are detained or delivered to a law enforcement institution without personal documents must immediately be released upon establishing their identity.

Entry into the residential or office premises of Constitutional Court judges, the inspection or search of, or making a seizure in such premises or the inspection or search of, or making a seizure in personal or service automobiles or other personal means of communication, the bodily inspection or search of judges, and the inspection or seizure of their property or documents shall be prohibited unless criminal proceedings have been instituted against the Constitutional Court judge according to the established procedure.

Criminal cases in which the accused is a Constitutional Court judge shall be tried by the Supreme Court.

Constitutional Court judges may not be persecuted for their speeches or voting in the Constitutional Court.

The powers and rights of the Constitutional Court and its judges may not be abridged upon the declaration of war or state of emergency.

Article 9 -Powers of Constitutional Court Judges

Constitutional Court judges shall have equal rights.

Constitutional Court judges shall have the right to participate in Constitutional Court sessions with the right of decisive vote, to be granted free access to all material and documents submitted to court sessions, and to exercise other rights provided for by this Law.

Constitutional Court judges shall propose issues for consideration at Constitutional Court sessions and shall prepare questions assigned to them.

Constitutional Court judges shall have the right to request that all State institutions and their officers, local government institutions and their officers, State and other companies, institutions, organisations, and citizens' associations submit any documents and information concerning the issue which is being prepared for court hearing, as well as to receive the officers' explanations on all issues under examination.

Judges shall also have the right to summon and question witnesses and experts, to apply for consultations of specialists, to commission persons to carry out check ups, and to send inquiries.

Constitutional Court judges shall not have the right to publicly express their opinion concerning the main point of issues which are either under examination or have been adopted for examination in the Constitutional Court.

Article 10 -Suspension of the Powers of Constitutional Court Judges

The powers of a Constitutional Court judge may be suspended on the decision of the Constitutional Court upon:

1. consent granted according to the procedure established by this Law to institute criminal proceedings against the Constitutional Court judge;
- 2.a resolution of the *Seimas* to initiate impeachment proceedings in the *Seimas* against the Constitutional Court judge after the findings of the special interrogatory commission; and
3. the declaration of the judge as missing by an effective court order.

Upon suspension of their powers, judges shall lose the rights established by Articles 9 and 15 of this Law.

When the grounds for suspension of the powers of a Constitutional Court judge cease to exist, the Constitutional Court shall, within three days, adopt a decision concerning the restoration of the judge's powers. If a decision is not adopted within the stated period, the powers of the Constitutional Court judge shall be considered restored from the day that the

judge actually resumes his or her duties upon notifying the Chairperson of the Constitutional Court thereof by application.

Article 11 -Termination of the Powers of a Constitutional Court Judge

The powers of a Constitutional Court judge shall be terminated:

- 1.on the expiration of the term of office;
- 2.upon the death of the judge;
- 3.upon voluntary resignation;
- 4.if the judge is incapable of fulfilling his or her duties for reasons of health, i.e. if in the course of one year the judge is ill for more than four months, or if he or she falls ill with a fatal or other lingering disease which precludes him or her from discharging the duties of judge; and
- 5.upon being removed from office by the *Seimas* according to impeachment proceedings.

In the case prescribed by paragraph 3 hereof, the decision concerning the termination of the powers of Constitutional Court judges shall be adopted by the *Seimas* on the recommendation of the *Seimas* Chairperson.

In the case prescribed by paragraph 4 hereof, the *Seimas* shall resolve issues concerning the termination of the powers of judges only when there is a corresponding decision of the Constitutional Court and the findings of the medical commission formed by the Minister of Health.

Article 12 -Pecuniary Penalties

Disciplinary actions may not be brought against Constitutional Court judges. For failure to carry out the duties established in this Law or for non-attendance of court sittings without good reason, a pecuniary penalty entailing the reduction of the judge's previous month salary by as much as 50% may be imposed on the judge upon the decision of the Constitutional Court.

Article 13 -The Chairperson of the Constitutional Court

In addition to the duties of judge, the Chairperson of the Constitutional Court shall:

- 1.direct the work of the Constitutional Court;
- 2.direct the preparation of issues submitted to the Constitutional Court for examination;
- 3.convene and preside over sittings of the Constitutional Court;
- 4.propose issues to be examined by the Constitutional Court;
- 5.assign work to Constitutional Court judges;
- 6.submit the composition of the Constitutional Court apparatus and personnel to the Constitutional Court for approval, direct the work of the apparatus, and hire and dismiss the apparatus staff;
- 7.issue orders and directives; and
- 8.exercise other powers prescribed by this Law.

In resolving issues related to the work of the apparatus as well as other internal questions, the Chairperson shall issue orders; the Chairperson shall realise the procedural rights granted to him or her by issuing directives.

The Chairperson of the Constitutional Court shall manage the funds appropriated for the operation of the Constitutional Court.

Article 14 -Acting for the Chairperson of the Constitutional Court

In the absence of the Chairperson of the Constitutional Court or when he or she is not in the position to fulfil the duties of Chairperson, said duties shall be temporarily performed by a judge appointed by the Chairperson of the Constitutional Court.

In the absence of the Chairperson of the Constitutional Court or the judge appointed by him or her to carry out these duties, the office of Chairperson of the Constitutional Court shall be temporarily executed by the Constitutional Court judge with the longest term of service as lawyer.

Article 15 -The Right of Constitutional Court Judges to participate in Sitzings of State Institutions

The Chairperson and judges of the Constitutional Court shall be entitled to participate in sittings of the *Seimas* of the Republic of Lithuania and of its committees and commissions, as well as in sittings of the Government, the Senate of Lithuanian Judges, the prosecutor's office, and other legal institutions.

Article 16 -Social and Living Provision for Constitutional Court Judges

Constitutional Court judges shall be paid a salary which is 30% more than the maximum salary of a superior court judge. The Chairperson or temporary Chairperson of the Constitutional Court shall be paid a salary which is 10% more than the salary of a Constitutional Court judge.

Upon leaving office because of expiration of the term or resignation due to pensionary age or health, judges of the Constitutional Court shall be paid gratuity on discharge equalling 6 monthly salaries. Upon the death of a Constitutional Court judge, the benefit of the said amount shall be paid to his or her family. When the powers of a Constitutional Court judge are terminated on other grounds, he or she shall be paid a gratuity equalling 2 monthly salaries. Judges who are dismissed from office according to impeachment proceedings shall not be paid any gratuity upon discharge.

Pensionary provision for Constitutional Court judges shall be regulated by the Law on State Pensions and other laws of the Republic of Lithuania.

The Government shall assign living quarters in Vilnius for the term of office to Constitutional Court judges who either do not have living quarters in Vilnius or who live in Vilnius and are entitled to State aid in acquiring living quarters.

Upon the expiration of their term, with the exception of the cases when Constitutional Court judges are dismissed from office according to impeachment proceedings, judges must be assigned a job or office in a State institution, or, when this is not possible, another analogous job or office.

Chapter 3 –Basic Rules of Legal Proceedings in the Constitutional Court**Section 1 – Common Rules****Article 17 -Legality and Independence of Constitutional Court Activities**

In carrying out their duties, the Constitutional Court and its judges shall be independent of any State institution, person or organisation, and shall act only in accordance with the Constitution of the Republic of Lithuania.

The Constitutional Court shall obey only the Constitution of the Republic of Lithuania and laws which are in conformity with the Constitution.

Interference with the activities of a judge of the Constitutional Court by institutions of State authority and administration, the *Seimas* and its officers, political parties, political and public organisations, or citizens shall be prohibited and shall incur liability under law.

The Chairperson and judges of the Constitutional Court must immediately inform the *Seimas* of attempts to influence the Constitutional Court or any of its judges, and must publicise this through mass media.

Meetings, pickets, and other actions staged within 75 metres of the Constitutional Court building or in the Court itself and which are aimed at influencing a judge or the Court, shall be considered interference with the activities of the judges or the Court.

Article 18 -Publicity of Constitutional Court Activities

Information concerning court sittings of the Constitutional Court shall be declared on the premises of the Constitutional Court and announced to public mass media through the Lithuanian News Agency (ELTA).

Constitutional Court sittings shall be open, and may be attended by persons who are of age as well as by representatives of the press and other public mass media. Persons who attend sittings in the court room may make tape recordings, short-hand records or records of the hearing from their seats.

Taking photographs, filming, and making video recordings or television or radio broadcasts of hearings

shall be permitted only upon the consent of the Constitutional Court.

The Constitutional Court may announce closed sittings provided that this is necessary for the safeguarding of a State, professional, commercial or other secret which is protected by law, or the security of a citizen or public morality.

If there are grounds to believe that during a sitting a threat may arise to the Court or the parties thereof, the Chairperson of the Constitutional Court may issue an order to the police or other State security servicemen to inspect the documents and belongings of persons entering the court room or to carry out bodily searches.

The Constitutional Court may remove persons interfering with the normal work of the Court from the court room.

The deliberation and voting of the judges of the Constitutional Court shall not be public, with the exception of cases provided for by this Law.

The ruling of the Constitutional Court shall always be announced publicly in the court room.

Article 19 -Collective Activities of the Constitutional Court

The Constitutional Court shall collectively investigate cases and arrive at conclusions, provided that no less than two-thirds of all the judges of the Constitutional Court are participating.

In approving or amending the Rules of the Constitutional Court, or in resolving other internal issues, Constitutional Court sittings shall be legitimate provided that at least half of all the judges participate therein.

Rulings shall be passed by majority vote of at least half of the judges participating in the sitting. In the case of a tie, the vote of the Chairperson shall be decisive.

Article 20 -Language of the Court

In the Constitutional Court, legal proceedings shall be held and rulings shall be passed and announced in the Lithuanian language. Documents written in other languages shall be submitted and announced in their Lithuanian translation and after having been approved by a notary.

People participating in sittings who do not know Lithuanian shall be guaranteed the right to use a translator.

Article 21 -Types of Constitutional Court Sittings

The Constitutional Court shall hold organisational and procedural sittings as well as court hearings. Sittings shall either be convened by the Chairperson of the Constitutional Court or held at the time set by the Constitutional Court.

The form of organisational and procedural sittings shall be free. In cases as provided for by this Law, court sittings may be held in a free form as well.

Concrete cases shall be tried in court hearings. These hearings shall be held according to the procedures established by this Law.

Article 22 -Rulings and Decisions of the Constitutional Court

The Constitutional Court shall settle cases in essence by passing rulings. The Constitutional Court shall announce rulings in the name of the Republic of Lithuania.

In cases provided by this Law, the final act of the Constitutional Court shall be called the conclusions.

The Constitutional Court shall adopt decisions on individual questions which prevent a case from being settled.

The Constitutional Court shall adopt rulings, conclusions, and decisions in the deliberation room. Upon consultation and without leaving to the deliberation room, the Constitutional Court may adopt a decision concerning simple issues as well as the imposition of penalties during a sitting. When such a decision is adopted, the Chairperson of the sitting shall immediately announce it and it shall be recorded in the sitting records.

Article 23 -Organisational Sittings of the Constitutional Court

Internal questions, issues of material investigation, and other issues shall be considered and settled in organisational sessions. The Chairperson and judges of the Constitutional Court shall propose issues for consideration. The Constitutional Court shall establish the agenda and schedule of sittings by its decision.

If necessary, scientists, specialists and other persons shall be invited to organisational sittings.

Article 24 -Preliminary Investigation of Material

Issues presented to the Constitutional Court for consideration must be preliminarily investigated. The Chairperson of the Constitutional Court shall charge one or several judges with conducting the investigation upon setting the term for this work.

The Chairperson of the Constitutional Court shall evenly distribute the preparatory work to judges.

A judge, upon beginning the investigation of the material which is given, shall:

- 1.ascertain that the grounds established in Articles 69 and 80 of this Law for refusal to examine a petition or inquiry are not present;
- 2.ascertain that the grounds established in Articles 70 and 81 of this Law for the return of a petition or inquiry of the petitioner are not present; and
- 3.establish which issues must be clarified before the case is prepared for the sitting.

Article 25 -Report of the Results of the Preliminary Investigation

Upon the carrying out of the preliminary investigation and necessary preparatory acts, a judge shall draw up a certificate with proposals and shall report it to:

- 1.the Chairperson of the Constitutional Court, in proposing to accept a petition or inquiry and begin the preparation of the case for a sitting of the Constitutional Court in the procedure established by Article 27 of this Law if the petition or inquiry is within the jurisdiction of the Constitutional Court and is in conformity with other requirements of this Law;
- 2.the Chairperson of the Constitutional Court, in proposing to return the petition or inquiry to the petitioner if the material conforms to the conditions provided in Articles 70 and 81 of this Law; and
- 3.the procedural sitting of the Constitutional Court, in proposing to adopt a decision to refuse to examine the petition or inquiry if the material conforms to

the conditions provided in Articles 69 and 80 of this Law.

In settling the issues provided in paragraphs 1 and 2 of the first part of this Article, the Chairperson of the Constitutional Court shall adopt decrees. If, due to the aforementioned issues, disagreements arise between a judge and the Chairperson of the Constitutional Court, such issues shall be referred to the procedural sitting of the Constitutional Court for the consideration and decision.

Article 26 -Suspension of Validity of Acts of the President, the Seimas or the Government of the Republic

In cases when the Constitutional Court receives a motion of the President of the Republic to investigate the conformity of an act of the Government with the Constitution, or when it receives a resolution of the *Seimas* wherein it is requested to investigate whether a law of the Republic of Lithuania or other act adopted by the *Seimas* is in compliance with the Constitution, the preliminary investigation of that material must be carried out within 3 days, and the issue of whether to accept the petition for a hearing in the Constitutional Court must be settled during its organisational sitting.

If the Constitutional Court adopts a decision to accept a petition for a hearing, the Chairperson of the Constitutional Court shall immediately give an official announcement about it either in the official gazette "*Valstybės žinios*" ("The News of the State") or in a special publication of the *Seimas*, or in newspapers through the Lithuanian News Agency (ELTA). In this announcement, the Chairperson must state the exact title of the act in question, the date of its adoption, and that, in accordance with Article 106 of the Constitution of the Republic of Lithuania, the validity of the aforementioned act is suspended from the day of its official announcement until the ruling of the Constitutional Court concerning this case is announced.

In cases when the Constitutional Court, having tried a case, adopts a ruling that the act in question is in conformity with the Constitution, the Chairperson of the Constitutional Court shall immediately make an official announcement about it in the publications mentioned in the second part of this Article. In this announcement, the Chairperson of the Constitutional Court shall state the exact title of the act in question, the date of its adoption, the main point of the ruling of the Constitutional Court concerning this issue, the date of

its adoption, and that the validity of the suspended act shall be restored from the day that this ruling is announced.

Article 27 -Preparation of Cases for Sitzings of the Constitutional Court

A case shall be prepared for a sitting of the Constitutional Court by the chairperson-appointed judge of the Constitutional Court. Normally, this judge shall be the one who has carried out the preliminary investigation of the appropriate material.

The judge shall conduct the following activities:

- 1.in necessary cases, interrogate the petitioner or the petitioner's representative about the main points of the demands, hear the petitioner's arguments, and propose, if necessary, that additional evidence be presented;
- 2.in necessary cases, interrogate the person concerned or the person's representative about the circumstances of the case, ascertain the person's counter-arguments and available evidence, and, if necessary, propose that explanations concerning the case be presented in writing;
- 3.interrogate witnesses and decide whether or not to summon them to the Court;
- 4.request and obtain documentary and material evidence and other necessary material from persons, State institutions, and other organisations;
- 5.commission an examination, and summon and interrogate specialists who are impartial to the results of the case; and
- 6.carry out other actions which are necessary for the preparation of the case for the court hearing.

The case material – copies of the petition to verify the conformity of a legal act with the Constitution or laws, copies of legal acts under examination, copies of other received documents – must be sent to the parties to the case within 3 days of the beginning of the preparation of the case for the court hearing.

The judge, having carried out preparatory acts and considering the case to be adequately prepared, shall propose to pass a decision to assign the case for the

hearing in the court sitting during a procedural sitting of the Constitutional Court.

Article 28 -Procedural Sitzings of the Constitutional Court

The following issues shall be considered in procedural sittings of the Constitutional Court: issues concerning the acceptance of petitions provided in Article 26 of this Law; all cases of the refusal to examine a petition or inquiry; issues concerning the preparation of cases for hearing; and other issues of preparation for court hearings.

Having heard the report of the judge and having discussed the issue of the preparation of the case for the court hearing, the Constitutional Court shall pass one of the following decisions:

- 1.to assign the case for hearing in the court sitting and appoint a court speaker;
- 2.to return the case for additional investigation; and
- 3.to refuse to hear the case in the procedure established in Articles 69 and 80 of this Law.

Minutes shall be taken during procedural sittings of the Constitutional Court.

Upon the invitation of the Chairperson of the Constitutional Court, scientists, specialists, and other necessary persons may participate in procedural sittings. With permission of the chairperson of the sitting, said persons may speak on the issue.

Article 29 -Terms of the Hearing of Appeals in the Constitutional Court

Upon receiving an appeal – a petition or inquiry – which is within the jurisdiction of the Constitutional Court and which is presented in the procedure established by this Law, the Constitutional Court must begin investigation within 7 days, i.e. commission a judge of the Constitutional Court to start the preliminary investigation.

The hearing of the case must be finished and the final ruling or conclusions passed within 4 months of the day the petition or inquiry is received by the Constitutional Court unless otherwise provided by the Constitutional Court.

Article 30 -Limits of Court Hearings of the Constitutional Court

The Constitutional Court shall investigate and decide only legal issues.

Article 31 -Persons Participating in Cases

The following persons shall be considered parties to the case:

- the petitioner – the State institution, the group of *Seimas* members who are granted by law the right to apply to the Constitutional Court with a petition to investigate the conformity of a legal act with the Constitution or laws or to pass a finding, or their representatives;
- the person concerned – the State institution which has adopted the legal act whose conformity with the Constitution and laws is under investigation or its representative; *Seimas* members or other State officers, the constitutionality of whose actions must be investigated due to impeachment proceedings which have been initiated against them in the *Seimas* or their representative; the President of the Republic, when conclusions are presented concerning his or her state of health or the President's representative.

The parties to the case shall have equal procedural rights. They shall have the right to get familiar with the material of the case, make extractions, duplicates, and copies from it, declare suspensions, provide evidence, participate in the investigation of evidence, question other persons, witnesses and experts participating in the case, make requests, give explanations, provide their own arguments and reasonings, and object to requests, arguments and reasonings of other persons participating in the case.

Article 32 -Representation in the Constitutional Court

Parties to the case may conduct their cases in the Constitutional Court either personally or through their representatives. Participation of the party in the case does not deny its right to have its representatives in the case.

Heads of corresponding State institutions who act according to the authorization granted by the law shall be held legitimate representatives. They shall present

documents to the Constitutional Court which confirm their post. A member or members of the *Seimas* who represents a group of *Seimas*' members and who was indicated in the request of all appealing *Seimas*' members providing their signatures are confirmed by the *Seimas* Chairperson or deputy Chairperson shall also be held the legitimate representative. The court which appealed to the Constitutional Court shall be represented by the judge who has passed the ruling (or the Chairperson of the Panel of Judges).

Representatives of the parties to the case in the Constitutional Court may (by order) be advocates, persons possessing academic degrees in law, and also persons having legal experience in higher State institutions. An advocate's warrant of attorney shall be approved by the warrant of an advocate. All other aforesaid persons shall be issued the warrants of attorney by the heads of the institutions which they represent or the legitimate representative of the group of *Seimas*' members. The head of the institution may also commission another employee of that institution for the representation of his or her institute by issuing that person the warrants of attorney.

Article 33 -Parties to the Action

In this Law, parties to the action shall be considered parties to the case, their representatives, witnesses, experts, invited specialists and interpreters.

Article 34 -Evidence

Any facts shall be admitted as evidence on the basis of which the Constitutional Court states that there are circumstances which justify the requests or rebukes of the parties to the case or that there are no such circumstances.

These facts shall be established on the basis of explanations of the parties to the case, testimony of witnesses, documentary evidence, and findings of experts.

Each party to the case must prove the circumstances on the basis of which they make their requests and retorts.

Parties to the case shall present evidence. The Court may propose that they present additional evidence.

The Court shall accept only that evidence which prove circumstances which are of importance to the case for investigation.

It shall be not required to prove the circumstances which are recognised by the Constitutional Court to be publicly known.

Facts which are established by ruling of the Constitutional Court in one case shall not be proved again in hearings of other cases.

Article 35 -Assessment of Evidence

Evidence presented to the Constitutional Court shall have no obligatory force in advance.

The Court shall assess evidence in accordance with the inner conviction of judges which shall be based on the detailed, comprehensive and objective examination of the whole complex of the circumstances of the case in the court sitting and in observance of the laws.

Article 36 -The Witness

Any person who may know some circumstances related to a case may be a witness.

A person summoned to be a witness must appear before the Court or the judge and must testify truthfully.

For failure to appear before the judge or the Court due to reasons which are recognized as unimportant by the Court, a penalty may be imposed on the witness; if the witness fails to appear at a sitting without a valid reason for a second time, he or she may be brought by force by the police.

For the refusal or avoidance of testimony, or for knowingly false testimony, a witness shall be liable in accordance with laws. Witnesses shall be warned about their liability in the sitting of the Constitutional Court and shall sign on.

Expenses related to the appearance of witnesses before the judge and their participation in sittings of the Constitutional Court shall be covered from the funds assigned to the Constitutional Court for those purposes.

Article 37 -The Expert

A person having the required knowledge to provide findings may be appointed as an expert. If necessary, several experts may be appointed.

The judge who prepares the case for hearing shall have the right to ask questions to which the expert's findings must be provided, while each party to the case shall have such a right during the sitting. These questions shall be finally determined by the Court.

Upon the summons of the Court or a judge, a person appointed as expert must be in attendance and provide the objective findings on the questions posed.

Experts shall have the right to get familiar with the case material, to participate in the case hearing, to address witnesses and persons participating in the case with questions, and to ask for additional material.

Penalties may be imposed on experts for failure to attend upon the summons of the Court or a judge or for an unjustified refusal to provide the findings.

Experts shall be liable in accordance with criminal laws for providing the findings which are knowingly false. Experts shall be warned of this and shall sign on.

Experts shall be compensated for their work if the work is not obligatory to them by virtue of their office, as well as for other expenses incurred for participation in the sitting of the Constitutional Court from the funds assigned to the Constitutional Court for these purposes.

Article 38 -Expert Findings

Expert findings shall be presented in writing and shall be set forth in the examination act which state the executed investigations, the findings made on their basis, and the reasoned answers to the questions posed by the Court.

If there are several experts, they shall deliberate among themselves before providing the findings. If the experts reach the common findings, that findings shall be signed by all of the experts. Experts who do not agree with other experts shall sign their own findings.

Expert findings shall have no obligatory force in advance.

Article 39 -Compensation of Expenses Incurred by Parties to the Case

Expenses of the parties to the case related to attendance and participation in legal proceedings of the Constitutional Court shall be compensated by the institutions which they represent.

Article 40 -The Right of the Constitutional Court to Impose Penalties

The Constitutional Court shall have the right to impose penalties when:

- 1.officials and persons, at the set time and without valid reasons, fail to fulfil the requirements of the Constitutional Court or its judge to present documents or material, to approve documents or texts of acts, or to carry out investigations;
- 2.without valid reasons, a witness or expert fails to attend, refuses to attend, or does not inform of their failure to appear before the Constitutional Court or the judge;
- 3.an expert, without valid reasons, refuses to provide the findings;
- 4.a party to the case, after being reprimanded once, speaks out of turn or insults participants of the sitting or the Court a second time; and
- 5.a person who is in the court room violates order or does not listen to demands of the Chairperson of the sitting to maintain order.

The Constitutional Court shall have the right to impose a penalty on citizens and representatives of the parties to the case equalling up to one average monthly salary, and on officials – up to four average monthly salaries for each case of violation.

When violations stated in the first part of this Article are committed during a sitting, the decision of the Constitutional Court concerning the imposition of a penalty shall be passed immediately during the sitting. In other cases, the decision concerning the imposition of a penalty shall be passed after the investigation. In all cases, the decision of the Constitutional Court concerning the imposition of a penalty shall be entered into the record of the sitting where the name, surname, working place and address of the violator shall be stated.

The decision of the Constitutional Court concerning the imposition of a penalty (extract from the record of the sitting) shall be sent to the bailiff to conduct.

Article 41 -Joining of Petitions

Upon establishing that there are two or more petitions concerning the conformity of the same legal act with the Constitution or laws, the Constitutional Court may join them into one case before the beginning of the court hearing. In this case, the Constitutional Court shall adopt a reasoned decision.

Article 42 -Summonses of the Constitutional Court

Parties to the case and their representatives shall be informed by summonses of the Court of the time of the sitting of the Constitutional Court and the time and place of performance of separate procedural actions. Witnesses, experts and interpreters shall be summoned to the Court by summonses as well. Consequences for failure to appear before the Court shall be stated in the summons.

Summonses shall be delivered through messengers or by mail. The time when the addressee is presented with the summons shall be stated in the delivered summons and in the part of the summons returned to the Court which shall contain the signature confirming the delivery of the summons.

Summons to appear in Court for parties to the case must be delivered no later than 7 days before the beginning of the sitting.

Article 43 -Sitting Notices

Sitting notices must be presented to judges of the Constitutional Court no later than 7 days before the beginning of the sitting. Duplicates of the material of the case under examination shall be delivered to the judges upon the commencement of the preliminary investigation of the material.

Section 2 – Court Proceedings

Article 44 -Court Hearings

A case shall be investigated by the Constitutional Court only once the parties to the case have been notified of this.

Absence of the parties in a court hearing shall not be an obstacle in conducting the investigation of the case, passing a ruling or conclusion, or adopting other decisions.

While investigating a case, the Constitutional Court must directly examine evidence: they must listen to the statements of the parties participating in the case, the testimony of witnesses, and the findings of experts, and must examine written and other evidence.

The Court shall not have the right to investigate other cases until the investigation of the case at hand is settled or its investigation is suspended except for adoption of procedural decisions regarding designation of investigation for other case in the court sittings or prolonging the term for the investigation.

Only parties to the case, their representatives, witnesses, experts, and invited specialists and officers may speak in the Court.

In cases when no party or their representatives who have been summoned come to the court hearings, the court hearings shall be held in a free form.

Article 45 -The Chairperson of Court Hearings

Court hearings shall be presided over by the Chairperson of the Constitutional Court; in the absence or on the instruction of the Chairperson, hearings shall be presided over by the deputy Chairperson of the Constitutional Court, and if they are also absent – by a judge selected by the Constitutional Court other than the judge who is acting as speaker.

The presiding Chairperson: shall conduct the hearing and take measures to fully and impartially investigate the circumstances of the case; shall exclude all things which are irrelevant to the case from the trial; shall interrupt the parties if they speak about matters which are irrelevant to the case or which are not within the jurisdiction of the Constitutional Court; and shall deprive speakers of speech when they start speaking at their own will, when they do not fulfil the requirements of the Chairperson of the court hearing, when they speak in a rude or insulting manner, or when they show disrespect for the Constitution or constitutional order of the State.

The Chairperson of the court hearing shall have the right to require anyone who breaches procedure or disobeys his orders to leave the court room. A party to the case who ignores a reprimand to the Chairperson of the court hearing may be removed from the court room by Court decision.

The Chairperson of the court hearing shall warn the persons present in the court room that if their conduct

interferes with the court hearing and that upon repeated violation of order, they may be removed from the court room.

The Chairperson of the Court shall announce a recess when it is necessary to take a rest, when parties to the case must get ready for the final speech, at the end of working hours, when normal work is obstructed, and in other cases.

Article 46 -Procedure for Court Hearings

The persons present in the court room must keep order and respect the Court, and must, without objection, obey the Chairperson's demands to maintain order.

Minors, if they are not witnesses, shall not be admitted into the court room.

When the judges enter or leave the court room, and when the decision or ruling of the Constitutional Court is being declared, the persons present in the court room shall rise. All parties to the action shall stand while addressing the Court, speaking, and giving their testimony and explanations.

The Court shall be addressed with the words "High Court" or "Honourable Court".

During hearings of the Constitutional Court, order shall be kept by the Court clerk.

Demands of the clerk to keep order or to fulfil the instructions of the Chairperson shall be obligatory to all parties to the case.

If, during the court hearing, parties to the case breach order, disobey demands of the Chairperson of the court hearing to keep order, or violate other rules adopted by the Constitutional Court, they may be removed from the court room or be held liable under law.

Article 47 -The Preparatory Stage of the Court Hearing

At the set time, the Chairperson of the court hearing shall announce the commencement of the hearing of the Constitutional Court as well as which case shall be tried.

The secretary of the Constitutional Court hearing shall announce which of the summoned persons are

present as well as the reasons for which the other persons have failed to appear before Court.

The Court shall identify the persons who are present, and shall verify the powers of the officials and representatives. If anyone from the parties fails to appear or if a representative does not have due power, the Constitutional Court shall decide whether or not it is possible to begin the hearing. Experts and parties to the case shall be informed by the Chairperson of the hearing of their rights and duties, and other summoned persons shall be informed by the Chairperson of their duties and responsibility.

Requests of the parties to the case shall be heard and settled by the Court.

Article 48 -Self-suspension or Suspension of Constitutional Court Judges

A Constitutional Court judge may suspend himself or be suspended from the investigation of a case if he:

1. is a relative of one of the parties to the case and if the matter in dispute is of a personal nature; or
2. has publicly declared how the case under investigation should be settled.

If circumstances indicated in part 1 of this Article are present, the judge must announce them in writing prior to the commencement of the hearing, and must ask the Constitutional Court to settle the issue of the judge's suspension. On the same grounds and according to the same procedure, the parties to the case may also declare justified suspension.

If a suspension has been declared, the Constitutional Court must hear the arguments of the parties to the case. The Court shall settle issues of self-suspension or suspension in the room designated for deliberation.

Article 49 -Suspension of the Investigation of a Case

The investigation of a case may be suspended upon the decision of the Constitutional Court if:

1. the issue has not been adequately prepared and additional examination is necessary;
2. it is necessary to obtain new evidence; or
3. other vital reasons turn up.

In suspending a case hearing, the Constitutional Court may set another date for the hearing and announce that persons present sign for this.

In suspending a case hearing, the Court may question witnesses who are present and who will normally no longer be summoned.

Having renewed a case hearing, the Court shall decide whether to start the hearing *de nova* or to resume the hearing from place in the legal process where the case hearing was suspended.

Article 50 -Examination of Evidence

The hearing of a case shall begin in essence with a speech by the court speaker, in which the main points of the case, the cause and grounds of its investigation, and the content and other necessary data related to the available material shall be established. The Constitutional Court judges may ask the speaker questions.

After this, the statements of the parties to the case shall be heard, beginning with that of the petitioner. There persons shall have the right to ask each other questions and to voice their opinion on each other's statement or request. The Constitutional Court judges may also ask them questions. The Chairperson of the hearing shall read aloud the written pleadings of the parties to the case who did not appear in a court hearing.

Prior to the questioning of witnesses, the Chairperson shall establish their identity and shall warn them of their responsibility upon signing for refusal or avoidance of giving evidence as well as for evidence which the know is false.

A witness may be asked questions after giving testimony. The written evidence of witnesses shall be read aloud at the court hearing.

Written evidence or the records of their examination shall be read aloud at the court hearing and shall be given to the parties to the case so that they can familiarize themselves with the material, and who thereafter shall be able to give their explanations.

Material evidence shall be examined by the Court; evidence shall also be shown to the parties to the case, and, as necessary, to experts and witnesses.

Parties to the case may give explanations relative to material evidence.

Expert statements shall be read aloud at the court hearing. An expert may be asked questions. As necessary, the Court may set additional or repeated expert examinations.

The specialists who have been summoned to the hearing shall present their explanations as regards the questions that were raised to them and set forth their arguments. The specialists may ask questions.

Upon examining all of the evidence, the Chairperson of the court hearing shall ask the parties to the case if they want to supplement the case material. The Court shall settle requests by adopting decisions concerning them. When the requests have been settled or when there are no requests, the Chairperson of the court hearing shall announce the completion of the examination of evidence.

Article 51 -Court Arguments

Court arguments shall consist of the statements of the parties to the action.

During court arguments, the plaintiff and his representative shall present their statements first, followed by the interested person and his representative.

After that, the parties to the case may speak for a second time concerning the previous pleadings. The right to the final statement shall always belong to the interested person and his representative.

If the Constitutional Court acknowledges, in the course of the court arguments, that new circumstances pertaining to the case must be disclosed or new evidence must be investigated, it shall adopt a decision for the renewal of the examination of evidence. Upon completing the investigation of the evidence, the Court shall hear the arguments again according to the general procedure.

Article 52 -Taking of Minutes

Minutes shall be taken for each court hearing, as well as for each separate procedural action which is performed outside of the court hearing. Minutes shall be taken by the court hearing secretary.

Record of hearings of the Constitutional Court shall indicate:

- the place and the date of the hearing as well as the time of its commencement and conclusion;
- the full name and office of the Chairperson of the hearing;
- the full names of the judges participating in the case and the secretary of the hearing;
- the issue under investigation;
- data relative to the parties to the case;
- the witnesses and experts participating in the case;
- other officials present at the hearing;
- the consecutive order and the results of the actions of the Constitutional Court;
- the decisions of the Constitutional Court;
- the explanations and statements of the parties to the case;
- records of warnings issued to witnesses and experts concerning their responsibility;
- the evidence of witnesses and experts;
- the questions put to parties to the case, witnesses and experts as well as their responses;
- data concerning the examination of documents and other evidence;
- the content of pleadings;
- facts which parties to the action request to be entered in the record;
- violations of procedure as well as other facts concerning contempt for the Constitutional Court, reprimands, penalties and other procedural measures; and
- that the decision or other ruling has been read aloud.

The course and speeches of Constitutional Court hearings must be recorded in the minutes as accurately and comprehensibly as possible. The

evidence of witnesses and the findings of experts or explanations of other participants in the action shall be recorded on a separate sheet and shall be signed by them; these evidence and findings shall be attached to the record as its constituent part. The witness who has been questioned orally may also present his evidence in writing. It shall be attached to the record.

Audio and video recordings made during a hearing shall be added to the record and the existence thereof shall be indicated in the record.

The record must be completed within 2 days of the conclusion or suspension of the hearing. A printed version of the record shall be signed by the Chairperson of the Constitutional Court and by the secretary of the hearing.

Article 53 -Confidentiality of Deliberations of the Constitutional Court

Constitutional Court judges who have participated in court arguments shall retire to the deliberation room to make a ruling. The Chairperson of the hearing shall announce this to the persons present in the court room.

During the deliberation and adoption of decisions or conclusions, only Constitutional Court judges may be present in the deliberation room. The Chairperson of the hearing shall lead the deliberation of the judges, guaranteeing them the opportunity to express their opinion freely and without hindrance. In seeking a thorough and exhaustive deliberation, the Chairperson shall organize voting as well as the recording and drawing up of the resolution. Upon the conclusion of deliberation, the Constitutional Court may invite the court officer to the deliberation room to be dictated and record the ruling or conclusion of the Constitutional Court.

Neither the Constitutional Court judges nor the officer who participated in the hearing shall have the right to announce the opinions voiced in the deliberation room or how the judges voted.

Article 54 -Issues Settled upon the Adoption of a Ruling

In adopting a ruling, the Court shall weigh the evidence and state which preponderant circumstances have been established and which have not been established, which Constitutional or lawful norm must be applied in the case at hand, and whether the petition is awardable.

The Court shall base its ruling only on the evidence which was investigated during the court hearing.

The Court shall, upon deciding in deliberation that new circumstances must be disclosed or new evidence must be investigated, pass a decision to renew the investigation of the case and shall determine which additional procedural actions must be performed.

Article 55 -Procedure for Adopting a Constitutional Court Ruling

The ruling of the Constitutional Court concerning the case shall be made in the deliberation room. The ruling must be presented within 1 month of the completion of the investigation of the case.

Rulings shall be made by majority vote. In the event of a tie vote, the vote of the Chairperson of the hearing shall be decisive. Judges shall not have the right to refuse to vote or to abstain from voting.

Adopted rulings shall be set forth in writing and signed by all the participating judges.

The discussion of amendments to rulings must be put in writing prior to the signing by judges.

Article 56 -The Content of Constitutional Court Rulings

The ruling of the Constitutional Court on a case shall be drawn up as a separate document.

It shall state:

- the title, date and place of the ruling;
- the composition of the Constitutional Court;
- the secretary of the hearing;
- the parties to the case and their representatives;

- the issue under investigation and its grounds;
- the articles of the Constitution and this Law which establish the right of the Constitutional Court to investigate the issue;
- the request set forth in the appeal;
- the full title of the legal act whose constitutionality was examined as well as the source wherein it was declared and wherefrom it was received;
- the action or decision of a *Seimas* member or State officer whose constitutionality was examined;
- the circumstances established by the Constitutional Court;
- the arguments and proof upon which the ruling of the Constitutional Court is based, and, if necessary, the arguments refuting other opinions;
- the constitutional norm on the basis of which the Constitutional Court establishes the compliance of an act or action with the Constitution;
- the resolution of the ruling; and
- an indication that the ruling is final and not subject to appeal.

Article 57 -Announcement in Court of Rulings of the Constitutional Court

Having adopted a ruling, the Constitutional Court shall return to the court room and the Chairperson of the hearing shall announce the Court ruling.

All present in the court room, with the exception of the Constitutional Court judges, shall stand to hear the ruling.

Upon the adoption of the ruling, neither the parties to the case nor other institutions and persons may raise the issue concerning the conformity of the investigated legal act with the Constitution or laws in Court again, nor may they appeal against the conclusion of the Court of the Court established facts and legal relations.

Article 58 -Correction of Rulings

Upon announcing the ruling, the Constitutional Court may, on its own initiative or at the request of the parties to the case, correct inaccuracies or obvious editor's mistakes which are in the ruling providing they do not change the essence of the ruling. On account of this, the Constitutional Court shall adopt a corresponding decision which it shall send and announce pursuant to the procedure established by this Law.

Article 59 -Appeals against Constitutional Court Rulings

Rulings of the Constitutional Court shall be final and shall not be subject to appeal.

Article 60 -Sending of Constitutional Court Rulings

Constitutional Court rulings, within 2 days of their adoption, shall be sent to

- the judges of the Constitutional Court;
- the parties to the case;
- the *Seimas*, the President of the Republic, the Government; and
- the Chairperson of the Supreme Court, the Prosecutor General, and the Minister of Justice.

The Chairperson of the Constitutional Court may order that a Constitutional Court ruling be sent to other institutions, officers or persons.

Article 61 -Interpretation of Constitutional Court Rulings

Rulings of the Constitutional Court may only be officially interpreted by the Constitutional Court at the request of the parties to the case, of other institutions or persons to whom it was sent, or on its own initiative.

Regarding the interpretation of a Constitutional Court ruling, the court hearing shall be held in a free form. Parties to the case shall be notified about the date and place of such a hearing. A decision concerning an interpretation of a Constitutional Court ruling shall be passed at a Constitutional Court hearing as a separate document. It shall be sent and announced pursuant to the procedure established by this Law.

The Constitutional Court must interpret its rulings without changing their content.

Article 62 -Review of Constitutional Court Rulings

Constitutional Court rulings may be reviewed on their own initiative if:

- 1.new, vital circumstances turn up which were unknown to the Constitutional Court when the ruling was passed; or
- 2.the constitutional norm on which the ruling was based has changed.

In such a case, the Constitutional Court shall adopt a decision and start the investigation of the case *de novo*.

A decision of the Constitutional Court concerning its ruling may also be reviewed if the ruling was not interpreted according to its actual content.

Chapter 4 –Legal Proceedings for Investigation Requests Regarding the Compliance of Legal Acts with the Constitution

Article 63 -The Constitutional Court's Jurisdiction over Cases Concerning the Compliance of Legal Acts with the Constitution

The Constitutional Court shall examine cases concerning;

- 1.the compliance of laws and other acts of the *Seimas* with the Constitution of the Republic of Lithuania;
- 2.the compliance of the acts of the President of the Republic with the Constitution and laws; and
- 3.the compliance of the acts of the Government with the Constitution and laws.

While investigating the cases specified in part 1 of this Article, the Constitutional Court shall examine the compliance of the entire act as well as a part thereof with the Constitution and the laws.

Article 64 -Grounds and Cause for the Examination of Cases Concerning the Compliance of Legal Acts with the Constitution

The grounds for the examination of a case concerning the compliance of a legal act with the Constitution in the Constitutional Court shall be a legally justified doubt that the entire legal act or part thereof contradicts the Constitution according to:

- 1.the content of norms;
- 2.the extent of regulation;
- 3.form; and
- 4.the procedure of adoption, signing and promulgation which has been specified in the Constitution.

The cause for examining a case concerning the compliance of a legal act with the Constitution shall be the procedure prescribed by this Law and the filing of a petition of the established form with the Constitutional Court.

Article 65 -Filing a Petition with the Constitutional Court for the Investigation of the Compliance of a Legal Act with the Constitution

The right to file a petition with the Constitutional Court concerning the compliance of a legal act with the Constitution shall be vested in:

- 1.the Government, groups consisting of at least one-fifth of all *Seimas* members, and the courts for cases concerning a law or other act adopted by the *Seimas*;
- 2.groups consisting of at least one-fifth of all *Seimas* members and the courts for cases concerning an act of the President of the Republic; and
- 3.groups consisting of at least one-fifth of all *Seimas* members, the courts, and the President of the Republic for cases concerning Governmental acts.

Article 66 -The Content of Petitions for the Examination of the Compliance of Legal Acts with the Constitution

Petitions for the examination of the compliance of legal acts with the Constitution must contain:

- 1.the addressee – the Constitutional Court;
- 2.the name and address of the petitioner;
- 3.information about the representative of the petitioner and his powers, with the exception of *ex officio* representation;
- 4.the name and address of the State institution which has adopted a disputable legal act;
- 5.the norms of the Constitution and this Law which provide the right to appeal with a petition to the Constitutional Court;
- 6.the precise name of the disputable legal act, its number, the date of its adoption, and other information which is necessary for identification thereof, as well as the source of its publication (if it was publicised);
- 7.concrete grounds for the investigation of the case with references to the norms provided for in this Law;
- 8.the position of the petitioner concerning the conformity of an appropriate act with the Constitution and legal support of such position containing references to laws;
- 9.a formulated petition to the Constitutional Court; and
- 10.the list of appended documents.

The petition shall be signed by the head of the institution which has been granted the right to appeal to the Constitutional Court. The petition of the Government must be supported by a directive of the Government which shall be appended to the submitted documents. Petitions of *Seimas* members groups shall be signed by all *Seimas* members who file the petition and their representative (representatives) shall be indicated; the signatures of said *Seimas* members shall be confirmed by the signature of the Chairperson or Deputy Chairperson of the *Seimas*.

The following shall be appended to the petition:

- 1.a duplicate of the whole text of the disputable legal act;

- 2.power of attorney or other document which confirms the powers of the representative, with the exception of cases of *ex officio* representation; and
- 3.notary-approved translations into the Lithuanian language of all documents and other material which has been written in a language other than Lithuanian.

The list of witnesses and experts who are proposed to be summoned to the hearing of the Constitutional Court, findings of specialists, as well as other documents and material may be appended to the petition. The circumstances which each witness may confirm shall be indicated next to their name.

The petition and appendices thereto specified in part 3 of this Article shall be submitted to the Constitutional Court along with 30 copies of the duplicate. When necessary, the Chairperson of the Constitutional Court may charge the petitioner to submit up to 30 duplicates each of other appendices.

Article 67 -The Content of Petitions Filed with the Constitutional Court by the Supreme Court of Lithuania, the Court of Appeals of Lithuania, and District and Area Courts

Provided that there are grounds to consider that a law or other legal act, which shall be applicable in a concrete case, fails to conform with the Constitution, the court (judge) shall suspend the examination of said case and, with regard to the competence of the Constitutional Court, shall appeal to it with a petition to decide whether the said law or other legal act is in conformity with the Constitution.

The Supreme Court of Lithuania, the Court of Appeals of Lithuania, and district and area courts shall appeal to the Constitutional Court pursuant to a decision. The following must be indicated in the decision:

- 1.the time and place of the adoption of the decision;
- 2.the name and address of the court which has adopted the decision;
- 3.the composition of the court which has adopted the decision and the parties to the case;
- 4.brief content of the case and the laws by which the parties to the case support their demands or rebuttals;

5. legal arguments presenting the opinion of the court on the non-conformity of a law or other legal document with the Constitution; and

6. a formulated petition of the court to the Constitutional Court.

The court decision shall be supplemented by:

1. the suspended case; and

2. The duplicate of the whole text of the disputable act.

30 copies of the court decision and 30 duplicate copies of the disputable legal act shall be submitted to the Constitutional Court.

After the investigation of a case, the Constitutional Court shall return the presented suspended case to the appropriate court.

Article 68 -Withdrawal of Petitions to Examine the Conformity of a Legal Act with the Constitution

Upon the consent of the Chairperson of the Constitutional Court, the institution which has filed a petition to examine the conformity of a legal act with the Constitution may withdraw it prior to the setting of the investigation of said case at a court hearing.

Article 69 -Refusal of the Constitutional Court to consider Petitions for the Examination of the Constitutionality of a Legal Act

By a decision, the Constitutional Court shall refuse to consider petitions for the examination of the constitutionality of a legal act if:

1. the petition was filed by an institution or individual who does not have the right to appeal to the Constitutional Court;

2. the examination of the petition does not fall under the jurisdiction of the Constitutional Court;

3. the constitutionality of the act indicated in the petition has already been investigated by the Constitutional Court and the resolution on this issue adopted by the Constitutional Court is still in force;

4. the Constitutional Court has already initiated the examination of a case concerning the same issue; and

5. the petition is grounded by non-legal motives.

In refusing to consider a petition to investigate the conformity of a legal act with the Constitution, the Constitutional Court shall adopt a justified decision, the duplicate of which shall be sent or handed to the petitioner.

In the event that the grounds for refusal to consider a petition have been established after the initiation of the examination of the case during the session of the Constitutional Court, a decision to dismiss the case shall be adopted.

The annulment of a disputable legal act shall be grounds to adopt a decision to dismiss the initiated legal proceedings. If it becomes clear before the beginning of court hearing, the Constitutional Court shall decide this question in the deliberation room.

Article 70 -The Return of a Petition to Examine the Constitutionality of a Legal Act to the Petitioner

In the case that a petition or appendices thereof fail to comply with the provisions set forth in Articles 66 and 67, the Chairperson of the Constitutional Court shall return the petition to the petitioner on his own initiative or on the initiative of a judge.

The return of a petition shall not take away the right to appeal to the Constitutional Court according to the general procedure after abolishing reasons thereof.

Article 71 -Types of Constitutional Court Decisions in Cases Concerning the Conformity of Legal Acts with the Constitution

Upon examining a case concerning the conformity of a legal act with the Constitution, the Constitutional Court shall adopt one of the following rulings:

1. to recognise that a legal act is in conformity with the Constitution and laws; and

2. to recognise that a legal act contradicts the Constitution and laws.

In the case provided for in item 2 of part 1 of this Article, it shall be indicated what concrete Articles of

the Constitution or provisions thereof or what concrete laws with which the legal act fails to conform.

In cases when one part of a legal act has been determined to be in conformity with the Constitution or laws, while the other part thereof has been determined to be in contradiction with the Constitution or laws, it shall be precisely indicated in the ruling of the Constitutional Court.

Article 72 -Consequences of the Recognition of a Legal Act as Being Contradictory to the Constitution

Laws of the Republic of Lithuania (of a part thereof) or other *Seimas* acts (or a part thereof), acts of the President of the Republic, or acts of the Government (or a part thereof) shall not be applicable from the day that the Constitutional Court ruling that the appropriate act (or a part thereof) contradicts the Constitution of the Republic of Lithuania is publicised. The same consequences shall arise when the Constitutional Court adopts a ruling that an act of the President of the Republic or act of the Government (or a part thereof) is in contradiction with laws.

Rulings adopted by the Constitutional Court shall have the power of law and shall be binding to all governmental institutions, companies, firms, and organisations as well as to officials and citizens.

All governmental institutions as well as their officials must revoke executive acts or provisions thereof which they have adopted and which are based on an act which has been recognised as unconstitutional.

Decisions based on legal acts which have been recognised as being contradictory to the Constitution or laws must not be executed if they have not been executed prior to the appropriate Constitutional Court ruling became effective. The power of the Constitutional Court to recognise a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of a like legal act or part thereof.

Chapter 5 –Consideration of Inquiries concerning Rulings

Article 73 -Conclusions presented by the Constitutional Court

The Constitutional Court shall present the following rulings:

- 1.whether violations of the laws on elections occurred during the elections of the President of the Republic or the *Seimas*;
- 2.whether the President of the Republic's capacity to continue in office is limited by reasons of health;
- 3.whether international agreements of the Republic of Lithuania are in conformity with the Constitution. The conclusion concerning an international agreement may be requested prior to the ratification thereof by the *Seimas*; and
- 4.whether the concrete actions of the *Seimas* members or State officials to whom impeachment proceedings have been initiated contradict the Constitution.

Article 74 -Filing an Inquiry with the Constitutional Court

Only the *Seimas* may request the Constitutional Court conclusion on all issues specified in Article 73 of this Law.

The President of the Republic may appeal to the Constitutional Court with an inquiry concerning the election of the *Seimas* members and international agreements.

Article 75 -Cause for the preparation of a Constitutional Court Conclusion

The cause for the preparation of a conclusion of the Constitutional Court shall be the procedure established by this Law and the filing of an inquiry of an established form with the Constitutional Court.

Article 76 -The Content of the Inquiry

The following must be indicated in the inquiry:

- 1.the addressee – the Constitutional Court;
- 2.the name and address of the inquirer;
- 3.the norms of the Constitution and this Law which establish the right to file an inquiry with the Constitutional Court;
- 4.the actions whose constitutionality are proposed to be verified and the circumstances of their execution; when the inquiry concerns an international agreement – its exact name, number,

date of signing, and other necessary information as well as the source of publication (if it was publicised);

5.a justified petition to the Constitutional Court; and

6.the list of appended documents.

Inquiries of the *Seimas* may be set forth in a resolution. In other cases, a *Seimas* resolution on the approval of the inquiry must be included.

The inquiry shall be signed by the *Seimas* Chairperson or acting deputy; the President of the Republic.

An inquiry must be supplemented by:

1.a duplicate of the whole text of the agreement;

2.appropriate evidence and duplicates of the officials' decisions; and

3.notary-approved translations into the Lithuanian language of documents and other material which was written in a language other than Lithuanian.

The list of witnesses and experts who are proposed to be invited to the session of the Constitutional Court, findings of specialists, a document concerning the powers of representatives and the right thereof to speak in the Constitutional Court on behalf of the applicant, as well as other documents and material may be appended to the inquiry. The circumstances which each witness may confirm shall be indicated next to his or her surname.

Inquiries and necessary supplements thereof shall be submitted to the Constitutional Court with 30 duplicate copies. When necessary, the Chairperson of the Constitutional Court may also demand the up to 30 duplicate copies each of other documents.

Article 77 -Inquiries concerning the Violation of the Law on the Elections

Institutions indicated in Article 74 of this Law shall appeal to the Constitutional Court with inquiries concerning possible violations of the laws on elections during the elections of the President of the Republic or the *Seimas* elections within 3 days after the publication of the official election results.

The Constitutional Court shall examine and evaluate only the decisions made by the Central Electoral

Committee or the Electoral Committee for Elections of the President of the Republic or the refusal thereof to examine complaints concerning the violation of laws on elections in cases when such decisions were adopted or other actions were carried out after the termination of voting in the elections of the President of the Republic or the *Seimas*.

Inquiries shall be examined within 72 hours of their filing with the Constitutional Court. The terms specified in this Article shall also include non-working days.

Article 78 -Inquiries Concerning the President of the Republic's State of Health

Only the *Seimas* shall have the right to submit an inquiry to the Constitutional Court concerning the President of the Republic's capacity to continue in office due to health reasons. The inquiry must be confirmed by a resolution adopted by majority vote of more than half of all the *Seimas* members.

The inquiry or appropriate resolution of the *Seimas* must be accompanied by a *Seimas* approved conclusion of the medical commission. When necessary, other evidence describing the health condition shall be appended thereto.

Article 79 -Withdrawal of an Inquiry

An inquiry concerning the presentation of a conclusion may be withdrawn prior to the commencement of a Constitutional Court hearing by the institution which has filed it.

Article 80 -Refusal to examine an Inquiry in the Constitutional Court

The Constitutional Court shall refuse to examine an inquiry concerning the presentation of a conclusion in the following cases:

1.when the inquiry has been filed by an institution or individual who does not have the right to appeal to the Constitutional Court;

2.when the inquiry is not grounded on legal motives;

3.when the examination of a concrete issue does not fall under the jurisdiction of the Constitutional Court;

4.in the absence of an action or decision whose constitutionality must be verified; and

5. when the issue raised in the inquiry, with the exception of cases provided for in paragraph 2 of Article 73 of this Law, has already been investigated in the Constitutional Court and the conclusion adopted by the Constitutional Court concerning this issue is still in force.

If in the course of the examination of the inquiry the matter under investigation ceases to exist, the Constitutional Court shall dismiss the initiated legal proceedings on the grounds thereof.

Article 81 -Returning Inquiries to Applicants

The Chairperson of the Constitutional Court, on personal initiative or on the proposal of one of the judges, shall return inquiries to the applicants if the inquiry or appendices thereto fail to comply with the requirements set forth in Article 76 of this Law.

Returning of an inquiry shall not take away the right to appeal to the Constitutional Court according to the general procedure once the reasons for the return have been eliminated.

Article 82 -Procedure for the Examination of Inquiries in the Constitutional Court

Inquiries pertaining to the constitutionality of international treaties of the Republic of Lithuania shall be examined according to the general rules for the examination of the constitutionality of legal acts.

Other issues shall be examined at the discretion of the Constitutional Court in adhering to a simpler procedure. Disputes which arise shall be settled in accordance with the regulations prescribed by this Law.

Article 83 -Conclusions of the Constitutional Court

Upon the examination of an inquiry, the Constitutional Court shall adopt a conclusion.

The conclusion presented by the Constitutional Court shall be final and shall not be subject to appeal.

Article 86 -The Staff of the Constitutional Court

The Constitutional Court shall have an assisting staff, the structure and bylaws of which shall be approved by the Constitutional Court.

Chapter 6 –Final Provisions

Article 84 -Publicising Decisions of the Constitutional Court

The rulings and conclusions of the Constitutional Court, as well as, if necessary, other decisions thereof, shall be officially publicised in: a separate chapter of the official gazette "*Valstybės žinios*" ("The News of the State"); a special publication of the *Seimas*; and newspapers through the Lithuanian News Agency (ELTA). If necessary, the Constitutional Court shall publish its collections of its rulings and decisions as well as other publications.

Rulings of the Constitutional Court shall become effective on the day that they are publicised in one of the above mentioned publications.

Article 85 -Financing of the Constitutional Court

Taking account of the proposal of the Constitutional Court, the necessary means ensuring the activity of the Constitutional Court shall be yearly provided for in a separate article of the State Budget.

Article 87 -Protection of the Constitutional Court

The protection of the buildings and premises of the Constitutional Court, and, upon the instruction of the Chairperson of the Constitutional Court, of the judges of the Constitutional Court, shall be vested in the Ministry of Internal Affairs.

The Constitutional Court may decide to commission other State specialised security organisation to organise such protection.

Article 88 -Symbols of the Constitutional Court's Power

In the court room of the Constitutional Court there shall be a picture of the State Emblem of the Republic of Lithuania, a flag of the State, and a special edition of the Constitution of the Republic of Lithuania.

During hearings, judges of the Constitutional Court shall wear judge's gowns, the description and sample of which shall be approved by the Constitutional Court. Until such a sample is approved, approved Supreme Court judge gowns may be used.

Article 89 -The Seal of the Constitutional Court

The Constitutional Court shall be a legal person and have a seal with a picture of the State Emblem of the Republic of Lithuania and the title "the Constitutional Court of the Republic of Lithuania".

Article 90 -The Office of the Constitutional Court

The permanent office of the Constitutional Court shall be the city of Vilnius. Hearings of the Constitutional Court shall be held in its permanent office.

Poland Constitutional Tribunal

Constitutional Act of 17th October 1992

On the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government

Journal of Laws of the Republic of Poland of 23rd November 1992, No. 84, item 426

- extracts -

Chapter 2 – The Sejm and the Senate

Article 18

(...)

- 3.The President may refuse to sign a statute and refer it to the Sejm for its reconsideration, giving reasons therefore. If the said statute is repassed by the Sejm, by a two-thirds majority vote, the President shall, within 7 days, sign the statute and shall order its promulgation in the Journal of Laws of the Republic of Poland, unless he refers it to the Constitutional Tribunal according to paragraph 4.
- 4.The President may, before signing a statute, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The reference by the President to the Constitutional Tribunal shall suspend the time allowed for signing a statute. The President cannot refuse to sign a statute which has been judged, by the Constitutional Tribunal, as conforming to the Constitution.

Constitutional provisions

Continued in force pursuant to Article 77 of the Constitutional Act of 17th October 1992

- extracts -

Chapter 1 –The foundation of the political and economic system

Article 4

(...)

2.The non-conformity with the Constitution of the aims or activities of a political party shall be adjudicated upon by the Constitutional Tribunal.

Chapter 4 –The Constitutional Tribunal, the Tribunal of State, the Supreme Chamber of control, the Commissioner for citizens' rights, the National Council of radio broadcasting and television

Article 33a

- 1.The Constitutional Tribunal adjudicates upon the conformity with the Constitution of statutes and other normative acts passed by supreme and central State organs, and establishes the generally binding interpretation of statutes.
- 2.The decisions of the Constitutional Tribunal adjudicating upon non-conformity with the Constitution shall be examined by the Sejm.
- 3.The decisions of the Constitutional Tribunal adjudicating upon non-conformity with the Constitution or statutes of other normative acts laws shall be binding. The Constitutional Tribunal shall take measures necessary to remove that non-conformity.
- 4.Members of the Constitutional Tribunal shall be appointed by the Sejm from among persons who are distinguished in their legal knowledge.
- 5.Members of the Constitutional Tribunal are independent and liable to the Constitution only.
- 6.The competences, structure and procedure of the Constitutional Tribunal shall be defined by a statute.

Constitutional Tribunal Act of 29 April 1985

Uniform act as published in the Journal of Laws of 28th November 1991 No. 109, item 470, 1993 No. 47, item 213, 1994 No. 122, item 593, 1995 No. 13, item 59.

Chapter 1 – General provisions

Article 1

- 1.The Constitutional Tribunal adjudicates upon conformity:
 - 1.with the Constitution, of legislative acts: statutes and decrees approved by the Sejm, as well as statutes prior to their signing by the President of the Republic in accordance with Article 18, section 4, of the Constitution,
 - 2.with the Constitution or with legislative acts, of normative acts (acts establishing legal norms) other than those specified under point 1 issued by the President of the Republic, supreme and central organs of State administration, and other supreme and central State organs.
- 2.The provision of section 1, point 2, shall apply respectively to normative acts issued by the Council of State.

Article 2

In adjudicating upon the conformity of a legislative act with the Constitution or of another normative act with the Constitution or with a legislative act, the Constitutional Tribunal examines both the substance of such an act and the competence and observance of the statutory procedure required for its enactment; the decision may concern the act as a whole or its individual provisions.

Article 3

Proceedings before the Constitutional Tribunal in cases specified under Article 1 may be initiated:

- 1.with respect to statutes not signed by the President of the Republic, at the moment of the President of the Republic's moving to the Constitutional Tribunal for adjudication upon their conformity with the Constitution in accordance with Article 18, section 4, of the Constitution,
- 2.with respect to statutes and other acts that are subject to publication in a publishing organ according to regulations, at the moment of publication,
- 3.with respect to normative acts concerning which the regulations do not stipulate for obligatory publication in a publishing organ as a condition for them to acquire binding force at the moment of their introduction, even if those acts are to enter into force at a later date.

Article 4

- 1.The Constitutional Tribunal adjudicates upon conformity of a legislative act with the Constitution and of another normative act with the Constitution or a legislative act, with respect to such legislative and other normative acts as are in force on the day the decision is passed, or in the case of which, by force of Article 3, it is admissible to institute proceedings before their entering into force.
- 2.A loss of the binding force of a normative act prior to the decision of the Constitutional Tribunal results in the discontinuance of proceedings with respect to such act.

Article 5

The Constitutional Tribunal establishes the generally binding interpretation of statutes.

Article 6

The Constitutional Tribunal submits to the Sejm of the Republic of Poland and other competent law-making organs its comments concerning the ascertained infringements and lacunas of the law the removal of which is indispensable to provide the coherence of the legal system of the Republic of Poland.

Chapter 2 –Adjudication upon conformity of legislative acts with the Constitution**Article 7**

- 1.A decision adjudicating upon non-conformity with the Constitution of a legislative act shall be submitted by the President of the Constitutional Tribunal to the Sejm, and also to the President of the Republic, if the motion to examine that act has been submitted by the President of the Republic.
 - 2.The decisions specified under section 1 shall be examined by the Sejm not later than within six months after the date of submission of the decision by the President of the Constitutional Tribunal.
 - 3.Should the Sejm find the decision well-founded, it shall introduce the relevant changes in the act covered by the decision or abrogate it wholly, or in part. Should the Sejm find the act subject to the decision conform with the Constitution, it shall dismiss the decision of the Constitutional Tribunal, and the issue covered by that decision cannot be a matter of proceedings before the Tribunal once again.
 - 4.Resolutions of the Sejm on the dismissing of the decision of the Tribunal shall be passed by a majority of at least two-thirds of votes, with at least a half of the total number of deputies present.
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Chapter 3 –Adjudication upon the conformity of other normative acts with the Constitution or legislative acts

Article 8

A decision adjudicating upon non-conformity with the Constitution or a legislative act, of an act specified under Article 1, point 2, shall be submitted by the President of the Constitutional Tribunal to the organ that has issued the act covered by the decision.

Article 9

1. In cases specified under Article 8, the organ which has issued the act covered by the decision shall immediately introduce appropriate changes in the act or abrogate it wholly or in part, not later than within three months after the submission to that organ of the relevant decision of the Constitutional Tribunal.
2. Should a motion be submitted for re-examination of the case as specified under Article 30, sections 2 and 3, the provision of section 1 shall apply to the act covered by the decision of the Constitutional Tribunal adjudicating upon non-conformity of that act with the Constitution or a legislative act issued as a result of examination of that motion.

Article 10

1. In the case of a failure to remove non-conformity of an act with the Constitution or a legislative act within the time-limit specified under Article 9, that act shall lose its force on the expiry of that time-limit to the extent specified in the decision of the Constitutional Tribunal.
2. In particularly justified cases, the Tribunal may suspend wholly or in part the application of an act on the day of passing of the decision; the suspension shall be valid until the decision of the Constitutional Tribunal is executed under Article 9 or section 1 of this Article.
3. A loss of the binding force or a suspension of an act shall be announced by the President of the Constitutional Tribunal in the publishing organ in which that act has been published, and if the decision concerns an act that has not been published in a publishing organ, in the official gazette of the Republic of Poland "*Monitor Polski*".

Chapter 4 –Questions as to the law

Article 11

1. In connection with pending administrative, judicial proceedings, in cases of minor offenses and of fiscal offenses and transgressions that fall under the competence of financial adjudicating agencies, questions as to the law can be addressed at the Constitutional Tribunal as to the conformity of a legislative act with the Constitution, or other normative act with the Constitution or legislative act, if the judgment in such proceedings depends on the answer to a question as to the law.
2. Proceedings specified under section 1 in connection with which a question as to the law has been submitted shall be suspended on the day of submission of that question and shall remain suspended until the matter concerned, that is conformity of a legislative act with the Constitution or of another normative act with the Constitution or a legislative act can be adjudicated upon.

Article 12

The questions as to the law specified under Article 11, section 1, shall be examined by the Constitutional Tribunal according to the principles and mode provided for in the case of examination of motions for adjudication upon conformity of legislative acts with the Constitution and of other normative acts with the Constitution or a legislative act, with changes that follow from further provisions of this Act.

Chapter 5 –The generally binding interpretation of statutes

Article 13

1. The Constitutional Tribunal establishes the generally binding interpretation of statutes on the motion of the President of the Republic, the Prime Minister, the First President of the Supreme Court, the President of the Chief Administrative Court, the Commissioner for Civic Rights, and the Public Prosecutor General.
2. The Constitutional Tribunal establishes the generally binding interpretation of statutes at a sitting of its full bench by way of a resolution.

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3. The resolutions specified under section 2 shall be published in the Journal of Laws of the Republic of Poland.

Chapter 6 – Organisation of the Constitutional Tribunal

Article 14

The seat of the Constitutional Tribunal is the capital city of Warsaw.

Article 15

1. The Constitutional Tribunal shall be composed of: the President, the Vice President and ten judges.
2. Members of the Constitutional Tribunal shall be appointed and recalled by the Sejm.
3. No person shall be appointed member of the Constitutional Tribunal unless he is distinguished by his knowledge of law and has the necessary qualifications to hold the office of a judge of the Supreme Court or the Chief Administrative Court.
4. Members of the Constitutional Tribunal shall be appointed for the period of eight years, with a half of the bench being appointed every four years; a person cannot be re-appointed to the Tribunal unless his or her previous appointment took place in mid-term for a period of under four years.
5. No member of the Constitutional Tribunal may at the same time be deputy to the Sejm or senator, or hold an office in State organs, or engage in any other occupation which would hinder his performance of the duties of a member of the Tribunal or which might be beneath his dignity or undermine the trust in impartiality of adjudicating.
6. Taking up his duties, a member of the Constitutional Tribunal shall make the following solemn oath before the Speaker of the Sejm:

“I hereby vow that in performing my duties as member of the Constitutional Tribunal that have been vested in me, I shall faithfully serve the Polish nation, uphold the Constitution and statutes, and perform my duties with the greatest care”.

Article 16

1. The Sejm shall recall a member of the Constitutional Tribunal if that member:
 1. has resigned from his office,
 2. has become permanently unable to perform his duties due to illness, disability or weakness,
 3. has been convicted by court,
 4. has departed from the oath,
 5. has been sentenced by a valid disciplinary judgment to the penalty of dismissal from the office.
2. In the case of death of a member of the Tribunal, the Sejm shall state the expiration of his mandate.
3. Vacancies in the Tribunal resulting from circumstances, specified under sections 1 and 2, shall be filled by the Sejm within three months at the latest from a recall or statement of expiration of the mandate of a member of the Tribunal. A member thus appointed shall perform his functions until the end of the term for which his predecessor was appointed.

Article 17

1. No member of the Constitutional Tribunal can be brought to justice in a criminal, judicial or administrative case nor detained without the Tribunal's consent. This does not apply to apprehension *flagrante delicto*. A motion to this end shall be examined by the Tribunal in its full bench, with the exclusion of the judge whom the motion concerns.
 2. Until the Tribunal resolves to allow its member to be brought to justice, only urgent actions can be undertaken against that member.
 3. A member of the Tribunal bears only disciplinary responsibility for minor offences.
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Article 18

1. Concerning the rights and duties, and disciplinary responsibility of members of the Constitutional Tribunal that are not regulated by this Act, with the reservation of sections 2-5, provisions of the Supreme Court Act which concern the rights and duties and disciplinary responsibility of judges of the Supreme Court shall be appropriately applicable, provided they are not in contradiction to the provisions of this Act.
2. Cases of claims arising from the service relationship of the Vice President and judges of the Constitutional Tribunal shall be settled by the President of that Tribunal, and those of the President of the Republic, by the Speaker of the Sejm. Decisions of the President of the Tribunal can be appealed against by the Speaker of the Sejm.
3. In disciplinary proceedings, the Constitutional Tribunal shall adjudicate:
 1. in the first instance – in a bench of three judges,
 2. in the second instance – in a bench of five judges.
4. The judges who sit on the benches and the disciplinary prosecutor shall be appointed by the President of the Constitutional Tribunal from among members of that Tribunal.
5. Provisions of the act specified under section 1 on extraordinary appeal shall not apply to cases of disciplinary decisions.

Article 19

On the expiration of his term, a member of the Constitutional Tribunal shall have the right to take his previous office or to be given an office equal to that previously held, provided there are no legal obstacles thereto.

Article 20

The organisational and administrative working conditions shall be secured for the Constitutional Tribunal by its President and the Bureau of the Tribunal subordinate to the President.

Article 21

1. With respect to employees of the Bureau of the Constitutional Tribunal, provisions concerning State civil servants apply with the reservation of sections 2 and 3 below.
2. With respect to employees of the Bureau of the Constitutional Tribunal, the regulations specified under Article 2 point 1, Article 4 section 3, Article 7 section 6, Article 20 section 4, Article 21 section 3, Article 22 section 2, Article 26 section 2, Article 36 section 7 of the law of 16 September 1982 on State civil servants (Journal of Laws No. 31, item 214, and of 1984 No. 35, item 187, of 1988 No. 19, item 132, of 1989 No. 4, item 24, No. 34, item 178 and 182, of 1990 No. 20, item 121, and of 1991 No. 55, item 234, No. 88, item 400, No. 95, item 425) shall be enacted by the Speaker of the Sejm.
3. The rights arising from Article 30, section 1, and Article 31, section 3, of the act mentioned under section 2 above with respect to employees of the Bureau of the Constitutional Tribunal shall be vested in the Speaker of the Sejm.

Chapter 7 –Proceedings before the Constitutional Tribunal

Article 22

1. Motions for adjudication of conformity of a legislative act with the Constitution or of another normative act with the Constitution or a legislative act may be submitted by: the President of the Republic, the Presidium of the Sejm, parliamentary commissions or fifty deputies, the Presidium of the Senate, Senate commissions, or thirty senators, the Tribunal of State, the Council of Ministers or the Prime Minister, the Commissioner for Civic Rights, the President of the Chief Board of Supervision, the First President of the Supreme Court, the President of the Chief Administrative Court, the Public Prosecutor General. The proposers may move to the Tribunal on their own initiative or having analyzed motions and complaints of citizens.
2. Proceedings in cases mentioned in section 1 can be instituted by the Constitutional Tribunal on its own initiative.

Article 23

1. The motions specified under Article 22, section 1, may also be submitted by communal or regional councils, as well as self-government board of appeal, competent chief statutory agencies of national trade union organisations and associations of trade-unions, cooperative organisations, sociovocational organisations of individual farmers and other trade organisations, as well as the Council for Social Insurance of Farmers if the claimed legislative act or another normative act pertains to matters that fall under their competence as defined in provisions of law.
2. The motions of the organs and organisations specified under section 1 above are subject to preliminary examination by the Constitutional Tribunal in camera hearing, by one judge appointed by the President of the Tribunal.
3. According to the mode specified under section 2 above, the Tribunal may decide not to carry on further action if the motion fails to meet the requirements that follow from provisions of the Act or is obviously groundless or misaddressed; this decision of the Tribunal may be appealed against to that Tribunal which shall then examine the appeal in camera hearing in a bench of three judges.
2. The organs specified under section 1 above are obliged to notify the Constitutional Tribunal of all the instances of non-conformity of legislative acts with the Constitution and of other normative acts with the Constitution or legislative act, of which they have been informed by adjudicating agencies.
3. Should the Constitutional Tribunal, having examined a question as to the law, adjudicate upon non-conformity of a legislative act with the Constitution or of another normative act with the Constitution or a legislative act, the President of the Tribunal, beside sending the decision to the organ which issued the act covered by that decision, shall also send a copy of that decision to the organ which has submitted the question as to the law concerning this matter.
4. Should the Constitutional Tribunal adjudicate upon conformity of a legislative act covered by a question as to the law with the Constitution or of another normative act with the Constitution or a legislative act, the President of the Tribunal shall send the decision to the organ which has submitted that question as to the law, and a copy of that decision – to the organ which passed the act covered by that decision, and in the case of a decree – to the Sejm.
5. In cases specified under section 3 above, proceedings suspended under Article 11, section 2, shall be re-opened after the Sejm has resolved on conformity of a legislative act with the Constitution, and in the case of other normative acts after bringing about conformity of those acts with the Constitution or a legislative act, and in the case specified under Article 10, section 1, after the act has lost its binding force.

Article 24

Motions to initiate proceedings before the Constitutional Tribunal, submitted within five years following the publication of an act or approval of a decree (Article 3, point 2) or the passing of an act (Article 3, point 3) shall be directed by the Tribunal, according to the mode specified under Article 5, to the organ which issued the act covered by the motion, and if the motion concerns a decree – to the Sejm.

Article 25

1. The questions as to the law specified under Article 11, section 1, may be submitted to the Constitutional Tribunal by: the First President of the Supreme Court, the President of the Chief Administrative Court, benches of the Supreme Court, benches of the Chief Administrative Court and of courts of appeal, as well as the supreme and central organs of State administration, as well as self-government board of appeal.
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Article 26

1. The Constitutional Tribunal shall examine a motion or a question as to the law at a hearing about which it shall notify the proposer of that motion, the organ which issued the act covered by the motion, and if the motion concerns a decree the Sejm, as well as the Public Prosecutor General. The attendance at the hearing of the proposer of the motion or his representative is obligatory. The organ which issued the act covered by the motion or his representative may attend the hearing. In cases examined by the Tribunal at hearings in full bench the attendance of the Public Prosecutor General or his/her deputy is obligatory. Cases heard by the Tribunal in panels may be attended by a prosecutor of the National Prosecutor's Office.
2. In proceedings instituted as a result of a question as to the law, the organ which has submitted that question shall be represented at the hearing by a representative appointed by that organ.
3. In the course of proceedings, the Constitutional Tribunal may hear experts, demand that State organs and institutions as well as social organisations present files and documents, and also prove other evidence which it finds indispensable to adjudicate upon the case.

Article 27

Hearings before the Constitutional Tribunal shall be open. A decision to hear a case at a closed sitting may only be taken for reasons of State security or State secret.

Article 28

1. The Constitutional Tribunal shall examine motions (questions as to the law) concerning conformity of legislative acts with the Constitution in the bench of five judges, and motions (questions as to the law) concerning other normative acts – in the bench of three judges.
2. In particularly intricate cases, the President of the Tribunal may order examination of a motion by the Tribunal in its full bench.

Article 29

The Constitutional Tribunal passes a decision after having considered a hearing. Decisions are passed in the name of the Republic of Poland. They are drawn up in written form, including reasons.

Article 30

1. A decision of the Constitutional Tribunal shall be final.
2. Should the Constitutional Tribunal adjudicate upon non-conformity with the Constitution or a legislative act of a normative act issued by a supreme or central organ of State administration, the Council of Ministers or the Prime Minister may, within one month of the delivery of the decision, move for re-examination of the case by the Tribunal in its full bench.
3. The right specified under section 2 above shall be vested in the President of the Republic in the case of adjudication upon non-conformity with the Constitution or a legislative act of a normative act issued by the President of the Republic or another supreme or central State organ which is not an organ of State administration; this right does not apply to decisions of the Tribunal concerning decrees.

Article 31

1. Judicial or arbitration proceedings which ended in a valid decision passed with the application of a legal provision which has been changed or abrogated wholly or in part as non-conform with the Constitution or a legislative act basing on a decision of the Constitutional Tribunal may be re-opened according to the mode and principles specified in regulations concerning judicial or arbitration proceedings. However, with respect to decisions in civil and arbitration cases the proceedings may be re-opened within five and three years respectively since the day on which the decision became final at the latest.
2. Valid decisions and penal orders in cases of transgressions, as well as valid decisions in cases of fiscal offenses and transgressions which fall under the competence of financial adjudicating agencies and were passed in accordance with the legal provision specified under section 1 above shall be subject to reversal according to the mode

and principles specified in the regulations concerning cases of transgressions and provisions of the Penal Act on Offenses Against the Treasury that pertain to reversal of valid decisions, provided the decision or penal order was passed three years before at most.

3. Final decisions passed in general administrative proceedings and based on the legal provision specified under section 1 shall be found invalid according to the mode and principles defined in the Code of Administrative Proceedings in its part concerning the statement of invalidity of administrative decisions and the related claims for indemnity; in cases where this follows from the legal provision and circumstances of the case, the organ stating invalidity of a decision may at the same time pass a decision concerning the substance of the case.
4. Valid decisions and settlements passed in proceedings other than those specified under sections 1-3 above in accordance with the provision specified under section 1 shall be subject, on motion of a party, to reversal by the organ which passed such a decision or settlement provided three years at most have passed since that decision became valid.

Article 32

The Constitutional Tribunal shall publish a collection of its decisions.

Article 33

1. The President of the Constitutional Tribunal shall convene a general assembly of judges of the Tribunal at least once a year; the Tribunal's activity and problems arising from its decisions shall be discussed at the assembly.
2. The President of the Constitutional Tribunal shall invite to take part in the assembly chairmen of interested Sejm and Senate commissions, the President of the Chief Board of Supervision, the Minister of Justice, the First President of the Supreme Court, the President of the State Economic Arbitration, and the Public Prosecutor General.
3. The President of the Tribunal may also invite the President of the Republic, the Speaker of the Sejm, the Speaker of the Senate, and the Prime

Minister to attend the general assembly or to delegate their representatives.

Article 34

The Constitutional Tribunal shall submit to the Sejm and Senate information about important problems arising from the Tribunal's activity and decisions.

Article 35

1. The detailed mode of procedure before the Constitutional Tribunal shall be determined by the Sejm by way of a resolution; the resolution to this effect is subject to publication in the Journal of Laws of the Republic of Poland.
2. The regulations of procedure of the Constitutional Tribunal and the internal organisation of its Bureau shall be resolved by the Constitutional Tribunal.

Article 36

1. For the first bench of the Constitutional Tribunal, the Sejm shall appoint a half of that bench for the term of four years, and the other half for the term of eight years.
2. The Sejm shall appoint the first bench of the Constitutional Tribunal before 1 December 1985 at the latest; the term of members of that bench shall run as from 1 December 1985.

Article 37

1. Provisions of the Act, with the reservation of section 2, shall apply to legislative and other normative acts promulgated, approved or passed after the day of its entering into force.
2. With respect to acts specified under Article 1, which were issued prior to the day of entering into force of this Act, proceedings before the Constitutional Tribunal may be instituted provided those acts were promulgated, and in the case of decrees, approved, or acquired binding force after the day of entering into force of the Act of 26 March 1982 on amending the Constitution of the Polish People's Republic (Journal of Laws No. 11, item 83); Article 4, section 1 shall be applied respectively to such acts.

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3. The time-limit specified under Article 24 shall run with respect to acts specified under section 2 as from the day of entering into force of this Act.
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Court of Justice of the European Communities

Treaty establishing the European Community

Signed at Rome on 25 March 1957

Title as amended by Article G, point 1, of the Treaty on the European Union

- extracts -

Article 4

1. The tasks entrusted to the Community shall be carried out by the following institutions:

-a European Parliament,

-a Council,

-a Commission,

-a Court of Justice.

-a Court of Auditors.

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. The Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

a. directly or indirectly fix purchase or selling prices or any other trading conditions;

b. limit or control production, markets, technical development, or investment;

c. share markets or sources of supply;

d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

-any agreement or category of agreements between undertakings;

-any decision or category of decisions by associations of undertakings;

-any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

a. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

b. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

a. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

b. limiting production, markets or technical development to the prejudice of consumers;

c. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

d. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 93

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct.

On application by a Member State, the Council, may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application

being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Article 100a

1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 7a. The Council shall, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection.
4. If, after the adoption of a harmonization measure by the Council acting by a qualified majority, a Member State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it shall notify the Commission of these provisions.

The Commission shall confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before

the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

5. The harmonization measures referred to above shall, in appropriate cases, include a safeguard clause authorizing the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Community control procedure.

Article 164

The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

Article 165

The Court of Justice shall consist of 15 Judges.

The Court of Justice shall sit in plenary session. It may, however, form chambers, each consisting of three, five or seven Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purposes.

The Court of Justice shall sit in plenary session when a Member State or a Community institution that is a party to the proceedings so requests.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Judges and make the necessary adjustments to the second and third paragraphs of this Article and to the second paragraph of Article 167.

Article 166

The Court of Justice shall be assisted by eight Advocates-General. However, a ninth Advocate-General shall be appointed as from the date of accession until 6 October 2000*.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it in Article 164.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of

Advocates-General and make the necessary adjustments to the third paragraph of Article 167.

*First paragraph as amended by Article 20 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties – Accession to the European Union of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, in the version resulting from Article 11 of the Decision of the Council of the European Communities of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union.

Article 167

The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.

Every three years there shall be a partial replacement of the Judges. Eight and seven Judges shall be replaced alternately.

Every three years there shall be partial replacement of the Advocates-General. Four Advocates-General shall be replaced on each occasion.

Retiring Judges and Advocates-General shall be eligible for reappointment.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Article 168

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

Article 168a

1. A Court of First Instance shall be attached to the Court of Justice with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding defined in accordance with the conditions laid down in paragraph 2. The Court of First Instance shall not be competent to hear and determine questions referred for a preliminary ruling under Article 177.
 2. At the request of the Court of Justice and after consulting the European Parliament and the Commission, the Council, acting unanimously, shall determine the classes of action or proceeding referred to in paragraph 1 and the composition of the Court of First Instance and shall adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to the Court of First Instance.
 3. The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.
 4. The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.
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Article 169

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Article 170

A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

Article 171

1.If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

2.If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's

judgment within the time-limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 170.

Article 172

Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of this Treaty, may give the Court of Justice unlimited jurisdiction with regard to the penalties provided for in such regulations.

Article 173

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects *vis-à-vis* third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament and by the ECB for the purpose of protecting their prerogatives.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the

absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 174

If the action is well founded, the Court of Justice shall declare the act concerned to be void.

In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive.

Article 175

Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.

The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence and in actions or proceedings brought against the latter.

Article 176

The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 215.

This Article shall also apply to the ECB.

Article 177

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- a. the interpretation of this Treaty;
- b. the validity and interpretation of acts of the institutions of the Community and of the ECB;
- c. the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

Article 178

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 215.

Article 179

The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

Article 180

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- a. the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 169;
- b. measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of

Directors of the Bank may institute proceedings under the conditions laid down in Article 173;

c.measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 173, and solely on the grounds of non-compliance with the procedure provided for in Article 21.2, 5, 6 and 7 of the Statute of the Bank;

d.the fulfilment by national central banks of obligations under this Treaty and the Statute of the ESCB. In this connection the powers of the Council of the ECB in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 169. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under this Treaty, that bank shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

Article 181

The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law.

Article 182

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

Article 183

Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article 184

Notwithstanding the expiry of the period laid down in the fifth paragraph of Article 173, any party may, in proceedings in which a regulation adopted jointly by the European Parliament and the Council, or a regulation of the Council, of the Commission, or of the ECB is at issue, plead the grounds specified in the second paragraph of Article 173 in order to invoke before the Court of Justice the inapplicability of that regulation.

Article 185

Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 186

The Court of Justice may in any cases before it prescribe any necessary interim measures.

Article 187

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 192.

Article 188

The Statute of the Court of Justice is laid down in a separate Protocol.

The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.

The Court of Justice shall adopt its Rules of Procedure. These shall require the unanimous approval of the Council.

Article 192

Decisions of the Council or of the Commission which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which

it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Article 215

The contractual liability of the Community shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties.

The personal liability of its servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

Article 217

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice, be determined by the Council, acting unanimously.

Article 219

Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein.

Article 225

If measures taken in the circumstances referred to in Articles 223 and 224 have the effect of distorting the conditions of competition in the common market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the Treaty.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 223 and 224. The Court of Justice shall give its ruling *in camera*.

Article 228

1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.

In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases provided for in the second sentence of paragraph 2, for which it shall act unanimously.

2. Subject to the powers vested in the Commission in this field, the agreements shall be concluded by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules, and for the agreements referred to in Article 238.

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 113.3, including cases where the agreements covers a field for which the procedure referred to in Article 189b or that referred to in Article 189c is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

By way of derogation from the previous subparagraph, agreements referred to in Article 238, other agreements establishing a specific institutional framework by organizing cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 189b shall be concluded after the assent of the European Parliament has been obtained.

The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorize the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorization.

5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article N of the Treaty on European Union.

6. The Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article N of the Treaty on European Union.

7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.

Treaty establishing the European Atomic Energy Community

Signed at Rome on 25 March 1957

- extracts -

Article 3

1. The tasks entrusted to the Community shall be carried out by the following institutions:

- a European Parliament,

- a Council,

- a Commission,

- a Court of Justice,

- a Court of Auditors.

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity.

Article 12

Member States, persons or undertakings shall have the right, on application to the Commission, to obtain non-exclusive licences under patents, provisionally protected patent rights, utility models or patent applications owned by the Community, where they are able to make effective use of inventions covered thereby.

Under the same conditions, the Commission shall grant sub-licences under patents, provisionally protected patent rights, utility models or patent applications, where the Community holds contractual licences conferring power to do so.

The Commission shall grant such licences or sub-licences on terms to be agreed with the licensees and shall furnish all the information required for their use. These terms shall relate in particular to suitable remuneration and, where appropriate, to the right of the licensee to grant sub-licences to third parties and to the obligation to treat the information as a trade secret.

Failing agreement on the terms referred to in the third paragraph, the licensees may bring the matter before the Court of Justice so that appropriate terms may be fixed.

Article 18

An Arbitration Committee is hereby established for the purposes provided for in this Section. The Council shall appoint the members and lay down the Rules of Procedure of this Committee, acting on a proposal from the Court of Justice.

An appeal, having suspensory effect, may be brought by the parties before the Court of Justice against a decision of the Arbitration Committee within one month of notification thereof. The Court of Justice shall confine its examination to the formal validity of the decision and to the interpretation of the provisions of this Treaty by the Arbitration Committee.

The final decisions of the Arbitration Committee shall have the force of *res judicata* between the parties concerned. They shall be enforceable as provided in Article 164.

Article 21

If the proprietor does not propose that the matter be referred to the Arbitration Committee, the Commission may call upon the Member State concerned or its appropriate authorities to grant the licence or cause it to be granted.

If, having heard the proprietor's case, the Member State, or its appropriate authorities, considers that the conditions of Article 17 have not been complied with, it shall notify the Commission of its refusal to grant the licence or to cause it to be granted.

If it refuses to grant the licence or to cause it to be granted, or if, within four months of the date of the request, no information is forthcoming with regard to the granting of the licence, the Commission shall have two months in which to bring the matter before the Court of Justice.

The proprietor must be heard in the proceedings before the Court of Justice.

If the judgment of the Court of Justice establishes that the conditions of Article 17 have been complied with, the Member State concerned, or its appropriate

authorities, shall take such measures as enforcement of that judgment may require.

Article 38

The Commission shall make recommendations to the Member States with regard to the level of radioactivity in the air, water and soil.

In cases of urgency, the Commission shall issue a directive requiring the Member State concerned to take, within a period laid down by the Commission, all necessary measures to prevent infringement of the basic standards and to ensure compliance with regulations.

Should the State in question fail to comply with the Commission directive within the period laid down, the Commission or any Member State concerned may forthwith, by way of derogation from Articles 141 and 142, bring the matter before the Court of Justice.

Article 81

The Commission may send inspectors into the territories of Member States. Before sending an inspector on his first assignment in the territory of a Member State, the Commission shall consult the State concerned; such consultation shall suffice to cover all future assignments of this inspector.

On presentation of a document establishing their authority, inspectors shall at all times have access to all places and data and to all persons who, by reason of their occupation, deal with materials, equipment or installations subject to the safeguards provided for in this Chapter, to the extent necessary in order to apply such safeguards to ores, source materials and special fissile materials and to ensure compliance with the provisions of Article 77. Should the State concerned so request, inspectors appointed by the Commission shall be accompanied by representatives of the authorities of that State; however, the inspectors shall not thereby be delayed or otherwise impeded in the performance of their duties.

If the carrying-out of an inspection is opposed, the Commission shall apply to the President of the Court of Justice for an order to ensure that the inspection be carried out compulsorily. The President of the Court of Justice shall give a decision within three days.

If there is danger in delay, the Commission may itself issue a written order, in the form of a decision, to

proceed with the inspection. This order shall be submitted without delay to the President of the Court of Justice for subsequent approval.

After the order or decision has been issued, the authorities of the State concerned shall ensure that the inspectors have access to the places specified in the order or decision.

Article 82

Inspectors shall be recruited by the Commission.

They shall be responsible for obtaining and verifying the records referred to in Article 79. They shall report any infringement to the Commission.

The Commission may issue a directive calling upon the Member State concerned to take, by a time-limit set by the Commission, all measures necessary to bring such infringement to an end; it shall inform the Council thereof.

If the Member State does not comply with the Commission directive by the time limit set, the Commission or any Member State concerned may, in derogation from Articles 141 and 142, refer the matter to the Court of Justice direct.

Article 83

1. In the event of an infringement on the part of persons or undertakings of the obligations imposed on them by this Chapter, the Commission may impose sanctions on such persons or undertakings.

These sanctions shall be in order of severity:

- a. a warning;
- b. the withdrawal of special benefits such as financial or technical assistance;
- c. the placing of the undertaking for a period not exceeding four months under the administration of a person or board appointed by common accord of the Commission and the State having jurisdiction over the undertaking;
- d. total or partial withdrawal of source materials or special fissile materials.

2. Decisions taken by the Commission in implementation of paragraph 1 and requiring the surrender of materials shall be enforceable. They may be enforced in the territories of Member States in accordance with Article 164.

By way of derogation from Article 157, appeals brought before the Court of Justice against decisions of the Commission which impose any of the sanctions provided for in paragraph 1 shall have suspensory effect. The Court of Justice may, however, on application by the Commission or by any Member State concerned, order that the decision be enforced forthwith.

There shall be an appropriate legal procedure to ensure the protection of interests that have been prejudiced.

3. The Commission may make any recommendations to the Member States concerning laws or regulations which are designed to ensure compliance in their territories with the obligations arising under this Chapter.

4. Member States shall ensure that sanctions are enforced and, where necessary, that the infringements are remedied by those committing them.

Article 103

Member States shall communicate to the Commission draft agreements or contracts with a third State, an international organisation or a national of a third State to the extent that such agreements or contracts concern matters within the purview of this Treaty.

If a draft agreement or contract contains clauses which impede the application of this Treaty, the Commission shall, within one month of receipt of such communication, make its comments known to the State concerned.

The State shall not conclude the proposed agreement or contract until it has satisfied the objections of the Commission or complied with a ruling by the Court of Justice, adjudicating urgently upon an application from the State, on the compatibility of the proposed clauses with the provisions of this Treaty. An application may be made to the Court of Justice at any time after the State has received the comments of the Commission.

Article 104

No person or undertaking concluding or renewing an agreement or contract with a third State, an international organisation or a national of a third State after the entry into force of this Treaty may invoke that agreement or contract in order to evade the obligations imposed by this Treaty.

Each Member State shall take such measures as it considers necessary in order to communicate to the Commission, at the request of the latter, all information relating to agreements or contracts concluded after the entry into force of this Treaty, within the purview thereof, by a person or undertaking with a third State, an international organisation or a national of a third State. The Commission may require such communication only for the purpose of verifying that such agreements or contracts do not contain clauses impeding the implementation of this Treaty.

On application by the Commission, the Court of Justice shall give a ruling on the compatibility of such agreements or contracts with the provisions of this Treaty.

Article 105

The provisions of this Treaty shall not be invoked so as to prevent the implementation of agreements or contracts concluded before its entry into force by a Member State, a person or an undertaking with a third State, an international organisation or a national of a third State where such agreements or contracts have been communicated to the Commission not later than 30 days after the entry into force of this Treaty.

Agreements or contracts concluded between the signature and the entry into force of this Treaty by a person or an undertaking with a third State, an international organisation or a national of a third State shall not, however, be invoked as grounds for failure to implement this Treaty if, in the opinion of the Court of Justice, ruling on an application from the Commission, one of the decisive reasons on the part of either of the parties in concluding the agreement or contract was an intention to evade the provisions of this Treaty.

Article 136

The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

Article 137

The Court of Justice shall consist of 15 Judges.

The Court of Justice shall sit in plenary session. It may, however, form chambers, each consisting of three, five or seven Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with the rules laid down for these purposes.

The Court shall sit in plenary session when a Member State or a Community institution that is a party to the proceedings so requests.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Judges and make the necessary adjustments to the second and third paragraphs of this Article and to the second paragraph of Article 139.

Article 138

The Court of Justice shall be assisted by eight Advocates-General. However, a ninth Advocate-General shall be appointed as from the date of accession until 6 October 2000.*

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it in Article 136.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Advocates-General and make the necessary adjustments to the third paragraph of Article 139.

*First paragraph as amended by Article 20 AA A/FIN/SWE in the version resulting from Article 11 AD AA A/FIN/SWE.

Article 139

The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.

Every three years there shall be a partial replacement of the Judges. Eight and seven Judges shall be replaced alternately.

Every three years there shall be a partial replacement of the Advocates-General. Four Advocates-General shall be replaced on each occasion.

Retiring Judges and Advocates-General shall be eligible for re-appointment.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Article 140

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

Article 140a

1. A Court of First Instance shall be attached to the Court of Justice with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding defined in accordance with the conditions laid down in paragraph 2. The Court of First Instance shall not be competent to hear and determine questions referred for a preliminary ruling under Article 150.

2. At the request of the Court of Justice and after consulting the European Parliament and the Commission, the Council, acting unanimously, shall determine the classes of action or proceeding referred to in paragraph 1 and the composition of the Court of First Instance and shall adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the

Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to the Court of First Instance.

3. The Members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for re-appointment.

4. The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.

Article 141

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Article 142

A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not

prevent the matter from being brought before the Court of Justice.

Article 143

1.If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

2.If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time-limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 142.

Article 144

The Court of Justice shall have unlimited jurisdiction in:

- a.proceedings instituted under Article 12 to have the appropriate terms fixed for the granting by the Commission of licences or sub-licences;
- b.proceedings instituted by persons or undertakings against sanctions imposed on them by the Commission under Article 83.

Article 145

If the Commission considers that a person or undertaking has committed an infringement of this Treaty to which the provisions of Article 83 do not apply, it shall call upon the Member State having jurisdiction over that person or undertaking to cause sanctions to be imposed in respect of the infringement in accordance with its national law.

If the State concerned does not comply with such a request within the period laid down by the Commission, the latter may bring an action before the Court of Justice to have the infringement of which the person or undertaking is accused established.

Article 146

The Court of Justice shall review the legality of acts of the Council and of the Commission, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects *vis-à-vis* third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament for the purpose of protecting its prerogatives.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 147

If the action is well founded, the Court of Justice shall declare the act concerned to be void.

In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive.

Article 148

Should the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.

Article 149

The institution whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 188.

Article 150

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- a. the interpretation of this Treaty;
- b. the validity and interpretation of acts of the institutions of the Community;

- c. the interpretation of the statutes of bodies established by an act of the Council, save where those statutes provide otherwise.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

Article 151

The Court of Justice shall have jurisdiction in disputes relating to the compensation for damage provided for in the second paragraph of Article 188.

Article 152

The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

Article 153

The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law.

Article 154

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject-matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

Article 155

Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article 156

Notwithstanding the expiry of the period laid down in the third paragraph of Article 146, any party may, in proceedings in which a regulation of the Council or of the Commission is in issue, plead the grounds specified in the first paragraph of Article 146, in order to invoke before the Court of Justice the inapplicability of that regulation.

Article 157

Save as otherwise provided in this Treaty, actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 158

The Court of Justice may in any cases before it prescribe any necessary interim measures.

Article 159

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 164.

Article 160

The Statute of the Court of Justice is laid down in a separate Protocol.

The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.

The Court of Justice shall adopt its Rules of Procedure. These shall require the unanimous approval of the Council.

Article 164

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission, to the Court of Justice and to the Arbitration Committee set up by Article 18.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Article 188

The contractual liability of the Community shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The personal liability of its servants towards the Community shall be governed by the provisions laid down in the Staff Regulations or in the Conditions of Employment applicable to them.

Article 193

Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein.

Treaty establishing the European Coal and Steel Community

Signed at Paris on 18 April 1951.

- extracts -

Article 7

The institutions of the Community shall be:

- a High Authority (hereinafter referred to as "the Commission");
- a Common Assembly (hereinafter referred to as "the European Parliament");
- a Special Council of Ministers (hereinafter referred to as "the Council");
- a Court of Justice (hereinafter referred to as "the Court");
- a Court of Auditors.

The Commission shall be assisted by a Consultative Committee.

Article 31

The Court shall ensure that in the interpretation and application of this Treaty, and of rules laid down for the implementation thereof, the law is observed.

Article 32

The Court of Justice shall consist of 15 Judges.

The Court of Justice shall sit in plenary session. It may, however, form chambers, each consisting of three, five or seven Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purposes.

The Court of Justice shall sit in plenary session when a Member State or a Community institution that is a party to the proceedings so requests.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Judges and make the necessary adjustments to the second and third paragraphs of this Article and to the second paragraph of Article 32b.

Article 32a

The Court of Justice shall be assisted by eight Advocates-General. However, a ninth Advocate-General shall be appointed as from the date of accession until 6 October 2000*.

It shall be the duty of the Advocate-General acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court, in order to assist the Court in the performance of the task assigned to it in Article 31.

Should the Court so request, the Council may, acting unanimously, increase the number of Advocates-General and make the necessary adjustments to the third paragraph of Article 32b.

*First paragraph as amended by Article 20 AA A/FIN/SWE in the version resulting from Article 11 AD AA A/FIN/SWE.

Article 32b

The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.

Every three years there shall be a partial replacement of the Judges. Eight and seven Judges shall be replaced alternately.

Every three years there shall be a partial replacement of the Advocates-General. Four Advocates-General shall be replaced on each occasion.

Retiring Judges and Advocates-General shall be eligible for reappointment.

The Judges shall elect the President of the Court from among their number for a term of three years. He may be re-elected.

Article 32c

The Court shall appoint its Registrar and lay down the rules governing his service.

Article 32d

1. A Court of First Instance shall be attached to the Court of Justice with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding defined in accordance with the conditions laid down in paragraph 2. The Court of First Instance shall not be competent to hear and determine questions referred for a preliminary ruling under Article 41.
2. At the request of the Court of Justice and after consulting the European Parliament and the Commission, the Council, acting unanimously, shall determine the classes of action or proceeding referred to in paragraph 1, and the composition of the Court of First Instance and shall adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to the Court of First Instance.
3. The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.
4. The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.

Article 33

The Court shall have jurisdiction in actions brought by a Member State or by the Council to have decisions or recommendations of the Commission declared void on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The Court of Justice may not, however, examine the evaluation of the situation, resulting from economic facts or circumstances, in the light of which the Commission took its decisions or made its recommendations, save where the Commission is alleged to have misused its powers or to have manifestly failed to observe the provisions of this Treaty or any rule of law relating to its application.

Undertakings or associations referred to in Article 48 may, under the same conditions, institute proceedings against decisions or recommendations concerning them which are individual in character or against general decisions or recommendations which they consider to involve a misuse of powers affecting them.

The proceedings provided for in the first two paragraphs of this Article shall be instituted within one month of the notification or publication, as the case may be, of the decision or recommendation.

The Court of Justice shall have jurisdiction under the same conditions in actions brought by the European Parliament for the purpose of protecting its prerogatives.

Article 34

If the Court declares a decision or recommendation void, it shall refer the matter back to the Commission. The Commission shall take the necessary steps to comply with the judgment. If direct and special harm is suffered by an undertaking or group of undertakings by reason of a decision or recommendation held by the Court to involve a fault of such a nature as to render the Community liable, the Commission shall, using the powers conferred upon it by this Treaty, take steps to ensure equitable redress for the harm resulting directly from the decision or recommendation declared void and, where necessary, pay appropriate damages.

If the Commission fails to take within a reasonable time the necessary steps to comply with the judgment, proceedings for damages may be instituted before the Court.

Article 35

Wherever the Commission is required by this Treaty, or by rules laid down for the implementation thereof, to take a decision or make a recommendation and fails to fulfil this obligation, it shall be for States, the Council, undertakings or associations, as the case may be, to raise the matter with the Commission.

The same shall apply if the Commission, where empowered by this Treaty, or by rules laid down for the implementation thereof, to take a decision or make a recommendation, abstains from doing so and such abstention constitutes a misuse of powers.

If at the end of two months the Commission has not taken any decision or made any recommendation, proceedings may be instituted before the Court within one month against the implied decision of refusal which is to be inferred from the silence of the Commission on the matter.

Article 36

Before imposing a pecuniary sanction or ordering a periodic penalty payment as provided for in this Treaty, the Commission must give the party concerned the opportunity to submit its comments.

The Court shall have unlimited jurisdiction in appeals against pecuniary sanctions and periodic penalty payments imposed under this Treaty.

In support of its appeal, a party may, under the same conditions as in the first paragraph of Article 33 of this Treaty, contest the legality of the decision or recommendation which that party is alleged not to have observed.

Article 37

If a Member State considers that in a given case action or failure to act on the part of the Commission is of such a nature as to provoke fundamental and persistent disturbances in its economy, it may raise the matter with the Commission.

The Commission, after consulting the Council, shall, if there are grounds for so doing, recognize the existence of such a situation and decide on the measures to be taken to end it, in accordance with the provisions of this Treaty, while at the same time safeguarding the essential interests of the Community.

When proceedings are instituted in the Court under this Article against such a decision or against an express or implied decision refusing to recognize the existence of the situation referred to above, it shall be for the Court to determine whether it is well founded.

If the Court declares the decision void, the Commission shall, within the terms of the judgment of the Court, decide on the measures to be taken for the purposes indicated in the second paragraph of this Article.

Article 38

The Court may, on application by a Member State or the Commission, declare an act of the European Parliament or of the Council to be void.

Application shall be made within one month of the publication of the act of the European Parliament or the notification of the act of the Council to the Member States or to the Commission.

The only grounds for such application shall be lack of competence or infringement of an essential procedural requirement.

Article 39

Actions brought before the Court shall not have suspensory effect.

The Court may, however, if it considers that circumstances so require, order that application of the contested decision or recommendation be suspended.

The Court may prescribe any other necessary interim measures.

Article 40

Without prejudice to the first paragraph of Article 34, the Court shall have jurisdiction to order pecuniary reparation from the Community, on application by the injured party, to make good any injury caused in carrying out this Treaty by a wrongful act or omission on the part of the Community in the performance of its functions.

The Court shall also have jurisdiction to order the Community to make good any injury caused by a personal wrong by a servant of the Community in the performance of his duties. The personal liability of its

servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or the Conditions of Employment applicable to them.

All other disputes between the Community and persons other than its servants to which the provisions of this Treaty or the rules laid down for the implementation thereof do not apply shall be brought before national courts or tribunals.

Article 41

The Court shall have sole jurisdiction to give preliminary rulings on the validity of acts of the Commission and of the Council where such validity is in issue in proceedings brought before a national court or tribunal.

Article 42

The Court shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law.

Article 43

The Court shall have jurisdiction in any other case provided for by a provision supplementing this Treaty.

It may also rule in all cases which relate to the subject-matter of this Treaty where jurisdiction is conferred upon it by the law of a Member State.

Article 44

The judgments of the Court shall be enforceable in the territory of Member States under the conditions laid down in Article 92.

Article 45

The Statute of the Court is laid down in a Protocol annexed to this Treaty.

The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.

Article 47

The Commission may obtain the information it requires to carry out its tasks. It may have the necessary checks made.

The Commission must not disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components. Subject to this reservation, it shall publish such data as could be useful to governments or to any other parties concerned.

The Commission may impose fines or periodic penalty payments on undertakings which evade their obligations under decisions taken in pursuance of this Article or which knowingly furnish false information. The maximum amount of such fines shall be 1% of the annual turnover, and the maximum amount of such penalty payments shall be 5% of the average daily turnover for each day's delay.

Any breach of professional secrecy by the Commission which has caused damage to an undertaking may be the subject of an action for compensation before the Court, as provided in Article 40.

Article 48

The right of undertakings to form associations shall not be affected by this Treaty. Membership of such associations must be voluntary. Associations may engage in any activity which is not contrary to the provisions of this Treaty or to the decisions or recommendations of the Commission.

Where this Treaty requires the Consultative Committee to be consulted, any association shall have the right to submit to the Commission, within such time as the latter may set, the comments of its members on the proposed course of action.

To obtain information which it requires, or to facilitate the performance of the tasks entrusted to it, the Commission shall normally call upon producers' associations on condition either that they provide for accredited representatives of workers and consumers to sit on their governing bodies or on advisory committees attached to them, or that they make satisfactory provision in some other way in their organisation for the interests of workers and consumers to be voiced.

The associations referred to in the preceding paragraphs shall furnish the Commission with such information on their activities as it may consider necessary. The comments referred to in the second paragraph of this Article and the information furnished in pursuance of this paragraph shall also be forwarded by those associations to the government concerned.

Article 63

1.If the Commission finds that discrimination is being systematically practised by purchasers, in particular under provisions governing contracts entered into by bodies dependent on a public authority, it shall make appropriate recommendations to the governments concerned.

2.Where the Commission considers it necessary, it may decide that:

a.undertakings must frame their conditions of sale in such a way that their customers and commission agents acting on their behalf shall be under an obligation to comply with the rules made by the Commission in application of this Chapter;

b.undertakings shall be held responsible for infringements of this obligation by their direct agents or by commission agents acting on their behalf.

In the event of an infringement of this obligation by a purchaser, the Commission may restrict or, should the infringement be repeated, temporarily prohibit dealings with that purchaser by Community undertakings. If this is done, the purchaser shall have the right, without prejudice to Article 33, to bring an action before the Court.

3.In addition, the Commission is empowered to make to the Member States concerned any appropriate recommendations to ensure that the rules laid down for the application of Article 60.1 are duly observed by all distributive undertakings and agencies in the coal and steel sectors.

Article 64

The Commission may impose upon undertakings which infringe the provisions of this Chapter or decisions taken thereunder fines not exceeding twice the value of the sales effected in disregard thereof. If the infringement is repeated, this maximum shall be doubled.

Article 65

1.All agreements between undertakings, decisions by associations of undertakings and concerted practices tending directly or indirectly to prevent, restrict or distort normal competition within the common market shall be prohibited, and in particular those tending:

a.to fix or determine prices;

b.to restrict or control production, technical development or investment;

c.to share markets, products, customers or sources of supply.

2.However, the Commission shall authorize specialization agreements or joint-buying or joint-selling agreements in respect of particular products, if it finds that:

a.such specialization or such joint-buying or joint-selling will make for a substantial improvement in the production or distribution of those products;

b.the agreement in question is essential in order to achieve these results and is not more restrictive than is necessary for that purpose; and

c.the agreement is not liable to give the undertakings concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the products in question within the common market, or to shield them against effective competition from other undertakings within the common market.

If the Commission finds that certain agreements are strictly analogous in nature and effect to those referred to above, having particular regard to the fact that this paragraph applies to distributive

undertakings, it shall authorize them also when satisfied that they meet the same requirements.

Authorizations may be granted subject to specified conditions and for limited periods. In such cases the Commission shall renew an authorization once or several times if it finds that the requirements of subparagraphs a to c are still met at the time of renewal.

The Commission shall revoke or amend an authorization if it finds that as a result of a change in circumstances the agreement no longer meets these requirements, or that the actual results of the agreement or of the application thereof are contrary to the requirements for its authorization.

Decisions granting, renewing, amending, refusing or revoking an authorization shall be published together with the reasons therefore; the restrictions imposed by the second paragraph of Article 47 shall not apply thereto.

3. The Commission may, as provided in Article 47, obtain any information needed for the application of this Article, either by making a special request to the parties concerned or by means of regulations stating the kinds of agreement, decision or practice which must be communicated to it.

4. Any agreement or decision prohibited by paragraph 1 of this Article shall be automatically void and may not be relied upon before any court or tribunal in the Member States.

The Commission shall have sole jurisdiction, subject to the right to bring actions before the Court, to rule whether any such agreement or decision is compatible with this Article.

5. On any undertaking which has entered into an agreement which is automatically void, or has enforced or attempted to enforce, by arbitration, penalty, boycott or any other means, an agreement or decision which is automatically void or an agreement for which authorization has been refused or revoked, or has obtained an authorization by means of information which it knew to be false or misleading, or has engaged in practices prohibited by paragraph 1 of this Article, the Commission may impose fines or periodic penalty payments not exceeding twice the turnover on the products which were the subject of the agreement, decision or practice prohibited by this

Article; if, however, the purpose of the agreement, decision or practice is to restrict production, technical development or investment, this maximum may be raised to 10% of the annual turnover of the undertakings in question in the case of fines, and 20% of the daily turnover in the case of periodic penalty payments.

Article 66

1. Any transaction shall require the prior authorization of the Commission, subject to the provisions of paragraph 3 of this Article, if it has in itself the direct or indirect effect of bringing about within the territories referred to in the first paragraph of Article 79, as a result of action by any person or undertaking or group of persons or undertakings, a concentration between undertakings at least one of which is covered by Article 80, whether the transaction concerns a single product or a number of different products, and whether it is effected by merger, acquisition of shares or parts of the undertaking or assets, loan, contract or any other means of control. For the purpose of applying these provisions, the Commission shall, by regulations made after consulting the Council, define what constitutes control of an undertaking.

2. The Commission shall grant the authorization referred to in the preceding paragraph if it finds that the proposed transaction will not give to the persons or undertakings concerned the power, in respect of the product or products within its jurisdiction:

-to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for those products; or

-to evade the rules of competition instituted under this Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

In assessing whether this is so, the Commission shall, in accordance with the principle of non-discrimination laid down in Article 4.b, take account of the size of like undertakings in the Community, to the extent it considers justified in order to avoid or correct disadvantages resulting from unequal competitive conditions.

The Commission may make its authorization subject to any conditions which it considers appropriate for the purposes of this paragraph.

Before ruling on a transaction concerning undertakings at least one of which is not subject to Article 80, the Commission shall obtain the comments of the governments concerned.

3. The Commission shall exempt from the requirement of prior authorization such classes of transactions as it finds should, in view of the size of the assets or undertakings concerned, taken in conjunction with the kind of concentration to be effected, be deemed to meet the requirements of paragraph 2. Regulations made to this effect, with the assent of the Council, shall also lay down the conditions governing such exemption.

4. Without prejudice to the application of Article 47 to undertakings within its jurisdiction, the Commission may, either by regulations made after consultation with the Council stating the kind of transaction to be communicated to it or by a special request under these regulations to the parties concerned, obtain from the natural or legal persons who have acquired or regrouped or are intending to acquire or regroup the rights or assets in question any information needed for the application of this Article concerning transactions liable to produce the effect referred to in paragraph 1.

5. If a concentration should occur which the Commission finds has been effected contrary to the provisions of paragraph 1 but which nevertheless meets the requirements of paragraph 2, the Commission shall make its approval of that concentration subject to payment by the persons who have acquired or regrouped the rights or assets in question of the fine provided for in the second subparagraph of paragraph 6; the amount of the fine shall not be less than half of the maximum determined in that subparagraph should it be clear that authorization ought to have been applied for. If the fine is not paid, the Commission shall take the steps hereinafter provided for in respect of concentrations found to be unlawful.

If a concentration should occur which the Commission finds cannot fulfil the general or specific conditions to which an authorization under paragraph 2 would be subject, the Commission shall, by means of a reasoned decision, declare the concentration unlawful and, after giving the parties concerned the

opportunity to submit their comments, shall order separation of the undertakings or assets improperly concentrated or cessation of joint control, and any other measures which it considers appropriate to return the undertakings or assets in question to independent operation and restore normal conditions of competition. Any person directly concerned may institute proceedings against such decisions, as provided in Article 33. By way of derogation from Article 33, the Court shall have unlimited jurisdiction to assess whether the transaction effected is a concentration within the meaning of paragraph 1 and of regulations made in application thereof. The institution of proceedings shall have suspensory effect. Proceedings may not be instituted until the measures provided for above have been ordered, unless the Commission agrees to the institution of separate proceedings against the decision declaring the transaction unlawful.

The Commission may at any time, unless the third paragraph of Article 39 is applied, take or cause to be taken such interim measures of protection as it may consider necessary to safeguard the interests of competing undertakings and of third parties, and to forestall any step which might hinder the implementation of its decisions. Unless the Court decides otherwise, proceedings shall not have suspensory effect in respect of such interim measures.

The Commission shall allow the parties concerned a reasonable period in which to comply with its decisions, on expiration of which it may impose daily penalty payments not exceeding one tenth of 1% of the value of the rights or assets in question.

Furthermore, if the parties concerned do not fulfil their obligations, the Commission shall itself take steps to implement its decision; it may in particular suspend the exercise, in undertakings within its jurisdiction, of the rights attached to the assets acquired irregularly, obtain the appointment by the judicial authorities of a receiver of such assets, organize the forced sale of such assets subject to the protection of the legitimate interests of their owners, and annul with respect to natural or legal persons who have acquired the rights or assets in question through the unlawful transaction, the acts, decisions, resolutions or proceedings of the supervisory and managing bodies or undertakings over which control has been obtained irregularly.

The Commission is also empowered to make such recommendations to the Members States concerned as may be necessary to ensure that the measures provided for in the preceding subparagraphs are implemented under their own law.

In the exercise of its powers, the Commission shall take account of the rights of third parties which have been acquired in good faith.

6. The Commission may impose fines not exceeding:

-3% of the value of the assets acquired or regrouped or to be acquired or regrouped, on natural or legal persons who have evaded the obligations laid down in paragraph 4;

-10% of the value of the assets acquired or regrouped, on natural or legal persons who have evaded the obligations laid down in paragraph 1; this maximum shall be increased by one twenty-fourth for each month which elapses after the end of the 12th month following completion of the transaction until the Commission establishes that there has been an infringement;

-10% of the value of the assets acquired or regrouped or to be acquired or regrouped, on natural or legal persons who have obtained or attempted to obtain authorization under paragraph 2 by means of false or misleading information;

-15% of the value of the assets acquired or regrouped, on undertakings within its jurisdiction which have engaged in or been party to transactions contrary to the provisions of this Article.

Persons fined under this paragraph may appeal to the Court as provided in Article 36.

7. If the Commission finds that public or private undertakings which, in law or in fact, hold or acquire in the market for one of the products within its jurisdiction a dominant position shielding them against effective competition in a substantial part of the common market are using that position for purposes contrary to the objectives of this Treaty, it shall make to them such recommendations as may be appropriate to prevent the position from being so used. If these recommendations are not implemented satisfactorily within a reasonable time, the Commission shall, by decisions taken in

consultation with the government concerned, determine the prices and conditions of sale to be applied by the undertaking in question or draw up production or delivery programmes with which it must comply, subject to liability to the penalties provided for in Articles 58, 59 and 64.

Article 80

For the purposes of this Treaty, "undertaking" means any undertaking engaged in production in the coal or the steel industry within the territories referred to in the first paragraph of Article 79, and also, for the purposes of Articles 65 and 66 and of information required for their application and proceedings in connection with them, any undertaking or agency regularly engaged in distribution other than sale to domestic consumers or small craft industries.

Article 87

The High Contracting Parties undertake not to avail themselves of any treaties, conventions or declarations made between them for the purpose of submitting a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein.

Article 88

If the Commission considers that a State has failed to fulfil an obligation under this Treaty, it shall record this failure in a reasoned decision after giving the State concerned the opportunity to submit its comments. It shall set the State a time-limit for the fulfilment of its obligation.

The State may institute proceedings before the Court within two months of notification of the decision; the Court shall have unlimited jurisdiction in such cases.

If the State has not fulfilled its obligation by the time-limit set by the Commission, or if it brings an action which is dismissed, the Commission may, with the assent of the Council acting by a two-thirds majority:

- a. suspend the payment of any sums which it may be liable to pay to the State in question under this Treaty;
- b. take measures, or authorize the other Member States to take measures, by way of derogation from the

provisions of Article 4, in order to correct the effects of the infringement of the obligation.

Proceedings may be instituted before the Court against decisions taken under subparagraphs a and b within two months of their notification; the Court shall have unlimited jurisdiction in such cases.

If these measures prove ineffective, the Commission shall bring the matter before the Council.

Article 89

Any dispute between Member States concerning the application of this Treaty which cannot be settled by another procedure provided for in this Treaty may be submitted to the Court on application by one of the States which are parties to the dispute.

The Court shall also have jurisdiction in any dispute between Member States which relates to the subject-matter of this Treaty, if the dispute is submitted to it under a special agreement between the parties.

Article 92

Decisions of the Commission which impose a pecuniary obligation shall be enforceable.

Enforcement in the territory of Member States shall be carried out by means of the legal procedure in force in each State, after the order for enforcement in the form in use in the State in whose territory the decision is to be enforced has been appended to the decision, without other formality than verification of the authenticity of the decision. This formality shall be carried out at the instance of a minister designated for this purpose by each of the governments.

Enforcement may be suspended only by a decision of the Court.

Article 95

In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the Commission is necessary to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.

Any decision so taken or recommendation so made shall determine what penalties, if any, may be imposed.

If, after the end of the transitional period provided in the Convention on the Transitional Provisions, unforeseen difficulties emerging in the light of experience in the application of this Treaty, or fundamental economic or technical changes directly affecting the common market in coal and steel, make it necessary to adapt the rules for the Commission's exercise of its powers, appropriate amendments may be made; they must not, however, conflict with the provisions of Articles 2, 3 and 4 or interfere with the relationship between the powers of the Commission and those of the other institutions of the Community.

These amendments shall be proposed jointly by the Commission and the Council, acting by a twelve-fifteenths majority of its members, and shall be submitted to the Court for its opinion. In considering them, the Court shall have full power to assess all points of fact and of law. If as a result of such consideration it finds the proposals compatible with the provisions of the preceding paragraph, they shall be forwarded to the European Parliament and shall enter into force if approved by a majority of three-quarters of the votes cast and two-thirds of the Members of the European Parliament.

Convention on certain common institutions

Signed at Rome on 25 March 1957

- extracts -

Article 3

The jurisdiction which the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community confer upon the Court of Justice shall be exercised, in accordance with those Treaties, by a single Court of Justice composed and appointed as provided in Articles 165 to 167 of the Treaty establishing the European Economic Community and in Articles 137 to 139 of the Treaty establishing the European Atomic Energy Community.

Article 4

1. Upon taking up its duties, the single Court of Justice referred to in Article 3 shall take the place of the Court provided for in Article 32 of the Treaty establishing the European Coal and Steel Community. It shall exercise the jurisdiction conferred upon that Court by that Treaty in accordance with the provisions thereof.

The President of the single Court of Justice referred to in Article 3 shall exercise the powers conferred by the Treaty establishing the European Coal and Steel Community upon the President of the Court provided for in that Treaty.

2. To this end, on the date when the single Court of Justice referred to in Article 3 takes up its duties:

a. Article 32 of the Treaty establishing the European Coal and Steel Community shall be repealed and the following provisions substituted therefore:

(The provisions concerned are Articles 32 to 32c.)

b. The provisions of the Protocol on the Statute of the Court of Justice annexed to the Treaty establishing the European Coal and Steel Community, in so far as they are in conflict with Articles 32 to 32c of that Treaty, shall be repealed.

Council Decision establishing a Court of First Instance of the European Communities

Council Decision (88/591/ECSC, EEC, Euratom) of 24 October 1988

Official Journal of the European Communities No L 319 of 25 November 1988, p. 1, and No L 241 of 17 August 1989 (corrigenda), p. 4.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 32d thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 168a thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 140a thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, signed in Paris on 18 April 1951,

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, signed in Brussels on 17 April 1957,

Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community, signed in Brussels on 17 April 1957,

Having regard to the Protocol on Privileges and Immunities of the European Communities, signed in Brussels on 8 April 1965,

Having regard to the request of the Court of Justice,

Having regard to the opinion of the Commission,

Having regard to the opinion of the European Parliament,

Whereas Article 32d of the ECSC Treaty, Article 168a of the EEC Treaty and Article 140a of the EAEC Treaty empower the Council to attach to the Court of Justice a Court of First Instance called upon to exercise important judicial functions and whose members are independent beyond doubt and possess the ability required for performing such functions;

Whereas the aforesaid provisions empower the Council to give the Court of First Instance jurisdiction to hear and determine at first instance, in accordance with the conditions laid down by the Statutes, certain classes of action or proceeding brought by natural or legal persons, subject to the right of appeal to the Court of Justice on questions of law alone; whereas the Council is to determine, pursuant to the aforesaid provisions, the composition of that court and adopt the necessary adjustments and additional provisions to the Statutes of the Court of Justice;

Whereas, in respect of actions requiring close examination of complex facts, the establishment of a second court will improve the judicial protection of individual interests;

Whereas it is necessary, in order to maintain the quality and effectiveness of judicial review in the

Community legal order, to enable the Court to concentrate its activities on its fundamental task of ensuring uniform interpretation of Community law;

Whereas it is therefore necessary to make use of the powers granted by Article 32d of the ECSC Treaty, Article 168a of the EEC Treaty and Article 140a of the EAEC Treaty and to transfer to the Court of First Instance jurisdiction to hear and determine at first instance certain classes of action or proceeding which frequently require an examination of complex facts, that is to say actions or proceedings brought by servants of the Communities and also, in so far as the ECSC Treaty is concerned, by undertakings and associations in matters concerning levies, production, prices, restrictive agreements, decisions or practices and concentrations, and so far as the EEC Treaty is concerned, by natural or legal persons in competition matters,

HAS DECIDED AS FOLLOWS:

Article 1

A Court, to be called the Court of First Instance of the European Communities, shall be attached to the Court of Justice of the European Communities. Its seat shall be at the Court of Justice.

Article 2

1. The Court of First Instance shall consist of 15 Judges.
2. The members shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected.
3. The members of the Court of First Instance may be called upon to perform the task of an Advocate-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on certain cases brought before the Court of First Instance in order to assist the Court of First Instance in the performance of its task.

The criteria for selecting such cases, as well as the procedures for designating the Advocates-General, shall be laid down in the Rules of Procedure of the Court of First Instance.

A member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

4. The Court of First Instance shall sit in chambers of three or five judges. The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure the Court of First Instance may sit in plenary session.

5. Article 21 of the Protocol on the privileges and immunities of the European Communities and Article 6 of the Treaty establishing a Single Council and a Single Commission of the European Communities shall apply to the members of the Court of First Instance and to its Registrar.

Article 3

1. The Court of First Instance shall exercise at first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities and by the acts adopted in implementation thereof, save as otherwise provided in an act setting up a body governed by Community law:

- a. in disputes as referred to in Article 179 of the EEC Treaty and in Article 152 of the EAEC Treaty;
- b. in actions brought by natural or legal persons pursuant to the second paragraph of Article 33, Article 35, the first and second paragraphs of Article 40 and Article 42 of the ECSC Treaty;
- c. in actions brought by natural or legal persons pursuant to the second paragraph of Article 173, the third paragraph of Article 175 and Articles 178 and 181 of the EEC Treaty;
- d. in actions brought by natural or legal persons pursuant to the second paragraph of Article 146, the third paragraph of Article 148 and Articles 151 and 153 of the EAEC Treaty.

2. *Repealed*

3. *Repealed*

Article 4

Save as hereinafter provided, Articles 34, 36, 39, 44 and 92 of the ECSC Treaty, Articles 172, 174, 176, 184 to 187 and 192 of the EEC Treaty and Articles 49, 83, 144b, 147, 149, 156 to 159 and 164 of the Euratom Treaty shall apply to the Court of First Instance.

Article 5

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community:

(See Articles 44 to 54 of the ECSC Statute)

Article 6

The former Articles 44 and 45 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community shall become Articles 55 and 56 respectively.

Article 7

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Economic Community:

(See Articles 44 to 54 of the EEC Statute)

Article 8

The former Articles 44, 45 and 46 of the Protocol on the Statute of the Court of Justice of the European Economic Community shall become Articles 55, 56 and 57 respectively.

Article 9

The following provisions shall be inserted after Article 44 of the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community:

(See Articles 45 to 55 of the EAEC Statute)

Article 10

The former Articles 45, 46 and 47 of the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community shall become Articles 56, 57 and 58 respectively.

Article 11

The first President of the Court of First Instance shall be appointed for three years in the same manner as its members. However, the governments of the Member States may, by common accord, decide that the procedure laid down in Article 2.2 shall be applied.

The Court of First Instance shall adopt its Rules of Procedure immediately upon its constitution.

Until the entry into force of the Rules of Procedure of the Court of First Instance, the Rules of Procedure of the Court of Justice shall apply *mutatis mutandis*.

Article 12

Immediately after all members of the Court of First Instance have taken oath, the President of the Council shall proceed to choose by lot the members of the Court of First Instance whose terms of office are to expire at the end of the first three years in accordance with Article 32d.3 of the ECSC Treaty, Article 168a.3 of the EEC Treaty, and Article 140a.3 of the EAEC Treaty.

Article 13

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*, with the exception of Article 3, which shall enter into force on the date of the publication in the *Official Journal of the European Communities* of the ruling by the President of the Court of Justice that the Court of First Instance has been constituted in accordance with law.

Article 14

Cases referred to in Article 3 of which the Court of Justice is seised on the date on which that Article enters into force but in which the preliminary report provided for in Article 44.1 of the Rules of Procedure of the Court of Justice has not yet been presented shall be referred back to the Court of First Instance.

Statute of the Court of Justice of the European Community

Protocol on the Statute of the Court of Justice, signed at Brussels on 17 April 1957.

Article 1

The Court established by Article 4 of this Treaty shall be constituted and shall function in accordance with the provisions of this Treaty and of this Statute.

Title I – Judges and Advocates-General

Article 2

Before taking up his duties each Judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity including words spoken or written.

The Court, sitting in plenary session, may waive the immunity.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the Court competent to judge the members of the highest national judiciary.

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court.

Article 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations.

The Registrar of the Court shall communicate the decision of the Court to the President of the European Parliament and to the President of the Commission and shall notify it to the President of the Council.

In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

Article 7

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

Title II – Organisation**Article 9**

The Registrar shall take an oath before the Court to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 10

The Court shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court.

Article 11

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.

Article 12

On a proposal from the Court, the Council may, acting unanimously, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 13

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court has its seat.

Article 14

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Article 15

Decisions of the Court shall be valid only when an uneven number of its members is sitting in the deliberations. Decisions of the full Court shall be valid if nine members are sitting. Decisions of the chambers consisting of three or five Judges shall be valid only if three Judges are sitting. Decisions of the chambers consisting of seven Judges shall be valid only if five Judges are sitting. In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

Article 16

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court.

A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

Title III – Procedure

Article 17

The States and the institutions of the Community shall be represented before the Court by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer entitled to practise before a court of a Member State.

Other parties must be represented by a lawyer entitled to practise before a court of a Member State.

Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Article to lawyers entitled to practise before a court of a Member State.

Article 18

The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties and to the institutions of the Community whose decisions are in dispute, of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of agents, advisers and lawyers entitled to practise before a court of a Member State and of the submissions of the Advocate-General, as well as the hearing, if any, of witnesses and experts.

Article 19

A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party against whom the application is made, the subject matter of the dispute, the submissions and a brief statement of the grounds on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article 175 of this Treaty, by documentary evidence of the date on which an institution was, in accordance with that Article, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

Article 20

In the cases governed by Article 177 of this Treaty, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and also to the Council if the act the validity or interpretation of which is in dispute originates from the Council.

Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the Council, shall be entitled to submit statements of case or written observations to the Court.

Article 21

The Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

The Court may also require the Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 22

The Court may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of giving an expert opinion.

Article 23

Witnesses may be heard under conditions laid down in the Rules of Procedure.

Article 24

With respect to defaulting witnesses the Court shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

Article 25

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

Article 26

The Court may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Article 27

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court, the Member State concerned shall prosecute the offender before its competent court.

Article 28

The hearing in court shall be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

Article 29

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court only through their representatives.

Article 30

Minutes shall be made of each hearing and signed by the President and the Registrar.

Article 31

The case list shall be established by the President.

Article 32

The deliberations of the Court shall be and shall remain secret.

Article 33

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 34

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

Article 35

The Court shall adjudicate upon costs.

Article 36

The President of the Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Article 185 of this Treaty, or to prescribe interim measures in pursuance of Article 186, or to suspend enforcement in accordance with the last paragraph of Article 192.

Should the President be prevented from attending, his place shall be taken by another Judge under conditions laid down in the Rules of Procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Article 37

Member States and institutions of the Community may intervene in cases before the Court.

The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Community or between Member States and institutions of the Community.

Submissions made in an application to intervene shall be limited to supporting the submissions of one of the parties.

Article 38

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

Article 39

Member States, institutions of the Community and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

Article 40

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party or any institution of the Community establishing an interest therein.

Article 41

An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognizing that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

Article 42

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

Article 43

Proceedings against the Community in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community. In the latter event the proceedings must be instituted within the period of two months provided for in Article 173; the provisions of the second paragraph of Article 175 shall apply where appropriate.

Title IV –The Court of First Instance of the European Communities

Article 44

Articles 2 to 8 and 13 to 16 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

Article 45

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9, 10 and 13 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

Article 46

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Article 20.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 168a.4 of this Treaty.

Notwithstanding the fourth paragraph of Article 18 of this Statute, the Advocate-General may make his reasoned submissions in writing.

Article 47

Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice, it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it

shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

Article 48

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

Article 49

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Community and its servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same

position as Member States or institutions which intervened at first instance.

Article 50

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Articles 185 or 186 or the fourth paragraph of Article 192 of this Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 36 of this Statute.

Article 51

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 52

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

Article 53

Without prejudice to Articles 185 and 186 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 187 of this Treaty, decisions of the Court of First Instance declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 49 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice,

however, to the right of a party to apply to the Court of Justice, pursuant to Articles 185 and 186 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

Article 54

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which did not intervene in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.

Article 55

The Rules of Procedure of the Court provided for in Article 188 of this Treaty shall contain, apart from the provisions contemplated by this Statute, any other provisions necessary for applying and, where required, supplementing it.

Article 56

The Council may, acting unanimously, make such further adjustments to the provisions of this Statute as may be required by reason of measures taken by the Council in accordance with the last paragraph of Article 165 of this Treaty.

Article 57

Immediately after the oath has been taken, the President of the Council shall proceed to choose by lot the Judges and Advocates-General whose terms of office are to expire at the end of the first three years in accordance with the second and third paragraphs of Article 167 of this Treaty.

Statute of the Court of Justice of the European Atomic Energy Community

Protocol on the Statute of the Court of Justice, signed at Brussels on 17 April 1957.

Article 1

The Court established by Article 3 of this Treaty shall be constituted and shall function in accordance with the provisions of this Treaty and of this Statute.

Title I – Judges and Advocates-General

Article 2

Before taking up his duties each Judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

The Court, sitting in plenary session, may waive the immunity.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the Court competent to judge the members of the highest national judiciary.

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court.

Article 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations.

The Registrar of the Court shall communicate the decision of the Court to the President of the European Parliament and to the President of the Commission and shall notify it to the President of the Council.

In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

Article 7

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

Title II – Organisation**Article 9**

The Registrar shall take an oath before the Court to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 10

The Court shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court.

Article 11

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.

Article 12

On a proposal from the Court, the Council may, acting unanimously, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 13

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court has its seat.

Article 14

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Article 15

Decisions of the Court shall be valid only when an uneven number of its members is sitting in the deliberations. Decisions of the full Court shall be valid if nine members are sitting. Decisions of the chambers consisting of three or five Judges shall be valid only if three Judges are sitting. Decisions of the chambers consisting of seven Judges shall be valid only if five Judges are sitting. In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

Article 16

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or on which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court.

A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

Title III – Procedure

Article 17

The States and the institutions of the Community shall be represented before the Court by an agent appointed for each case; the agent may be assisted by an adviser or a lawyer entitled to practise before a court of a Member State.

Other parties must be represented by a lawyer entitled to practise before a court of a Member State.

Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Article to lawyers entitled to practise before a court of a Member State.

Article 18

The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties and to the institutions of the Community whose decisions are in dispute of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of agents, advisers and lawyers entitled to practise before a court of a Member State and of the submissions of the Advocate-General, as well as the hearing, if any, of witnesses and experts.

Article 19

A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party against whom the application is made, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article 148 of this Treaty, by documentary evidence of the date on which an institution was, in accordance with that Article, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

Article 20

A case governed by Article 18 of this Treaty shall be brought before the Court by an appeal addressed to the Registrar. The appeal shall contain the name and permanent address of the applicant and the description of the signatory, a reference to the decision against which the appeal is brought, the names of the respondents, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the appeal is based.

The appeal shall be accompanied by a certified copy of the decision of the Arbitration Committee which is contested.

If the Court rejects the appeal, the decision of the Arbitration Committee shall become final.

If the Court annuls the decision of the Arbitration Committee, the matter may be re-opened, where appropriate, on the initiative of one of the parties in the case, before the Arbitration Committee. The latter shall conform to any decisions on points of law given by the Court.

Article 21

In the cases governed by Article 150 of this Treaty, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and also to the Council if the act the validity or interpretation of which is in dispute originates from the Council.

Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the Council, shall be entitled to submit statements of case or written observations to the Court.

Article 22

The Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

The Court may also require the Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 23

The Court may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of giving an expert opinion.

Article 24

Witnesses may be heard under conditions laid down in the Rules of Procedure.

Article 25

With respect to defaulting witnesses the Court shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

Article 26

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

Article 27

The Court may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Article 28

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court, the Member State concerned shall prosecute the offender before its competent court.

Article 29

The hearing in court shall be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

Article 30

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court only through their representatives.

Article 31

Minutes shall be made of each hearing and signed by the President and the Registrar.

Article 32

The case list shall be established by the President.

Article 33

The deliberations of the Court shall be and shall remain secret.

Article 34

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 35

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

Article 36

The Court shall adjudicate upon costs.

Article 37

The President of the Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Article 157 of this Treaty, or to prescribe interim measures in pursuance of Article 158, or to suspend enforcement in accordance with the last paragraph of Article 164.

Should the President be prevented from attending, his place shall be taken by another Judge under conditions laid down in the Rules of Procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Article 38

Member States and institutions of the Community may intervene in cases before the Court.

The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Community or between Member States and institutions of the Community.

Submissions made in an application to intervene shall be limited to supporting the submissions of one of the parties.

Article 39

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

Article 40

Member States, institutions of the Community and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

Article 41

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party or any institution of the Community establishing an interest therein.

Article 42

An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact,

recognizing that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

Article 43

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

Article 44

Proceedings against the Community in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community. In the latter event the proceedings must be instituted within the period of two months provided for in Article 146; the provisions of the second paragraph of Article 148 shall apply where appropriate.

Title IV –The Court of First Instance of the European Communities

Article 45

Articles 2 to 8 and 13 to 16 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

Article 46

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9, 10 and 13 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials

and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

Article 47

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Articles 20 and 21.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 140a.4 of this Treaty.

Notwithstanding the fourth paragraph of Article 18, the Advocate-General may make his reasoned submissions in writing.

Article 48

Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule

on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

Article 49

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

Article 50

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Community and its servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Article 51

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Article 157 or 158 or

the third paragraph of Article 164 of this Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 37 of this Statute.

Article 52

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 53

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

Article 54

Without prejudice to Articles 157 and 158 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 159 of this Treaty, decisions of the Court of First Instance declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 50 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 157 and 158 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

Article 55

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which did not intervene in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.

Article 56

The Rules of Procedure of the Court provided for in Article 160 of this Treaty shall contain, apart from the provisions contemplated by this Statute, any other provisions necessary for applying and, where required, supplementing it.

Article 57

The Council may, acting unanimously, make such further adjustments to the provisions of this Statute as may be required by reason of measures taken by the Council in accordance with the last paragraph of Article 137 of this Treaty.

Article 58

Immediately after the oath has been taken, the President of the Council shall proceed to choose by lot the Judges and Advocates-General whose terms of office are to expire at the end of the first three years in accordance with the second and third paragraphs of Article 139 of this Treaty.

Statute of the Court of Justice of the European Coal and Steel Community

Protocol on the Statute of the Court of Justice, signed at Paris on 18 April 1951.

Article 1

The Court of Justice established by Article 7 of the Treaty shall be constituted and shall function in accordance with the provisions of this Treaty and of this Statute.

Title I – Judges

Oath of office

Article 2

Before taking up his duties each Judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Privileges and immunities

Article 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

The Court, sitting in plenary session, may waive the immunity.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

Disqualifications

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council, acting by a two-thirds majority.

They may not acquire or retain, directly or indirectly, any interest in any business related to coal and steel during their term of office and for three years after ceasing to hold office.

Remuneration

Article 5

Repealed by Article 8.3.a of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed at Brussels on 8 April 1965.

Termination of appointment

Article 6

Apart from normal replacement, the duties of a Judge shall end on his death or resignation.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

Save where Article 7 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 7

A Judge may be deprived of his office only if, in the unanimous opinion of the other Judges, he no longer fulfils the requisite conditions.

The President of the Council, the President of the Commission and the President of the European Parliament shall be notified thereof by the Registrar.

A vacancy shall arise on the bench upon this notification.

Article 8

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

Title II – Organisation

Article 9

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court has its seat.

Article 10

The Court shall be assisted by two Advocates-General and a Registrar.

Advocates-General

Article 11

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, oral and reasoned submissions on cases brought before the Court, in order to assist the Court in the performance of the task assigned to it in Article 31 of this Treaty.

Article 12

The Advocates-General shall be appointed for a term of six years in the same manner as the Judges. Every three years there shall be a partial replacement. The Advocate-General whose term of office is to expire at the end of the first three years shall be chosen by lot. The provisions of the third and fourth paragraphs of Article 32 of this Treaty* and the provisions of Article 6 of this Statute shall apply to the Advocates-General.

*Since the new version of Article 32 of the Treaty establishing the Coal and Steel Community this reference is no longer accurate; see Articles 32a and 32b of this Treaty.

Article 13

The provisions of Articles 2 to 5 and of Article 8 shall apply to the Advocates-General.

An Advocate-General may be deprived of his office only if he no longer fulfils the requisite conditions. The decision shall be taken by the Council, acting unanimously, after the Court has delivered its opinion.

Registrar

Article 14

The Court shall appoint its Registrar and lay down the rules governing his service, account being taken of the provisions of Article 15. The Registrar shall take an oath before the Court to perform his duties impartially and conscientiously and preserve the secrecy of the deliberations of the Court.

Article 15

Repealed by Article 8.3.a of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed at Brussels on 8 April 1965.

Staff of the Court

Article 16

1. Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.
2. On a proposal from the Court, the Council may, acting unanimously, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Functioning of the Court

Article 17

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Composition of the Court

Article 18

The Court shall sit in plenary session. It may, however, form chambers, each consisting of three, five or seven Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purpose.

Decisions of the Court shall be valid only when an uneven number of its members is sitting in the deliberations. Decisions of the full Court shall be valid if nine members are sitting. Decisions of the chambers consisting of three or five Judges shall be valid only if three Judges are sitting. Decisions of the chambers consisting of seven Judges shall be valid only if five Judges are sitting. In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

Actions brought by States or by the Council shall in all cases be tried in plenary session.

Special rules

Article 19

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or on which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court.

A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

Title III – Procedure

Representation of and assistance to the parties

Article 20

The States and the institutions of the Community shall be represented before the Court by an agent appointed for each case; the agent may be assisted by a lawyer entitled to practise before a court of a Member State.

Undertakings and all other natural or legal persons must be assisted by a lawyer entitled to practise before a court of a Member State.

Such agents and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties under conditions laid down in rules drawn up by the Court and submitted for the approval of the Council, acting unanimously.

As regards such lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in those rules.

University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Article to lawyers entitled to practise before a court of a Member State.

Stages of procedure

Article 21

The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties and to the institutions of the Community whose decisions are in dispute of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of witnesses, experts, agents, and lawyers entitled to practise before a court of a Member State and of the submissions of the Advocate-General.

Applications

Article 22

A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the name and address of the party and the description of the signatory, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the application is based.

The application shall be accompanied, where appropriate, by the decision the annulment of which is sought or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request was lodged. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

Transmission of documents

Article 23

Where proceedings are instituted against a decision of one of the institutions of the Community, that institution shall transmit to the Court all the documents relating to the case before the Court.

Preparatory inquiries

Article 24

The Court may require the parties, their representatives or agents or the governments of the Member States to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

Article 25

The Court may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of holding an inquiry or giving an expert opinion; to this end it may compile a list of individuals or bodies approved as experts.

Hearing to be public**Article 26**

The hearing in court shall be public, unless the Court decides otherwise for serious reasons.

Minutes**Article 27**

Minutes shall be made of each hearing and signed by the President and the Registrar.

Hearings**Article 28**

The case list shall be established by the President.

Witnesses may be heard under conditions laid down in the Rules of Procedure. They may be heard on oath.

During the hearings the Court may also examine experts, persons entrusted with holding an inquiry, and the parties themselves. The latter, however, may address the Court only through their representatives or their lawyers.

Where it is established that a witness or expert has concealed facts or falsified evidence on any matter on which he has testified or been examined by the Court, the Court is empowered to report the misconduct to the Minister for Justice of the State of which the witness or expert is a national, in order that he may be subjected to the relevant penal provisions of the national law.

With respect to defaulting witnesses the Court shall have the powers generally granted to courts and tribunals, under conditions laid down in rules drawn up by the Court and submitted for the approval of the Council, acting unanimously.

Secrecy of the deliberations of the Court**Article 29**

The deliberations of the Court shall be and shall remain secret.

Judgments**Article 30**

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 31

Judgments shall be signed by the President, the Judge acting as Rapporteur and the Registrar. They shall be read in open court.

Costs**Article 32**

The Court shall adjudicate upon costs.

Summary procedure**Article 33**

The President of the Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in the second paragraph of Article 39 of this Treaty, or to prescribe interim measures in pursuance of the last paragraph of Article 39, or to suspend enforcement in accordance with the third paragraph of Article 92.

Should the President be prevented from attending, his place shall be taken by another Judge under conditions laid down in the rules provided for in Article 18 of this Statute.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Intervention

Article 34

Natural or legal persons establishing an interest in the result of any case submitted to the Court may intervene in that case.

Submissions made in an application to intervene shall be limited to supporting or requesting the rejection of the submissions of one of the parties.

Judgment by default

Article 35

Where the defending party in proceedings in which the Court has unlimited jurisdiction, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

Third-party proceedings

Article 36

Natural or legal persons and the institutions of the Community may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard.

Interpretation

Article 37

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party or any institution of the Community establishing an interest therein.

Revision of a judgment

Article 38

An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognizing that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

Time-limits

Article 39

The proceedings provided for in Articles 36 and 37 of this Treaty must be instituted within the time-limit of one month provided for in the last paragraph of Article 33.

Periods of grace based on considerations of distance shall be laid down in the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

Periods of limitation

Article 40

Proceedings provided for in the first two paragraphs of Article 40 of this Treaty shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community. In the latter event the proceedings must be instituted within the time-limit of one month provided for in the last paragraph of Article 33; the provisions of the last paragraph of Article 35 shall apply where appropriate.

Special rules relating to disputes between Member States

Article 41

Where a dispute between Member States is brought before the Court under Article 89 of this Treaty, the other Member States shall be notified forthwith by the Registrar of the subject-matter of the dispute.

Each Member State shall have the right to intervene in the proceedings.

The disputes referred to in this Article must be dealt with in plenary session.

Article 42

If a State intervenes in a case before the Court as provided for in the preceding Article, the interpretation contained in the judgment shall be binding upon the State.

Proceedings by third parties

Article 43

Decisions taken by the Commission under Article 63.2 of this Treaty must be notified to the purchaser and to the undertakings concerned; if the decision concerns all or a large number of undertakings, publication may be substituted for individual notification.

Appeals may be brought, under Article 36 of this Treaty, by any person on whom a periodic penalty payment has been imposed under the fourth subparagraph of Article 66.5.

Title IV –The Court of First Instance of the European Communities

Rules concerning the Members of the Court of First Instance and its organisation

Article 44

Articles 2, 3, 4, 6 to 9, the first paragraph of Article 13, Article 17, the second paragraph of Article 18 and Article 19 of this Statute shall apply to the Court of First Instance and its Members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 7 shall be adopted by that Court after hearing the Court of First Instance.

Registrar and staff

Article 45

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9 and 14 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

Procedure before the Court of First Instance

Article 46

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Articles 41 and 42.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 32d.4 of this Treaty.

Notwithstanding the fourth paragraph of Article 21 of this Statute, the Advocate-General may make his reasoned submissions in writing.

Article 47

Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise,

where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

Article 48

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only, or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

Appeals to the Court of Justice

Article 49

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only, or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Community and its servants, an appeal may also be brought by Member States and

Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Article 50

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to the second or third paragraphs of Article 39 or the third paragraph of Article 92 of the Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 33 of this Statute.

Article 51

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Procedure before the Court

Article 52

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

Suspensory effect**Article 53**

Without prejudice to the second and third paragraphs of Article 39 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 44 of this Treaty, decisions of the Court of First Instance declaring a general decision or general recommendation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 49 of this Statute, or if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice pursuant to the second and third paragraphs of Article 39 of this Treaty, for the suspension of the effects of the act which has been declared void or for the prescription of any other interim measure.

Decision of the Court on the appeal**Article 54**

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which did not intervene in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.

Rules of procedure**Article 55**

The Court of Justice shall adopt its Rules of Procedure. These shall require the unanimous approval of the Council. The Rules of Procedure shall contain all the provisions necessary for applying and, where required, supplementing this Statute.

Transitional provision**Article 56**

Immediately after the oath has been taken, the President of the Council shall proceed to choose by lot the Judges and Advocates-General whose terms of office are to expire at the end of the first three years in accordance with Article 32 of this Treaty.