

# Austria

## Constitutional Court

### Federal Constitutional Law (*Bundes-Verfassungsgesetz B-VG*) - extracts -

#### Article 89

1. Save as otherwise provided by this Article, the courts are not entitled to examine the validity of duly published laws, ordinances, and treaties.
2. Should a court have scruples against the application of an ordinance on the ground of it being contrary to law, it shall file an application with the Constitutional Court for rescission of this ordinance. Should the Supreme Court or a court of second instance competent to give judgment have scruples against the application of a law on the ground of its being unconstitutional, it shall file an application with the Constitutional Court for rescission of this law.
3. If the legal regulation to be applied has already ceased to be in force, the court's application to the Constitutional Court must request a decision that the legal regulation was contrary to law or unconstitutional.
4. Paragraph 2 and paragraph 3 above apply analogously to treaties as provided in Article 140a.
5. Federal law shall determine what effects an application pursuant to paragraph 2, paragraph 3, or paragraph 4 above has on the pending legal proceedings.

#### Article 119a

1. The *Bund* and the *Land* exercise the right of supervision over a *Gemeinde* to the purpose that it does not infringe laws and ordinances in dealing with its own sphere of competence, in particular does not overstep its sphere of competence, and fulfils the duties legally devolving upon it.
2. The *Land* has furthermore the right to examine the financial administration of a *Gemeinde* with respect to its thrift, efficiency, and expediency. The result of the examination shall be conveyed to the *Bürgermeister* for submission to the *Gemeinderat*.

The *Bürgermeister* shall within three months inform the supervisory authority of the measures taken by reason of the result of the check.

3. In so far as a *Gemeinde*'s own sphere of competence comprises matters deriving from the sphere of *Bund* execution, the right of supervision and its legislative regulation lie with the *Bund*, in other respects with the *Länder*; the right of supervision shall be exercised by the authorities of the ordinary public administration.
4. The supervisory authority is entitled to inform itself about every kind of *Gemeinde* business. The *Gemeinde* is bound to impart the information demanded in individual cases by the supervisory authority and to allow examination to be conducted on the spot.
5. Whoever alleges infringement of his rights through the ruling of a *Gemeinde* authority in matters pertaining to its own sphere of competence can, after exhaustion of all channels of appeal (Article 118, paragraph 4), within two weeks after issue of the ruling make representations against it to the supervisory authority. The latter shall rescind the ruling, if the rights of the intervener have been infringed by it, and refer the matter for a fresh decision to the *Gemeinde*. For towns with their own charter the competent legislature (paragraph 3) can direct that representation to the supervisory authority does not take place.
6. The *Gemeinde* shall without delay advise the supervisory authority of ordinances issued in its own sphere of competence. The supervisory authority shall after a hearing of the *Gemeinde* rescind ordinances which are contrary to law and simultaneously advise the *Gemeinde* of the reasons.
7. In so far as the competent legislature (paragraph 3) contemplates the dissolution of the *Gemeinderat* as a supervisory expedient, this measure rests with the *Land* Government in exercise of the *Land*'s right of supervision, with the *Landeshauptmann* in exercise of the *Bund*'s right of supervision. The admissibility of effecting a substitution shall be confined to cases of absolute necessity. Supervisory expedients shall be applied with greatest possible consideration for third parties' acquired rights.

8. Individual measures to be taken by a *Gemeinde* in its own sphere of competence but which to a special degree affect extra-local interests, particularly such as have a distinct financial bearing, can be tied by the competent legislature (paragraph 3) to a sanction on the part of the supervisory authority. Only a state of affairs which unequivocally justifies the preference of extra-local interests may come into consideration as a reason for withholding the sanction.

9. The *Gemeinde* has the status of a party to supervisory authority proceedings; it is entitled to lodge complaint with the Administrative Court (Articles 131 and 132) and with the Constitutional Court (Article 144) against the supervisory authority.

10. The provisions of this Article shall find corresponding application to supervision of *Gemeinde* associations in so far as these perform matters pertaining to a *Gemeinde's* own sphere of competence.

#### Article 126a

Should divergences of opinion arise between the *Rechnungshof* and a legal entity (Article 121, paragraph 1) on interpretation of the legal provisions which prescribe the competence of the *Rechnungshof*, the Constitutional Court decides the issue upon application by the Federal Government or a *Land* Government or the *Rechnungshof*. All legal entities must in accordance with the legal opinion of the Constitutional Court render possible a scrutiny by the *Rechnungshof*. The enforcement of this obligation will be implemented by the ordinary courts. The procedure will be prescribed by Federal law.

#### Chapter VI

#### Constitutional and the Administration Guarantees

#### Article 135

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4. Article 89 applies analogously to the Administrative Court.

#### C – The Constitutional Court

#### Article 137

The Constitutional Court pronounces on pecuniary claims on the *Bund*, the *Länder*, the *Bezirke*, the *Gemeinden* and *Gemeinde* associations which cannot be settled by ordinary legal process nor be liquidated by the ruling of an administrative authority.

#### Article 138

1. The Constitutional Court furthermore pronounces on conflicts of competence

a. between courts and administrative authorities;

b. between the Administrative Court and all other courts, in particular too between the Administrative Court and the Constitutional Court itself, as well as between the ordinary courts and other courts;

c. between the *Länder* amongst themselves as well as between a *Land* and the *Bund*.

2. The Constitutional Court furthermore determines at the application of the Federal Government or a *Land* Government whether an act of legislation or execution falls into the competence of the *Bund* or the *Länder*.

#### Article 138a

1. The Constitutional Court establishes on application by the Federal Government or a *Land* Government concerned whether an agreement within the meaning of Article 15a, paragraph 1 exists and whether the obligations arising from such an agreement, save in so far as it is a matter of pecuniary claims, have been fulfilled.

2. If it stipulated in an agreement within the meaning of Article 15a, paragraph 2, the Court also establishes on application by a *Land* Government concerned whether such an agreement exists and whether the obligations arising from such an agreement, save in so far as it is a matter of pecuniary claims, have been fulfilled.

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Article 139

1. The Constitutional Court pronounces on application by a court or an autonomous administrative tribunal whether ordinances issued by a Federal or *Land* authority are contrary to law, but *ex officio* in so far as the Court would have to apply such an ordinance in a pending suit. It also pronounces on application by the Federal Government whether ordinances issued by a *Land* authority are contrary to law and likewise on application by the *Gemeinde* concerned whether ordinances issued by a *Gemeinde* supervisory authority in accordance with Article 119a, paragraph 6 are contrary to law. It pronounces furthermore whether ordinances are contrary to law when an application alleges direct infringement of personal rights through such illegality in so far as the ordinance has become operative for the applicant without the delivery of a judicial decision or the issue of a ruling; Article 89, paragraph 3 applies analogously to such applications.
  2. If the litigant in a suit lodged with the Constitutional Court, entailing application of an ordinance by the Constitutional Court, receives satisfaction, the proceedings initiated to examine the ordinance's legality shall nevertheless continue.
  3. The Constitutional Court may rescind an ordinance as contrary to law only to the extent that its rescission was expressly submitted or the Court would have had to apply it in the pending suit. If the Court reaches the conclusion that the whole ordinance
    - a. has no foundation in law,
    - b. was issued by an authority without competence in the matter, or
    - c. was published in a manner contrary to law, it shall rescind the whole ordinance as illegal. This does not hold good if rescission of the whole ordinance manifestly runs contrary to the legitimate interests of the litigant who has filed an application pursuant to the last sentence in paragraph 1 above or whose suit has been the occasion for the initiation of *ex officio* examination proceedings into the ordinance.
  4. If the ordinance has at the time of the Constitutional Court's delivery of its judgment already been repealed and the proceedings were initiated *ex officio* or the application was filed by a court or an applicant alleging direct infringement of his personal rights through the ordinance's illegality the Court must pronounce whether the ordinance contravened the law. Paragraph 3 above applies analogously.
  5. The judgment by the Constitutional Court which rescinds an ordinance as contrary to law imposes on the highest competent authority in the *Bund* or *Land* the obligation of publish the rescission without delay. This applies analogously in the case of a pronouncement pursuant to paragraph 4 above. The rescission enters into force on the day of publication if the Court does not set a deadline, which may not exceed six months or if legal dispositions are necessary one year, for the rescission.
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6.If an ordinance has been rescinded on the score of illegality or if the Constitutional Court has pursuant to paragraph 4 above pronounced an ordinance to be contrary to law, all courts and administrative authorities are bound by the Court's decision, the ordinance shall however continue to apply to the circumstances effected before the rescission, the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to paragraph 5 above, the ordinance shall apply to all the circumstances effected, the case in point excepted, till the expiry of this deadline.

#### Article 139a

The Constitutional Court pronounces on application by a court whether in the republication of a legal norm the limits of the authority conferred were transcended; *ex officio*, in so far as the republication of the legal norm constitutes the prerequisite to a judgment by the Court itself; also on application by a *Land* Government in the case of legal norms republished by the *Bund*, likewise on application by the Federal Government in the case of legal norms republished by a *Land*. It pronounces furthermore whether in the republication of a legal norm the limits of the authority conferred were transcended when an application alleges direct infringement of personal rights in so far as the republished legal norm has become operative against the applicant without the delivery of a judicial decision or the issue of a ruling. Article 89, paragraphs 2, 3 and 5 as well as Article 139, paragraphs 2 to 6 shall apply analogously.

#### Article 140

- 1.The Constitutional Court pronounces on application by the Administrative Court, the Supreme Court, a competent appellate court or an autonomous administrative tribunal whether a Federal or *Land* law is unconstitutional, but *ex officio* in so far as the Court would have to apply such a law in a pending suit. It pronounces also on application by the Federal Government whether *Land* laws are unconstitutional and likewise on application by a *Land* Government, by one third of the *Nationalrat's* members, or by one third of the *Bundesrat's* members whether Federal laws are unconstitutional. A *Land* constitutional law can provide that such a right of application as regards the unconstitutionality of *Land* laws lies with one third of the *Landtag's* members. The Court pronounces furthermore whether laws are unconstitutional when an application alleges direct infringement of personal rights through such unconstitutionality in so far as the law has become operative for the applicant without the delivery of a judicial decision or the issue of a ruling; Article 89, paragraph 3 applies analogously to such applications.
- 2.If the litigant in a suit lodged with the Constitutional Court, entailing application of a law by the Court, receives satisfaction, the proceedings initiated to examine the law's constitutionality shall nevertheless continue.
- 3.The Constitutional Court may rescind a law as unconstitutional only to the extent that its rescission was expressly submitted or the Court would have to apply the law in the suit pending with it. If however the Court concludes that the whole law was enacted by a legislative authority unqualified in accordance with the allocation of competence or published in an unconstitutional manner, it shall rescind the whole law as unconstitutional. This does not hold good if rescission of the whole law manifestly runs contrary to the legitimate interests of the litigant who has filed an application pursuant to the last sentence in paragraph 1 above or whose suit has been the occasion for the initiation of *ex officio* examination proceedings into the law.
- 4.If the law has at the time of the Constitutional Court's delivery of its judgment already been repealed and the proceedings were initiated *ex officio* or the

application filed by a court or an applicant alleging direct infringement of personal rights through the law's unconstitutionality, the Court must pronounce whether the law was unconstitutional. Paragraph 3 above applies analogously.

5. The judgment by the Constitutional Court which rescinds a law as unconstitutional imposes on the Federal Chancellor or the competent *Landeshauptmann* the obligation to publish the rescission without delay. This applies analogously in the case of a pronouncement pursuant to paragraph 4 above. The rescission enters into force on the day of publication if the Court does not set a deadline for the rescission. This deadline may not exceed eighteen months.
6. If a law is rescinded as unconstitutional by a judgment of the Constitutional Court, the legal provisions rescinded by the law which the Court has pronounced unconstitutional become effective again unless the judgment pronounces otherwise, on the day of entry into force of the rescission. The publication on the rescission of the law shall also announce whether and which legal provisions again enter into force.
7. If a law has been rescinded on the score of unconstitutionality or if the Constitutional Court has pursuant to paragraph 4 above pronounced a law to be unconstitutional, all courts and administrative authorities are bound by the Court's decision. The law shall however continue to apply to the circumstances effected before the rescission the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to paragraph 5 above, the law shall apply to all the circumstances effected, the case in point excepted till the expiry of this deadline.

#### Article 140a

1. The Constitutional Court pronounces whether treaties are contrary to law. Article 140 shall apply to treaties concluded with the sanction of the *Nationalrat* pursuant to Article 50 and to law-modifying or law-amending treaties pursuant to Article 16, paragraph 1, Article 139 to all other treaties with the proviso that the authorities competent for their execution shall from the day of the judgment's publication not apply those which the Court establishes as being contrary to law or unconstitutional unless it determines a deadline prior to which such a treaty shall continue to be applied. The deadline may not in the case of treaties specified in Article 50 and of law-modifying or law-amending treaties pursuant to Article 16, paragraph 1 exceed two years, in the case of all others one year.
2. If the Constitutional Court establishes that a treaty whose fulfilment requires the issue of laws or ordinances is contrary to law or unconstitutional, the effect of the sanction or the directive for implementation of the treaty by ordinance expires.

#### Article 141

1. The Constitutional Court pronounces upon
  - a. a challenge to the election of the Federal President and elections to the popular representative bodies, the European Parliament or the constituent authorities (representative bodies) of statutory professional associations;
  - b. challenges to elections to a *Land* Government and to *Gemeinde* authorities entrusted with executive power;
  - c. application by a popular representative body for a loss of seat by one of its members; application by at least eleven members of the European Parliament from the Republic of Austria for a loss of seat by a member from the Republic of Austria;
  - d. application by a constituent authority (representative body) of a statutory professional association for a loss of seat by one of the members of such an authority;

e. the challenge, in so far as laws of the *Bund* or *Länder* governing elections provide for a loss of seat by the ruling of an administrative authority, and after all stages of legal remedy have been exhausted, to rulings whereby the loss of a seat in a popular representative body, in a *Gemeinde* authority entrusted with executive power or in a constituent authority (representative body) of a professional association has been enunciated.

The challenge (application) can be based on the alleged illegality of the electoral procedure or on a reason provided by law for the loss of membership in a popular representative body, in the European Parliament, in a *Gemeinde* authority entrusted with executive power, or in a constituent authority (representative body) of a statutory professional association. The Court shall allow an electoral challenge if the alleged illegality has been proved and was of influence on the election result. In the proceedings before the administrative authorities the popular representative body or statutory professional association has litigant status.

2. If a challenge pursuant to paragraph 1, sub-paragraph a above is allowed and it thereby becomes necessary to hold the election to a popular representative body, to the European Parliament or to a constituent authority of a statutory professional association in whole or in part again, the representative body's members concerned lose their seat at the time when it is assumed by those elected at the ballot which has to be held within a hundred days after delivery of the Constitutional Court's decision.

3. The premises for a decision by the Constitutional Court in challenges to the result of initiatives, plebiscites, or referenda will be prescribed by Federal law. How long, in view of the possibility of such a challenge, it is necessary to retard publication of the law about which a referendum has taken place, can also be laid down by Federal law.

#### Article 142

1. The Constitutional Court pronounces on suits which predicate the constitutional responsibility of the highest Federal and *Land* authorities for legal contraventions culpably ensuing from their official activity.

2. Suit can be brought:

a. against the Federal President, for contravention of the Federal Constitution: by a vote of the *Bundesversammlung*;

b. against members of the Federal Government and the authorities placed with regard to responsibility on an equal footing with them, for contravention of the law: by a vote of the *Nationalrat*;

c. against an Austrian representative in the Council for contravention of law in matters where legislation would pertain to the *Bund*: by a vote of the *Nationalrat*; for contravention of law in matters where legislation would pertain to the *Länder*: by identically worded votes of all the *Landtage*;

d. against members of a *Land* Government and the authorities placed by the present Law or the *Land* constitution with regard to responsibility on an equal footing with them, for contravention of the law: by a vote of the competent *Landtag*;

e. against a *Landeshauptmann*, his deputy (Article 105, paragraph 1) or a member of the *Land* Government (Article 103, paragraphs 2 and 3) for contravention of the law as well as for non-compliance with ordinances or other directives (instructions) of the *Bund* in matters pertaining to the indirect Federal administration, in the case of a member of the *Land* Government also with regard to instructions from the *Landeshauptmann* in these matters: by a vote of the Federal Government;

f. against the authorities of the Federal capital Vienna, in so far as within its autonomous sphere of competence they perform functions from the domain of the Federal executive power, for contravention of the law: by a vote of the Federal Government;

g. against a *Landeshauptmann* for non-compliance with an instruction pursuant to Article 14, paragraph 8: by a vote of the Federal Government;

h. against a president or executive president of a *Land* school board, for contravention of the law as well as for non-compliance with ordinances or

other directives (instructions) of the *Bund*: by a vote of the Federal Government;

i. against members of a *Land* Government for contravention of the law as well as for non-compliance with ordinances of the *Bund* in matters relating to Article 11, paragraph 1, sub-paragraph 7 as well as for obstruction of the powers pursuant to Article 11, paragraph 9: by a vote of the *Nationalrat* or the Federal Government.

3. If pursuant to paragraph 2, sub-paragraph e above the Federal Government brings a suit only against a *Landeshauptmann* or his deputy and it is shown that another member of the *Land* Government in accordance with Article 103, paragraph 2 concerned with matters pertaining to the indirect Federal administration is guilty of an offence within the meaning of paragraph 2, sub-paragraph e above, the Federal Government can at any time pending the passing of judgment widen its suit to include this member of the *Land* Government.

4. The condemnation by the Constitutional Court shall pronounce a forfeiture of office and, in particularly aggravating circumstances, also a temporary forfeiture of political rights. In the case of minor legal contraventions in the instances mentioned in paragraph 2, sub-paragraphs c, e, g and h above, the Court can confine itself to the statement that the law has been contravened. From forfeiture of the office of president of the *Land* school board ensue forfeiture of the office with which pursuant to Article 81a, paragraph 3, sub-paragraph b it is linked.

5. The Federal President can avail himself of the right vested in him in accordance with Article 65, paragraph 2, sub-paragraph c only on the request of the representative body or the representative bodies which voted for the filing of the suit, but if the Federal Government has voted for the filing of the suit only at its request, and in all cases only with the approval of the defendant.

#### Article 143

A suit can be brought against the persons mentioned in Article 142 also on the score of actions involving penal proceedings connected with the activity in office of the individual to be arraigned. In this case competence lies exclusively with the Constitutional Court; any investigation already pending in the ordinary criminal courts devolves upon it. The Court can in such cases, in addition to Article 142, paragraph 4, apply the provisions of the criminal law.

#### Article 144

1. The Constitutional Court pronounces on rulings by administrative authorities including the autonomous administrative tribunals in so far as the appellant alleges an infringement by the ruling of a constitutionally guaranteed right of the infringement of personal rights on the score of an illegal ordinance, an unconstitutional law, or an unlawful treaty. The complaint can only be filed after all other stages of legal remedy have been exhausted.

2. The Constitutional Court can before the proceedings decide to reject a hearing of a complaint if it has no reasonable prospect of success or if the decision cannot be expected to clarify a constitutional problem. The rejection of the hearing is inadmissible if the case at hand according to Article 133 is barred from the competence of the Administrative Court.

3. If the Constitutional Court finds that a right within the meaning of paragraph 1 above has not been infringed by the challenged ruling and if the case at hand is not in accordance with Article 133 barred from the competence of the Administrative Court, the Court shall on the request of the applicant transfer the complaint to the Administrative Court for decision whether the applicant sustained by the ruling the infringement of any other right. This applies analogously in the case of decisions in accordance with paragraph 2 above.

#### Article 145

The Constitutional Court pronounces judgment on contraventions of international law in accordance with the provisions of a special Federal law.

## Article 146

1. The enforcement of judgments pronounced by the Constitutional Court on claim made in accordance with Article 137 is implemented by the ordinary courts.
2. The enforcement of other judgments by the Constitutional Court is incumbent on the Federal President. Implementation shall in accordance with his instructions lie with the *Bund* or *Länder* authorities, including the Federal Army, appointed at his discretion for the purpose. The request to the Federal President for the enforcement of such judgments shall be made by the Constitutional Court. The afore-mentioned instructions by the Federal President require, if it is a matter of enforcements against the *Bund* or Federal authorities, no countersignature in accordance with Article 67.

## Article 147

1. The Constitutional Court consists of a President, a Vice-President, twelve additional members and six substitute members.
2. The President, the Vice-President, six additional members and three substitute members are appointed by the Federal President on the recommendation of the Federal Government, these members shall be selected from among judges, administrative officials, and professors holding a chair in law. The remaining six members and three substitute members are appointed by the Federal President on the basis of proposals submitted by the *Nationalrat* for three members and two substitute members and by the *Bundesrat* for three members and one substitute member. Three members and two substitute members must have their domicile outside the Federal capital, Vienna. Administrative officials who are appointed members of the Constitutional Court shall, in so far and for as long as they are not superannuated, be freed from all official duties.
3. The President, the Vice-President, and the other members and substitute members must have completed their studies in law and political science and for at least ten years have held a professional appointment which prescribes the completion of these studies.

4. The following cannot belong to the Constitutional Court: members of the Federal Government or a *Land* Government, furthermore members of the *Nationalrat*, the *Bundesrat*, or any other popular representative body; for members of these representative bodies who have been elected for a fixed term of legislation or office such incompatibility continues until the expiry of that term of legislation or office. Finally persons who are in the employ of or hold office in a political party cannot belong to the Constitutional Court.
5. Anyone who during the preceding four years has exercised one of the functions specified in paragraph 4 above cannot be appointed President or Vice-President of the Constitutional Court.
6. Article 87, paragraphs 1 and 2 and Article 88, paragraph 2 apply to members of the Constitutional Court; detailed provisions will be prescribed in the Federal law to be promulgated pursuant to Article 148. The 31 December of the year in which a judge completes his seventieth year of life is fixed as the age limit on whose attainment his term of office ends.
7. If a member or substitute member disregards without satisfactory excuse three successive requests to attend a hearing of the Constitutional Court, the Court shall formally establish the fact after listening to his testimony. Establishment of the fact entails loss of membership or the status of substitute membership.

## Article 148

Detailed provisions about the organization and procedure of the Constitutional Court will be prescribed by a special Federal law and in Standing Orders to be voted by the Constitutional Court on the basis of this.

## Chapter VII

### *Volksanwaltschaft*

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## Article 148e

On application by the *Volksanwaltschaft* the Constitutional Court pronounces on the illegality of ordinances by a Federal authority.



## Article 148f

If differences of opinion arise between the *Volksanwaltschaft* and the Federal Government or a Federal Minister on the interpretation of legal provisions, the Constitutional Court on application by the Federal Government or the *Volksanwaltschaft* decides the matter in closed proceedings.

## Article 148i

1. The *Länder* can by *Land* constitutional law declare the *Volksanwaltschaft* competent also in the sphere of the particular *Land's* administration. In such case Articles 148e and 148f shall apply analogously.

2. If *Länder* create agencies in the sphere of *Land* administration with tasks similar to the *Volksanwaltschaft*, *Land* constitutional law can prescribe a provision corresponding to Articles 148e and 148f above.

### Constitutional Law on Finance (*Finanzverfassungsgesetz*, F-VG)

Law of 21 January 1946 (BGBl. n° 45)

- extracts -

## Article 10

Where a decision to collect taxes adopted by a municipal council – which becomes applicable without the publication of a *Land* law – is unlawful, the Federal Finance Minister may order the *Land* Government to set it aside. If the law is not set aside within one month of receipt of that order, the Federal Finance Minister may ask the Constitutional Court to declare the decision void.

### Federal Law on the Constitutional Court (*Verfassungsgerichtshofgesetz* 1953, *VerfGG* 1953)

The original text of this Law was published in the Federal Law Gazette (*Bundesgesetzblatt*, hereinafter referred to as BGBl.) 1953/55. It has been amended on a number of occasions, the following being a list of the issues of the BGBl in which the various amendments were published.

- 1.BGBl. 11/1955
- 2.BGBl. 171/1956
- 3.BGBl. 18/1958
- 4.BGBl. 232/1961
- 5.BGBl. 185/1964
- 6.BGBl. 297/1964
- 7.BGBl. 1967/200
- 8.BGBl. 284/1968
- 9.BGBl. 275/1972
- 10.BGBl. 311/1976
- 11.BGBl. 234/1977
- 12.BGBl. 298/1977
- 13.BGBl. 670/1977
- 14.BGBl. 683/1978
- 15.BGBl. 545/1980
- 16.BGBl. 363/1981
- 17.BGBl. 51/1983
- 18.BGBl. 297/1984
- 19.BGBl. 732/1988
- 20.BGBl. 329/1990
- 21.BGBl. 334/1993
- 22.BGBl. 150/1993
- 23.BGBl. 43/1995
- 24.BGBl. 297/1995
- 25.BGBl. 469/1995
- 26.BGBl. 820/1995
- 27.BGBl. 201/1996
- 28.BGBl. 392/1996
- 29.BGBl. I 3/1997

## Section 1

#### Organisation of the Constitutional Court

## Article 1

1. The Constitutional Court shall be composed of a President, a Vice President, twelve other members and six substitute members.
2. The vacant positions of President, Vice-President or of any of the other members or substitute members of the Constitutional Court shall be advertised nationwide in the *Amtsblatt zur Wiener Zeitung* and in the *Land* newspapers which carry official announcements. In each case, the Chairman of the organ which, under Article 147, subparagraph 2 of the B-VG, must propose the appointment, shall be responsible for placing the advertisement.

## Article 2

1. The Constitutional Court shall elect permanent reporting judges from among its members for a term of three years. The Vice President may also act as a permanent reporting judge. Until such time as an election can be held the President of the Constitutional Court shall make appointments to fill any vacancies which may arise among permanent reporting judges.
2. The President or Vice President, at least two permanent reporting judges and at least two substitute members must reside in Vienna.

## Article 3

1. The President shall be responsible for directing the Constitutional Court; he shall preside over the hearings and deliberations.
2. Where the President is prevented from doing so the Vice President shall act in his place.
3. Where the Vice President is prevented from doing so the oldest member of the Constitutional Court present in Vienna shall act as President.
4. The provisions of subparagraphs 2 and 3 shall also apply where the post of President is vacant.
5. Apart from the situation envisaged in subparagraph 2, the President may also delegate the presidency to the Vice President for hearings and deliberations. The Vice President shall be authorised to take part, as voting member, in hearings where he does not act as President.

## Article 4

1. With effect from the first day of the month following his appointment, a member of the Constitutional Court shall be remunerated at the following rates:
  1. President: 166%
  2. Vice President: 138%
  3. Permanent reporting judges: 138%
  4. Other members: 83%

of the allowance to which a current member of the National Council would be entitled if he had sat as

a deputy in the National Council for a period equivalent to that served by the member of the Constitutional Court. Members of the Constitutional Court shall also be paid a monthly expense allowance at the rate of 25% of their monthly salary.

2. Where the Vice President also acts as a permanent reporting judge he shall not be paid for doing so.
3. Substitute members of the Constitutional Court shall be paid for each sitting which they attend at the rate of one tenth of the monthly salary of the members described in sub-subparagraph 1, sub-subparagraph 4 for each day of the sitting, calculated on the basis of the initial allowance; they shall also be paid an expense allowance at the rate of 25% of their fees.
4. In addition to their salaries, members of the Constitutional Court shall receive a special payment in accordance with the provisions of Articles 3, subparagraph 3 and 7, subparagraph 2 of the Law on salaries of 1956, BGBl No. 54.

## Article 5

1. Upon leaving office, the President, Vice President and other members of the Constitutional Court shall receive the salary payable to them during their final month of service, for the following periods: three months if they have been in office for at least six months, six months if they have been in office for at least one year, and one year if they have been in office for at least three years.
2. The salary provided for in subparagraph 1 shall not be payable where the person concerned leaves office for one of the reasons set out in Article 10, subparagraph 1, sub-subparagraph b or c.

## Article 5a

1. In addition to the salaries described in Article 4, members and substitute members who do not live in Vienna shall be paid travelling expenses and the expenses incurred in staying in Vienna for each sitting. These travelling and lodging expenses shall be assessed in accordance with a special regulation of the Federal Government.
2. The salaries paid in accordance with Articles 4 and 5 and subparagraph 1 of this Article shall be exempt from attachment.

## Article 5b

1. A monthly retirement pension shall be paid to members of the Constitutional Court, upon application, upon completion of their activities. The retirement pension shall be paid with effect from the first month following the application, but not before the expiry of the period during which the salary provided for in Article 5, subparagraph 1 is paid.
  2. The legal provisions on the retirement pensions of federal officials shall apply by analogy to the retirement pensions of members of the Constitutional Court; however, no entitlement to a pension shall arise where a member leaves office for one of the reasons set out in Article 10, subparagraph 1, sub-subparagraphs b and c. The pension's assessment basis shall be calculated on the basis of 80% of the salary determined in Article 4, subparagraph 1, sub-subparagraph 4 and shall be paid at the rate of 50% of the pension's assessment basis for a member who has completed eight years of service, plus 6% for each full additional year's service. Article 4, subparagraphs 3 to 5 of the Law on Pensions of 1965 shall apply save that:
    1. before the age of 60, removal from office under Article 10, subparagraph 1, sub-subparagraph a or d of this Law, shall take the place of retirement, and
    2. the pension's assessment basis shall be reduced by 0.1667% for every month between the time of removal from office and the end of the month in which the member reaches the age of 60.
- The pension drawn may not be less than 50% of the pension's assessment basis.

## Article 5c

1. A supplementary retirement pension shall be payable to members who have acted as President, Vice President or permanent reporting judge. For each complete year during which a member acted in one of these capacities the supplementary pension shall be 8% of the differential amount between the salary in Article 4, subparagraph 1, sub-subparagraphs 1 to 3 and the salary in Article 4, subparagraph 1, sub-subparagraph 4, up to a maximum of 80% of the (differential) amount corresponding to the highest office occupied. Any period during which a higher post was occupied which is not of sufficient duration to take effect shall be added to the period during which the next lower post was occupied. If the pension's assessment basis is reduced in accordance with Article 5b, subparagraph 2, last sentence, the maximum amount of the supplementary retirement pension specified in the second sentence shall be reduced by a corresponding amount.
2. Where a member has not yet become eligible for a retirement pension within the meaning of Article 5b but has occupied a post for the purposes of subparagraph 1 for at least three years, he shall, upon application, be paid the supplementary pension.

## Article 5d

Where a former President, Vice President or permanent reporting judge is entitled, in addition to the retirement pension or supplementary retirement pension described in Articles 5b and 5c, to a salary or retirement pension payable under a contract of employment with the Federation, a *Land*, an association of communes, a commune, another community governed by public law, a fund, a foundation or a public establishment which are administered by the organs of those legal entities, or with undertakings operated solely by those legal entities, or in which such legal entities have an interest, the supplementary pension can be paid only in so far as the total amount of the salary and the retirement pension, including the pension provided for in Article 5b and the supplementary pension provided for in Article 5c, does not exceed 150% in the case of the President or 165% in the case of the Vice President and the permanent reporting judges of the salary provided for in Article 4, subparagraph 1, sub-subparagraphs 1 to 3.

## Article 5e

1.A member may renounce his/her entitlement to the retirement pension (supplementary pension) referred to in Articles 5b and 5c. If such entitlement has not been renounced:

1.for the period of time up to 31 December 1995, 13%, and

2.as from 1 January 1996, 14.5%

or, in the event of partial renunciation or of special payments a commensurate sum, shall be deducted from the salary to which the member is entitled. Renunciation may not be revoked.

2.The figure "18.49%" shall replace the figure "14.5%" in subparagraph 1, sub-subparagraph 2, for the period of time between 1 January and the coming into force of the next amendment of the Federal Law on the Constitutional Court.

## Article 5f

Where a member of the Constitutional Court dies while in office or where a person in receipt of a retirement pension provided for in Article 5b dies, his survivors shall receive a death grant and an assistance benefit. As regards the death grant, the similar provisions applicable to federal employees governed by public law shall apply by analogy; and as regards the assistance benefit the provisions of Articles 5b to 5d shall apply by analogy, although the basis for defining the assistance benefit must be taken as 75% of salary for the widow of the President and 82.5% of salary for the widow of the Vice President or a permanent reporting judge.

## Article 5g

The provisions of Articles 5b to 5f shall also apply in the case of former members of the Constitutional Court and their survivors.

## Article 5h

The provisions concerning contributions in accordance with Article 13a of the Law on Pensions of 1965, BGBl. No. 340/1965 shall apply, save that:

1.The words "regular monthly payments in accordance with this Law" shall be replaced by the words

"retirement pension drawn in accordance with Articles 5b to 5g of this Law".

2.The contribution which must be paid for rights in accordance with subparagraph 1 shall be increased for the period between 1 January 1996 and the coming into force of the next amendment of the Federal Law on the Constitutional Court by 3.99% of the basis on which pensions are assessed.

## Article 5i (Constitutional provision)

1.The sum total of salaries under Article 4, entitlements within the meaning of Article 16a of the Law on Emoluments, BGBl. No. 273/1972, in the version in force at the time, and any other emoluments, pensions and remuneration, which a member of the Constitutional Court receives from a territorial entity, may not exceed a federal minister's maximum salary plus reimbursement of expenses.

2.Subparagraph 1 shall apply to former members of the Constitutional Court save that a retirement pension (supplementary retirement pension) in accordance with Articles 5b and 5c shall replace the payments referred to Article 4, and may amount to only the maximum salary of a federal minister rather than a federal minister's maximum salary plus reimbursement of expenses.

3.If the sum total of entitlements under subparagraph 1 or 2 exceeds the limits laid down therein, all of these entitlements shall be reduced in pursuance of the provisions of Article 16a, subparagraph 6 of the Law on Emoluments.

4.If a member or former member of the Constitutional Court is entitled to payments on account of service or previous service in an organ of the European Communities (Article 23c, subparagraph 1 of the B-VG), notwithstanding subparagraph 3, entitlements under subparagraph 1 or 2, shall be paid only to the extent that the sum total of entitlements to payment from these organs of the European Community (except for those which are expressly granted as reimbursement for expenses incurred through having a residence at a duty station) shall be below the maximum limits specified in subparagraph 1 or 2.

5.A member or former member of the Constitutional Court must immediately inform all authorities responsible for payment of all entitlements to

payment referred to in subparagraphs 1 to 4, as well as any modifications of them.

#### Article 6

1. The Vice President and all the other members of the Constitutional Court shall be summoned to attend each hearing of the Constitutional Court.
2. Where a member is prevented from attending, a substitute member shall be summoned to attend. It is also necessary to take into account, as far as possible, whether the member prevented from attending was appointed upon a proposal of the Federal Government, a proposal of the National Council or a proposal of the Federal Council. The same shall apply where a member's post has become vacant until it is again filled.

#### Article 7

1. There shall be a quorum when the President and at least eight voting members are present.
2. There shall be a quorum where the President and four voting members are present where the hearing concerns the following matters:
  - a. monetary claims against the Federation, the *Länder*, the districts, the communes and associations of communes, where these claims cannot be settled through normal judicial channels or by a decision of an administrative authority (Article 137 of the B-VG, in the version adopted in the Constitutional Law of 9 October 1946 on constitutional and administrative jurisdiction, BGBl. No. 211);
  - b. disputes as to jurisdiction between courts and administrative authorities (Article 138, subparagraph 1, sub-subparagraph a of the B-VG);
  - c. all cases which are resolved in private, with the exception of those in Article 10, subparagraphs 2 and 4;
  - d. upon application by a reporting judge and with the consent of the President where the Court is dealing with complaints (*Beschwerde*) in disputes in which the legal problem has already been sufficiently clarified by case-law.

#### Article 8

1. Before taking office, members of the Constitutional Court shall swear an oath to observe the Constitution and all the other laws of the Republic unflinchingly and to perform their duties scrupulously.
2. The President and Vice President shall take oath before the President of the Federation, the members and substitute members before the President of the Constitutional Court.
3. A religious oath may be taken in addition to the oaths mentioned in subparagraphs 1 and 2.

#### Article 9

The President or Vice President may be granted leave of absence by the President of the Federation. Members and substitute members of the Constitutional Court may be granted leave by the President of the Court.

#### Article 10

1. A member or substitute member may be removed from office by a judgment of the Constitutional Court:
  - a. where circumstances arise which, according to Article 147, subparagraph 4 of the B-VG, prevent the member (or substitute member) from continuing to belong to the Constitutional Court,
  - b. where the conditions of Article 147, subparagraph 7 of the B-VG are satisfied,
  - c. where the member (or substitute member) has shown, by his attitude in the course of or outside his duties, that he is unworthy of the care and confidence which his duties demand, or where he has committed a serious breach of his duty of professional discretion, or
  - d. where the member (or substitute member) is incapable of performing his duties because of physical or mental infirmity.
2. The procedure to remove a member (or substitute member) from office can be set in motion in the situations provided for in subparagraph 1, sub-subparagraphs a to c, only on the basis of a

judgment adopted by the Constitutional Court after the member (or substitute member) concerned has been heard by the President or a member appointed by the President for that purpose. The judgment shall be delivered in private after the opinion of the Public Attorney's Department has been received and it must state precisely what the charges are. The Constitutional Court may also decide in private that a member against whom the procedure has been set in motion is to be suspended temporarily. For the remainder of the procedure the provisions of Articles 15, 16 and 18 to 23 of the Law on disciplinary arrangements for the judiciary of 21 May 1868, RGBI. No. 46, shall apply. Where the breach of obligations results in an act which is punishable before the courts the provisions of Articles 33 and 34 of the above-mentioned law shall apply.

3. For the procedure to be followed in the case of subparagraph 1, sub-subparagraph d, the provisions of Article 52, subparagraph 2 and Article 53 of the above-mentioned law on disciplinary matters for the judiciary shall apply.

4. A judgment of the Constitutional Court within the meaning of subparagraph 1 can only be adopted by a majority of at least two thirds of members and it shall state that the member (or substitute member) has been removed from office. In the situation provided for in subparagraph 1, sub-subparagraph b, the Constitutional Court shall simply declare that the member (substitute member) failed without valid reason to attend three consecutive sittings of the Constitutional Court after being called upon to do so; a declaration to that effect shall constitute a decision that the member (or substitute member) in question has been removed from office.

#### Article 11

Where a post in the Constitutional Court is vacant the President shall inform the Federal Chancellor, who shall do what is necessary to secure the necessary proposal for the post (Article 147, subparagraph 2 of the B-VG).

#### Article 12

1. A member cannot be challenged in respect of a case which has reached the hearing stage before the Constitutional Court.

2. A member of the Constitutional Court shall be excluded from sitting:

a. in cases where a judge would be so excluded according to the laws on procedure concerned in this Law;

b. where in the case before the Constitutional Court he took part in delivering a decree of the administrative authority during the administrative proceedings.

3. Where the case pending before the Court concerns an electoral challenge, no member who has taken part in the decision of an electoral commission under challenge may take part in the hearing or the judgment.

4. Where the Court is reviewing the lawfulness of a regulation, no member of the Court who at the time when the regulation was adopted belonged to the Federal Government or the *Land* Government concerned shall sit. Where the Court is reviewing the constitutionality of legislation, no member who at the time when the law was adopted belonged to the legislature which adopted it shall sit. Similarly, where the Court is reviewing the constitutionality of Federal legislation, no member who at the time when the law was adopted belonged to the Federal Council shall sit.

5. Where the Court is reviewing the lawfulness of a regulation or the constitutionality of a law upon application by a court, no member who belongs to the court which submitted the application shall sit.

6. The Constitutional Court shall decide whether there is a ground for requiring a judge to withdraw from the case; its judgment shall be adopted in private.

#### Article 13

1. Cases concerning the administrative staff of the Constitutional Court and material problems shall be conducted under the responsibility of the Federal Chancellor.

2. The bench of judges consisting of the President, the Vice President and the permanent reporting judges of the Constitutional Court shall be heard before any appointment concerning the administrative staff is made.

## Article 13a

1. A documentation service (*Evidenzbüro*) shall be set up within the Constitutional Court. If the President appoints a member of the Constitutional Court to direct the *Evidenzbüro* he shall be treated in the same way as a permanent reporting judge for salary and retirement pension purposes.
2. The *Evidenzbüro* shall have particular responsibility for the summary inventory of judgments of the Constitutional Court and, where necessary, decisions of the other supreme courts, and for the associated documents.

## Article 14

1. The Constitutional Court shall determine its Internal Rules, which shall be published by the Federal Chancellor.
2. The Internal Rules shall specify what means – apart from the imposition of a fine in the case of a frivolous appeal and a contempt of the Court as provided for in Article 28 – shall be available to the President for the purpose of implementing the Internal Rules and, for the purpose of maintaining order, during the hearings and deliberations of the Constitutional Court.
3. At the end of each year the Constitutional Court shall draw up a report of its activities and experiences which it has acquired in that regard; this report shall be communicated to the Federal Chancellor.

## Section 2

## Procedure before the Constitutional Court

## 1 – General rules of procedure

## Article 15

1. Applications formulated in accordance with Articles 137 to 145 of the B-VG shall be submitted in writing.
2. The application shall contain a reference to the article of the B-VG which forms the basis of the application to the Constitutional Court, a statement of the facts which gave rise to the application and a precise claim.

## Article 16

The President shall assign each case to a permanent reporting judge. However, in exceptional cases he may appoint another member of the Constitutional Court to draw up a report.

## Article 17

1. Each application must be accompanied by sufficient certified copies of the application and all the appendices thereto to enable a copy to be served on each of the parties (authorities) required by law to be summoned to attend the hearing.
2. Actions in accordance with Article 37, applications in accordance with Articles 46, 48, 50, 57, 62 and 66 and complaints which are not covered by Article 24, subparagraph 1 shall be submitted by a duly authorised lawyer.
3. Applications submitted by one third of the members of the National Council, the Federal Council or a *Land* Parliament as provided for in Article 140, subparagraph 1 of the B-VG need not be submitted by a duly authorised lawyer.
4. All applications may contain legal arguments.

## Article 18

Applications which do not satisfy the requirements of Articles 15 and 17 or other requirements as to form laid down in this Law shall be returned by the reporting judge, in so far as these defects may be covered, to enable the applicant to correct them.

## Article 19

1. Judgments of the Constitutional Court, apart from those delivered under Article 10 and Article 36c, shall be delivered after an oral hearing in public to which the applicant, the opposing party and any parties which may be interested in any respect shall be summoned.
2. The judgments shall be published and reproduced on behalf of the Republic.
3. Upon application by the reporting judge, the Court, sitting in private without a fuller procedure being necessary and without an oral hearing, may

- 1.refuse to examine a complaint as provided for in Article 144, subparagraph 2 of the B-VG.
- 2.reject an application upon the following procedural grounds:
  - a.the Constitutional Court clearly has no jurisdiction to deal with it,
  - b.the statutory time-limit has not been observed,
  - c.the defect is not covered by the formal requirements,
  - d.the case has become definitive, and
  - e.the applicant is no entitled to bring the application.
- 3.discontinue the proceedings on the ground that the application has been withdrawn or that the claim has been satisfied (Article 86).
- 4.The Constitutional Court may dispense with an oral hearing where it is apparent from the written submissions of the parties to the constitutional proceedings and the documents submitted to the Constitutional Court that no further light can be expected to be shed on the dispute in an oral discussion. In addition, upon application by the reporting judge, the Court, sitting in private and without an oral hearing, may
  - 1.dismiss a complaint where there has clearly been no breach of a constitutionally guaranteed right;
  - 2.settle any dispute where the legal problem has been raised in sufficiently clear terms in a previous judgment of the Constitutional Court;
  - 3.allow a complaint which led to an judgment overruling an unlawful regulation, an unconstitutional law or an illegal treaty.

- 5.Save as provided for in this Law and those mentioned in Article 35, subparagraph 1, applications for the enforcement of judgments of the Constitutional Court in accordance with Article 146, subparagraph 2 of the B-VG and applications for costs where proceedings are discontinued shall also be determined by a decision delivered in private.

#### Article 20

- 1.Decisions whose sole purpose is to resolve procedural issues which arise during the preparatory proceedings and those solely concerned with preparations for the hearing shall be adopted by the reporting judge without any need for a decision by the Court.
- 2.In the preparations for the hearing the reporting judge may decide, *inter alia*, to hear the interested persons, witnesses and expert witnesses, to carry out an inspection, to secure production of official documents or files and to obtain information from the authorities. The authority shall be required to produce these files. Where the authority has not submitted these files, has not submitted a statement (pleadings in defence), or has submitted a declaration (pleadings in defence) but has not submitted the files adopted during the administrative proceedings, the Constitutional Court, after first expressly informing the authority of the consequences of its failure to do what is required of it, may deliver judgment on the basis of the applicant's claims.
- 3.When they submit the files to the Constitutional Court the authorities may indicate whether these files or any part thereof, and if so which, must be withheld in the public interest from the inspection of files by the parties concerned. Where the reporting judge considers that the authorities' views regarding the exclusion of files or part thereof go too far he must reach agreement with the authorities concerning his thoughts and in any event he may ask the Court to determine the matter in a decision adopted in a private sitting.
- 4.The reporting judge may conduct the preparatory inquiries himself or require the competent authorities to do so.
- 5.Any letters rogatory addressed to the administrative authorities shall be issued by the President.



6. The certified copies of the judgments, decisions and other orders resolving disputes adopted by the Constitutional Court shall be authenticated by the provisions appearing on the original being reproduced by the chancellery, bearing the words "certified authentic copy".

#### Article 21

1. Where a hearing has been fixed it can only be adjourned where there are important reasons for doing so. Where an application for the hearing to be adjourned is submitted, the consent of the opposing part shall neither be necessary nor sufficient.
2. The decision to adjourn the hearing shall be adopted by the Court, where it is in session, or by the President.

#### Article 22

The President shall determine the date of the hearing. It must be published beforehand by being fixed to the official notice board and published in the *Wiener Zeitung*.

#### Article 23

The fact that the parties summoned to attend are not present shall not prevent the hearing from being held or the decision from being adopted.

#### Article 24

1. The Federation, the *Länder*, the districts and the communes, and also the administrative authorities of these territorial entities, and likewise foundations, funds and public establishments administered by the organs of these entities shall be represented by their authorised organs.
2. Without prejudice to the requirement set out in Article 17, subparagraph 2, the parties may conduct their case before the Constitutional Court or be represented by a lawyer.
3. In proceedings before the Constitutional Court the Public Attorney's Department shall be authorised to represent the legal persons mentioned in Article 2, subparagraph 1, sub-subparagraphs 1 to 4 and subparagraph 2 of the Law on the Public Attorney's Department, StGBI. No. 172/1945, and to act to protect the public interest in accordance

with Article 1 (3) of the Law on the Public Attorney's Department where authorised by the competent administrative organs or the competent supervising authorities. This authority does not require any special supporting document (StGBI. no. 172/45, Article 7, subparagraph 1 in the version set out in BGBl. No. 154/1948, Article 1, sub-subparagraph 6).

4. A party who is represented by a lawyer or the Public Attorney's Department shall not be prevented from appearing and speaking on his own behalf.
5. The organs and representatives authorised to represent the parties shall provide evidence of their authority to act.
6. A regulation adopted by the Federal Government shall determine whether, and by which representatives, robes are to be worn or may be worn in hearings before the Constitutional Court.

#### Article 25

The hearing shall begin with the reporting judge's account. His report shall contain a statement of the facts as disclosed by the documents in the case file, the tenor of the applications submitted by the parties and the outcome of any inquiries which may have been conducted. The legal arguments set out in the written submissions shall then be read, but only where they were submitted by a party who has not appeared at the hearing or where one of the parties which has appeared requires that they be read.

#### Article 26

1. Where possible the judgment shall be delivered immediately after the oral hearing has been closed; it shall be pronounced orally and immediately with the essential grounds of the judgment. The parties need not be present when the judgment is pronounced.
2. Where the judgment cannot be delivered immediately after the oral hearing has been closed it shall be either pronounced orally in a special hearing in public, notice of which shall be served on the persons concerned immediately after the oral hearing has been closed, or communicated, in pursuance of the Constitutional Court's discretionary power, in a certified copy served on the parties.

## Article 27

Costs shall be awarded only where expressly provided for in this Law. Where costs are applied for there is no need to specify the costs properly incurred, in particular for the application (the complaint) and the hearings.

## Article 28

1. Where an attempt to restore order has been unsuccessful, the President of the Court may impose a financial penalty of up to 500 Schillings, or up to three days' imprisonment in default, on anyone who disrupts the proceedings in the Constitutional Court or whose conduct is contrary to proper standards. Where there are aggravating circumstances the person concerned may be sentenced to a fixed term of imprisonment independently of or in addition to the penalty imposed under the foregoing provision. The Constitutional Court may impose similar financial penalties on anyone who employs insulting terms in his written submissions. Anyone who is ordered to pay a financial penalty may also be prosecuted for the same facts.

2. The Constitutional Court may impose a fine for frivolous appeal up to 1,500 Schillings on anyone who submits an abusive application to the Constitutional Court or who makes false statements for the purpose of delaying the proceedings, or up to nine days' imprisonment where the person concerned is unable to pay.

3. The fines for contempt of the Court and frivolous appeal shall be paid to the Federation.

4. Orders of the President of the Constitutional Court and judgments of the Constitutional Court imposing financial penalties or fines for contempt of the Court and frivolous appeal shall be enforceable. They shall be allowed and enforced by the ordinary courts.

## Article 29

1. A memorandum of the hearing shall be drawn up; it shall contain the names of the President, the members of the Constitutional Court present, the parties appearing and their representatives and also the essential events of the hearing, especially the claims submitted by the parties.

2. A special memorandum of the deliberation in private and the vote shall be drawn up. Each memorandum shall be signed by the President and a recording clerk.

## Article 30

1. The deliberation and the vote shall not be held in public.

2. The deliberation shall begin with the submission of the opinion of the reporting judge, which shall serve as the basis for the discussion. The vote shall be taken following the closure of the discussion.

3. The President shall determine the order in which a vote shall be taken on the opinions submitted in the discussion. At the request of one of the voting members a decision on this point shall be taken by the Court. The voting members shall give their vote beginning with the oldest.

## Article 31

Decisions shall be delivered in accordance with an absolute majority of the votes expressed. The President shall not take part in the vote. However, where one of a number of different opinions expressed receives at least one half of the total number of votes the President shall cast his vote. If he supports the opinion which received half the votes that opinion shall be established as the decision. Where a difference between two equally-divided opinions concerns only the sum the President may determine an average sum.

Decisions adopted in accordance with Article 19, subparagraph 3, sub-subparagraph 1 and subparagraph 4, sub-subparagraph 1 shall be adopted unanimously.

## Article 32

1. Where none of the opinions receives the requisite majority of the votes expressed a fresh vote shall be taken.

2. Where the requisite majority of votes expressed is still not obtained a fresh vote shall be held, when the opinions submitted shall where necessary be broken down into a number of questions.

3. The decision adopted on one point shall serve as the basis for the deliberation and vote concerning all the subsequent points, in such a way that the voting members who did not support the previous decision can accept it as the basis and vote accordingly.

#### Article 33

Where proceedings have become time-barred they may be reinstated only for the reasons provided for in Article 144 of the B-VG. The Constitutional Court shall determine applications to this effect in a private sitting.

#### Article 34

The proceedings may be reopened only for the reasons provided for in Articles 137, 143 and 144 of the B-VG. The Constitutional Court shall sit in private to determine whether an application for the proceedings to be reopened is admissible.

#### Article 35

1. Save as otherwise provided in this Law, the requirements of the Code of Civil Procedure and the Introductory Law thereto shall apply by analogy.
2. More particularly, the requirements laid down therein concerning the calculation of time limits shall be applicable; any days allowed for applications to reach the Court by post shall be ignored for the purpose of calculating the time limits.

#### Article 36

For the purpose of enforcements which must be carried out on the basis of Article 146, subparagraph 1 of the B-VG, the judgment of the Constitutional Court shall constitute the ground for enforcement.

### 2 – Special provisions

A – Differences of opinion between the Court of Audit and a legal entity or the Ombudsman institution (*Volksanwaltschaft*) and the Federal Government, a federal minister or a *Land* government (Article 126a and 148f of the B-VG)

#### Article 36a

1. In the event of differences of opinion between the Court of Audit and a legal entity (Article 121, subparagraph 1 of the B-VG) about the interpretation of legal provisions governing the jurisdiction of the Court of Audit, the Court of Audit may apply for a judgment from the Constitutional Court, as may the Federal Government in matters of federal administration, or a *Land* government in matters concerned with the administration of a *Land*, communes and associations of communes. A difference of opinion exists when a legal entity expressly disputes the jurisdiction of the Court of Audit over an audit, or does not actually permit an audit, or when the Court of Audit refuses to carry out certain audit measures.
2. An application shall no longer be admissible if a year has elapsed since the difference of opinion arose.

#### Article 36b

If an application is made to the Constitutional Court, the official action in question of the Court of Audit shall be postponed or suspended until the Constitutional Court has issued a decision.

#### Article 36c

1. The parties to the proceedings shall be the applicant and the legal entity with which a difference of opinion has arisen as to the jurisdiction of the Court of Audit, or the Court of Audit, if the last sentence of Article 36a, subparagraph 1 applies.
2. If a difference of opinion has arisen with a legal entity which is not a territorial entity, the Constitutional Court must request a statement from those territorial entities which have a holding in the undertaking concerned, or in the case of another type of legal entity, from the territorial entities in the administrative area of which the legal entity in question is situated. They shall likewise be consulted as associated parties to the proceedings.

## Article 36d

A judgment which finds that the Court of Audit is competent to examine the management of a legal entity which is not a territorial entity, must also state that it is incumbent upon the legal entity to enable an audit to be carried out, on pain of enforcement.

## Article 36e

The judgment of the Constitutional Court shall be issued, if possible, within six months of receipt of the application and shall be served on the parties of the proceedings.

## Article 36f

- 1.No costs shall be awarded in proceedings concerning differences of opinion between a territorial entity and the Court of Audit.
- 2.In proceedings concerning differences of opinion between other legal entities and the Court of Audit, the unsuccessful party, or a party which has withdrawn its application before the oral hearing, may – upon application – be ordered to reimburse the costs of proceedings.

## Article 36g

Articles 36a to 36e shall apply to proceedings in which the Constitutional Court is called upon to settle a difference of opinion between the Ombudsman institution and the Federal Government, a federal minister or a *Land* government about the interpretation of the legal provisions governing the jurisdiction of the Ombudsman institution, save that the Ombudsman institution shall take the place of the Court of Audit and the jurisdiction of the Ombudsman institution shall replace the jurisdiction of the Court of Audit.

B –Monetary claims against the Federation, the *Länder*, districts, communes and associations of communes where such claims cannot be settled through normal judicial channels or by a decision of an administrative authority (Article 137 of the B-VG, in the version adopted in the Constitutional Law of 9 October 1946 on constitutional and administrative jurisdiction, BGBl. No. 211). (BGBl. No. 132/1947, Articles 1 to 4)

## Article 37

The claim shall be submitted in the form of an action (*Klage*) against the Federation, a *Land*, a district or a commune, which shall be the respondent.

## Article 38

The action may ask the Court to determine the existence or otherwise of a right or legal situation where the applicant has an interest in having the right or legal situation determined immediately.

## Article 39

- 1.A certified copy of the action and all the supporting documents shall be served on the respondent, which shall submit a statement in defence within a specified time-limit of not less than two weeks.
- 2.For the preparation of the hearing other arguments and counter-arguments may be filed where the parties so desire within a time-limit to be determined.
- 3.This time-limit can be extended only for important reasons; the consent of the opposing party shall neither be necessary nor sufficient.

## Article 40

When the statement in defence and any other requested arguments have been filed or the time-limits are exhausted, the President shall set a date for the hearing.

## Article 41

The unsuccessful party may be ordered to pay the costs where these have been applied for. Furthermore, where the applicant has withdrawn his action prior to the beginning of the public oral hearing and costs have already been borne by the respondent, the applicant may be ordered to pay the costs where these have been applied for.

C –Decisions on questions of jurisdiction (Article 138 of the B-VG)

a –in the cases of Article 138, subparagraph 1 of the B-VG (disputes as to jurisdiction)

## Article 42

1. An application for a settlement of a dispute as to jurisdiction which has arisen because a court and an administrative authority (Article 138, subparagraph 1, sub-subparagraph a of the B-VG) have claimed the power to decide the same case or have actually delivered a decision in that case (positive dispute as to jurisdiction) can be submitted only until such time as a final judgment on the merits of the case has been delivered.
2. The application shall be submitted by the highest competent administrative authorities of the Federation or a *Land* within four weeks following the end of the day on which they had official notice of the dispute as to jurisdiction.
3. Where this time-limit is not observed the court in question shall be deemed to have jurisdiction in the matter.
4. The applicant administrative authority shall immediately notify the court concerned that it has submitted the application.
5. This notification shall serve to suspend the proceedings pending until the Constitutional Court issued a judgment.

## Article 43

1. Where a dispute as to jurisdiction has arisen because the Administrative Court and another court, or the Administrative Court and the Constitutional Court, or an ordinary court and another court (Article 138, subparagraph 1, sub-subparagraph b of the B-VG) have claimed jurisdiction to determine the same case (positive dispute as to jurisdiction), the Constitutional Court shall not deliver a judgment where a final judgment on the merits of the case has been delivered by one of the courts mentioned.
2. Where a court has already delivered a final judgment on the merits of the case that court alone has jurisdiction.
3. Where no final judgment on the merits of the case has yet been delivered the proceedings to determine jurisdiction shall be commenced as soon as the Constitutional Court has notice of that dispute as to jurisdiction, whether because it has been notified by one of the courts mentioned in subparagraph 1 or one of the administrative authorities or parties concerned by the case or because of the tenor of the files in its possession.
4. The authorities mentioned in subparagraph 3 shall be required to notify the Constitutional Court of any dispute as to jurisdiction which may arise.
5. Where proceedings are commenced before the Constitutional Court the proceedings before the court concerned shall be suspended until a judgment settling the dispute as to jurisdiction has been issued.

## Article 44

While the proceedings are suspended the competent court may order the suspension of an enforcement order or a temporary protective enforcement or an interim order or its suspension according to the legislative provisions governing enforcement.

## Article 45

The parties concerned may be summoned to attend the hearing. Whether or not the administrative authorities concerned or the courts appear shall be left to their discretion.

## Article 46

1. Where a dispute as to jurisdiction has arisen because a court and an administrative authority, or the Administrative Court and another court, or the Administrative Court and the Constitutional Court, or an ordinary court and another court (Article 138, subparagraph 1, sub-subparagraphs a and b of the B-VG) have declined jurisdiction in a particular case (negative dispute as to jurisdiction) an application for the dispute as to jurisdiction to be settled can only be submitted by the party concerned.
2. The party concerned shall be summoned to attend the hearing. Whether or not the administrative authorities concerned or the courts attend shall be left to their discretion.

## Article 47

1. Where a dispute as to jurisdiction arises between two *Länder* or between a *Land* and the Federation (Article 138, subparagraph 1, sub-subparagraph c of the B-VG) because both *Länder*, or the *Land* and the Federation, have claimed the right to determine or deal with a particular administrative matter (positive dispute as to jurisdiction), each of the Governments concerned may ask the Constitutional Court to settle the dispute.
2. The application shall be submitted within four weeks following the end of the day on which the applicant Government had official notice of the dispute as to jurisdiction.
3. The applicant Government shall immediately serve notice of the application on the other Government concerned.
4. The application to the Constitutional Court shall have the effect of suspending the proceedings pending before the administrative authorities.

## Article 48

Where a dispute as to jurisdiction within the meaning of Articles 42, 43 and 47 arises, the persons concerned shall be entitled to ask the administrative or judicial authorities entitled to submit the application to ask the Constitutional Court to settle the dispute as to jurisdiction as provided for by law. Where no answer to this request has been received within four weeks the party concerned shall be entitled to lodge such an application to the Constitutional Court within another four weeks.

## Article 49

The Governments concerned and the parties concerned in the proceedings shall be summoned to attend the hearing.

## Article 50

1. Where a dispute as to jurisdiction (Article 138, subparagraph 1, sub-subparagraph c of the B-VG) has arisen because two *Länder* or a *Land* and the Federation have declined the right of decision or the right to deal with a particular administrative matter (negative dispute as to jurisdiction), the party whose application has been dismissed may then submit an application for the purpose of securing a judgment.
2. The applicant and the Governments concerned shall be summoned to attend the hearing.

## Article 51

The judgment of the Constitutional Court on jurisdiction shall determine that any administrative measures which are contrary to the judgment are void.

## Article 52

Where a dispute as to jurisdiction is brought before the Constitutional Court as provided for in Articles 46, 48 and 50 the Constitutional Court may order the territorial entity of which the administrative authorities wrongly declined or claimed jurisdiction to pay the party's legal costs. Where the applicant has withdrawn his application before the public oral hearing has commenced and costs have already been incurred by the other parties concerned the applicant may be ordered to pay the costs.

b –in the case of Article 138, subparagraph 2 of the B-VG

#### Article 53

The application within the meaning of Article 138, subparagraph 2 of the B-VG shall ask the Constitutional Court to determine whether a legislative or implementing matter is within the competence of the Federation or the *Länder*.

#### Article 54

Where the issue concerns competence to enact legislation the application shall contain a draft law, which shall constitute the subject-matter of the deliberation within the legislature.

#### Article 55

Where the issue concerns competence to implement a particular measure the application shall contain:

- a. in the case of regulations: the draft regulation and the name of the authorities by which the regulation is to be adopted;
- b. in the case of other implementing measures: the particular fact to be regulated and the name of the authority by which the administrative decree is to be adopted.

#### Article 56

1. The judgment of the Constitutional Court on an application under Article 53 shall be delivered following an oral hearing in public.
2. In addition to the applicant Government, the Federal Government and all the *Land* Governments shall be summoned to attend the hearing, although it shall be left to the latter's discretion whether or not to attend.
3. At the same time as the date of the hearing is set down, the Governments other than the applicant Government shall be asked to present a written statement of the facts to the Constitutional Court in sufficient time to reach the Court not later than one week before the hearing.
4. The Constitutional Court shall summarise its findings in a legal axiom (*Rechtssatz*), which shall immedi-

ately be published by the Federal Chancellor in the Federal Law Gazette.

D –Applications for the determination of the existence and implementation of agreements between the Federation and the *Länder* or among the *Länder* (Article 138a of the B-VG)

#### Article 56a

1. An application within the meaning of Article 138a, subparagraph 1 of the B-VG shall ask the Constitutional Court to declare:

1. whether or not an agreement exists between the Federation and one or a number of *Länder*, or
2. whether or not an obligation arising under an agreement between the Federation and one or more *Länder* has been fulfilled.

2. Subparagraph 1 shall apply by analogy to agreements among the *Länder*.

3. The application shall state the precise grounds on which it is based.

#### Article 56b

1. The President shall immediately set a date for the public oral hearing. The Governments concerned by the agreement shall be summoned to attend. The Federation shall be represented by the Federal Government and the *Land* shall be represented by the respective *Land* Government.
2. At the same time as the date of the hearing is determined, the Governments concerned by the case shall be invited to submit a written statement to the Constitutional Court in sufficient time for it to reach the Court no later than one week before the hearing. The Constitutional Court may also invite the other Governments having any interest in the agreement to submit statements.

## E –Challenge of the lawfulness of regulations (Article 139 of the B-VG)

### Article 57

1. An application to overrule an unlawful regulation shall ask that either the regulation in its entirety or just specific provisions thereof be declared void for unlawfulness. The application shall set out in detail the reasons why the regulation is claimed to be unlawful. Where such an application is lodged by a person who claims that his rights have been directly encroached upon by the unlawfulness of the regulation it shall show to what extent the regulation was capable of being raised against him without the intervention of a judicial decision or without an administrative decision being adopted.
2. An application to overrule a regulation or specific provisions thereof can be introduced by a court (or an independent administrative chamber) only where the regulation is directly applicable by the court (or independent administrative chamber) in the proceedings pending before it or where the lawfulness of the regulation is a preliminary question which must be resolved before the proceedings pending before the court (or independent administrative chamber) can be settled.
3. Where a court (or an independent administrative chamber) has submitted an application to overrule a regulation or specific provisions of a regulation, until the judgment of the Constitutional Court has been pronounced and notified only judicial measures or decisions or orders which are incapable of being affected by the judgment of the Constitutional Court, or which do not restrictively govern the question and cannot be delayed, can be adopted.
4. Where the court (or independent administrative chamber) no longer needs to apply the regulation which it has asked the Constitutional Court to review it shall withdraw the application as soon as possible.

### Article 58

1. The President shall immediately set a date for the hearing. The following shall be summoned to attend the hearing: the applicant, the administrative authorities which adopted the regulation, the highest competent administrative authority of the Federation or the *Land* required to defend the impugned regulation and – where the application was submitted by a court (or an independent administrative chamber) – the parties concerned in the proceedings.
2. The administrative authority which adopted the regulation and the highest administrative authorities of the Federation or the *Land* required to defend the impugned regulation shall provide a statement on the facts within two weeks of receiving the summons to attend the hearing.

### Article 59

1. Where possible, the judgment of the Constitutional Court shall be delivered within one month of the submission of the application.
2. Where an unlawful regulation is overruled the judgment shall state whether the regulation is unlawful in its entirety or whether only certain specific provisions are unlawful.

### Article 60

1. The judgment of the Constitutional Court shall immediately be served on the applicant. Where the application was submitted by a court (or an independent administrative chamber) the latter shall immediately resume the proceedings. In determining the case pending before it the court (or independent administrative chamber) shall be bound by the Constitutional Court's legal conception in its judgment on the lawfulness of the regulation.
2. The judgment of the Constitutional Court shall also be served on the administrative authority which adopted the regulation. Where the regulation has been overruled the notice published in accordance with Article 139, subparagraph 5 of the B-VG shall state that the regulation has been overruled and precisely identify the judgment of the Constitutional Court.



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Article 61

These provisions shall apply by analogy where the Constitutional Court has determined *ex officio* that a regulation is unlawful (Article 139, subparagraph 1 of the B-VG).

## Article 61a

Where the proceedings for judicial review of a regulation were brought upon application by a person claiming that his rights were directly encroached upon by the unlawfulness of the regulation, the legal costs incurred shall be paid, where the person has been successful, by the legal entity on whose behalf the administrative authority acted when it adopted the regulation.

F –Challenge of the constitutionality of laws (Article 140 of the B-VG). (Constitutional Law on Finance 1946, BGBl. No. 45/1948)

## Article 62

1. An application to overrule an unconstitutional law shall ask that the law in its entirety or only specific provisions of the law be overruled on the ground that it is or they are unconstitutional. The application shall set out in detail the reasons why the law is claimed to be unconstitutional. Where such an application is submitted by a person who claims that his rights have been directly encroached upon by the unconstitutionality of the law it shall show to what extent the law was capable of being raised against him without the intervention of a judicial decision or without an administrative decision being adopted.

2. Applications formulated in accordance with subparagraph 1 which have been submitted by one third of the members of the National Council, the Federal Council or a *Land* Parliament and which do not bear the signature of a duly authorised lawyer shall be signed by all the applicants. The applicants shall appoint one or more representatives by name. Where such a representative is not expressly appointed by name the first signatory shall be the representative.

3. Where a court (or an independent administrative chamber) has submitted an application to overrule a law or specific provisions of a law, until such time as the judgment of the Constitutional Court has

been pronounced and notified only judicial measures or decisions and orders which cannot be affected by the judgment of the Constitutional Court, or which do not restrictively govern the question and cannot be delayed, can be adopted.

4. Where the court (or independent administrative chamber) no longer needs to apply the law which it has asked the Constitutional Court to review it shall withdraw the application as soon as possible.

## Article 63

1. The President shall immediately set down a date for the hearing. The applicant and the Government required to defend the impugned law shall be summoned to attend. Where the law in question is a Federal law it shall be defended by the Federal Government; where it is a *Land* law it shall be defended by the *Land* Government which enacted it. Where the application has been submitted by the Administrative Court, the Supreme Court of Justice, a court required to deal with an appeal against a decision at first instance or an independent administrative chamber, the parties concerned in the proceedings shall also be summoned to attend.

2. At the same time as the date of the hearing is set down the Government concerned shall be asked to submit a statement on the facts in sufficient time to reach the Court one week before the hearing.

3. Where possible, the judgment of the Constitutional Court shall be delivered within one month of the submission of the application.

## Article 64

1. The judgment shall express precisely whether the law in its entirety or only specific provisions thereof is or are overruled on the ground that it is or they are unconstitutional.

2. Where the judgment of the Constitutional Court overrules the law in whole or in part it shall be served on the Federal Chancellor or the *Land* Governor concerned. The notice published in accordance with Article 140, subparagraph 5 of the B-VG shall state that the law has been overruled and indicate precisely the judgment of the Constitutional Court.

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## Article 65

These provisions shall apply by analogy where the Constitutional Court is required to rule of its own motion on the constitutionality of a law (Article 140, subparagraph 1 of the B-VG).

## Article 65a

Where the proceedings for judicial review of a law were brought upon application by a person claiming that his rights were directly encroached upon by the unconstitutionality of the law, the legal costs incurred shall be paid – where the person is successful – by the Federation in the case of a Federal law or by the *Land* concerned in the case of a *Land* law.

## G –Challenge of the legality of treaties (Article 140a of the B-VG)

## Article 66

For the purposes of judicial review of the legality of treaties in pursuance of Article 140a of the B-VG, in the case of treaties concluded with the approval of the National Council in accordance with Article 50 of the B-VG or treaties amending or supplementing laws in accordance with Article 16, subparagraph 1 of the B-VG, the provisions of Part F of this Law shall apply by analogy; in the case of all other treaties the provisions of Part E of this Law shall apply by analogy, subject to the following:

1. The applicant and the administrative authority which concluded the treaty shall be summoned to attend the hearing. The Federal Government shall be required to defend a treaty concluded by the President of the Federation and the *Land* Government shall be required to defend a treaty concluded in accordance with Article 16, subparagraph 1 of the B-VG. Where the application was submitted by a court (or an independent administrative chamber) the parties concerned in the proceedings shall also be summoned to attend.
2. The judgment shall state whether the treaty in its entirety or only specific provisions thereof is or are not to be applied by the organs responsible for implementing it or them on the ground that it is or they are illegal.

3. The judgment of the Constitutional Court shall be served on the administrative authority which concluded the treaty. Where the treaty was concluded by the President of the Federation the judgment shall be served on the Federal Government; in the case of a treaty concluded in accordance with Article 16, subparagraph 1 of the B-VG the judgment shall be served on the *Land* Government. Where the judgment concerns a treaty which was concluded with the approval of the National Council it shall also be served on the Federal Chancellor; where it concerns a treaty which was concluded with the approval of a *Land* Parliament it shall also be served on the *Land* Governor.

4. Where the judgment of the Constitutional Court declares that the treaty or part thereof is illegal the notice published in accordance with Article 140a of the B-VG in conjunction with Article 139, subparagraph 5 or Article 140, subparagraph 5 of the B-VG shall state that the treaty, according to the judgment of the Constitutional Court, which shall be precisely identified, is not to be applied by the authorities responsible for implementing it and that the effectiveness of an eventual approval of the treaty concerned or the eventual instruction to implement the treaty by a regulation is expired.

## H –Challenge of elections, popular initiatives, popular consultations and referenda, and declaration that a member has lost his or her seat (Article 141 of the B-VG)

## Article 67

1. Challenges in respect of elections to the general representative bodies, a *Land* Government, an organ of a commune responsible for implementing measures (hereinafter referred to as local executive board) and also to an organ of a statutory professional association empowered to draw up its statutes may be raised against any alleged unlawfulness in the election procedure. A challenge may request the annulment of the election procedure in whole or a specific part thereof.
2. A challenge in relation to elections to a *Land* Government shall require an application from one tenth of the total number of, and in any case no fewer than two, members of the *Land* Parliament; a challenge in relation to elections to a local executive board shall require an application from

one tenth, and in any case no fewer than two, members of the local council. The other elections mentioned in subparagraph 1 may be challenged by the electoral groups (parties) which lodged lists of candidates for the election under challenge in good time with the electoral authority provided for in the Electoral Code, and of course by the representative authorised to accept service on their behalf. Where the Electoral Code makes no provision for lists of candidates to be noticed in advance, the entitlement to challenge the elections before the Constitutional Court shall be determined according to the special provisions of such electoral code. A candidate in the elections who claims to have been unlawfully declared ineligible during the electoral proceedings may also mount an electoral challenge.

3. Where the electoral challenge is based on the unlawfulness of a decision and no significant harm is to be feared if implementation of the decision against which the electoral challenge has been raised is suspended, the Constitutional Court may upon application declare that the application has suspensory effect. Where the Constitutional Court is not sitting the President shall hear and determine the matter upon application by the reporting judge.

#### Article 68

1. An electoral challenge shall be mounted within four weeks of completion of the electoral procedure or, where the electoral law concerned provides for a remedy, within four weeks of service of the decision delivered at last instance. The challenge shall be supported by all the evidence to which it refers, which shall be enclosed in the original or a copy thereof.
2. The Constitutional Court shall send a certified copy of the electoral challenge to the highest electoral authority mentioned in the relevant electoral code with the order to produce the election files within a specified time. The electoral authority shall be at liberty to submit pleadings in defence when it subsequently produces the election files.

#### Article 69

1. In addition to the party mounting the challenge, all the electoral groups (parties) which filed a notice of candidature in the elections in question or otherwise all the parties authorised to challenge the election in pursuance of the relevant electoral code shall be summoned to attend the hearing. The electoral authority mentioned in Article 68, subparagraph 2 shall be at liberty to appoint a representative.
2. Where the unlawfulness in the electoral procedure alleged in the application consists in the fact that an ineligible person was returned elected, or the fact that an eligible person was unlawfully declared ineligible, that person may also be summoned to attend the hearing.

#### Article 70

1. The Constitutional Court shall allow an electoral challenge mounted in accordance with Article 67 where the alleged unlawfulness in the electoral procedure has been proved and where it affects the outcome of the elections. In the judgment allowing the challenge the Constitutional Court shall declare that either the electoral procedure in its entirety or certain parts thereof, which it shall precisely identify, is or are void.
2. Where the Constitutional Court allows an electoral challenge because an ineligible person has been returned elected it shall declare the election of that person void. In this case the provisions on vacant seats in the relevant electoral code shall apply.
3. Where the Constitutional Court allows an electoral challenge because an eligible person has been unlawfully declared ineligible the judgment shall state whether the election of other persons has thereby become void, in which case it shall set aside the election of the other persons. Where the election under challenge has taken place on the basis of declared party lists the competent electoral authority shall amend its announcement of the election results.
4. The electoral authorities responsible for adopting other measures after the electoral challenge has been allowed shall be bound by the findings of fact and the legal conception on which the judgment of the Constitutional Court was based.

5. In the case of subparagraphs 1 to 3 the judgment of the Constitutional Court shall immediately be served on the chairman of the representative body concerned (or of the statutory professional association). The persons whose election must be regarded as set aside or declared void by the judgment of the Constitutional Court shall cease to take part in the deliberations of the representative bodies concerned with effect from the day following this service, and also from administering the affairs of the *Land* Government (or the local executive board or statutory professional association). Where the judgment of the Constitutional Court has the effect that the election to a general representative body or an organ of a statutory professional association empowered to draw up its statutes must be renewed in whole or in part, the relevant members of that representative body shall cease to hold office only when they are replaced by the members returned in the fresh elections.

#### Article 71

1. A general representative body may at any time ask the Constitutional Court to declare that a member of the representative organ shall lose seat for one of the statutory reasons. Similarly, a local council may ask to declare that a member of the local executive board shall lose seat and one of the bodies specified for that purpose in the electoral codes of statutory professional associations may ask to declare that a member of an organ (representative body) empowered to draw up the statutes of a statutory professional association shall lose seat. Where such a resolution is adopted by one of these representative bodies its chairman, or where the application concerns the chairman its representative, shall submit the application to the Constitutional Court on behalf of the representative body.

2. Where a person ceases to be eligible for public office as a result of a criminal conviction the Constitutional Court shall be bound by a criminal conviction which has become final.

3. In the proceedings the provisions on electoral challenges shall apply by analogy. The person who shall be declared to lose seat shall be summoned to attend the public oral hearing.

4. The provisions of subparagraphs 1 to 3 shall apply by analogy where the application for loss of seat is submitted in accordance with Articles 7 and 8 of the Law on Incompatibilities of 30 July 1925, BGBl. No. 294, in the version set out in BGBl. No. 100/1931.

#### Article 71a

1. A decree whereby an administrative authority delivers that a member of a general representative body, a local executive board or the organ (representative body) empowered to draw up the statutes of a statutory professional association loses seat may only be challenged when all administrative remedies have been exhausted and within six weeks following service of the decree delivered at last instance.

2. In the proceedings before the Constitutional Court the representative body (or statutory professional association) shall have the position of a party.

3. The application shall have suspensory effect.

4. The Constitutional Court shall allow the challenge and overrule the impugned decree where the alleged unlawfulness has been established.

5. In the proceedings the provisions of Article 82, subparagraphs 3 and 4, Article 83, Article 84, subparagraph 1 and Articles 86 and 88 shall apply by analogy. The applicant and the administrative authority shall be summoned to attend the public oral hearing.

I – Accusations whereby the constitutional liability of the supreme organs of the Federation and the *Länder* is brought into play owing to culpable breaches of the law which they have committed in the exercise of their duties (Articles 142 and 143 of the B-VG)

#### Article 72

1. Accusations decided by the Federal Assembly, the National Council or a *Land* Parliament shall be submitted to the Constitutional Court by transmission of a certified copy of the minutes of the sitting during which the resolution to accuse the person in question was adopted.

2. The representative body concerned shall at the same time indicate the members asked to defend the accusation before the Constitutional Court.

3. In the case of an accusation within the meaning of Article 142, subparagraph 2, sub-subparagraphs d to g of the B-VG, the accusation made by the Federal Chancellor shall be accompanied by the certified copy of the parts of the minutes of the Council of Ministers on which the resolution of the Federal Government to make the accusation is based. The same shall apply by analogy where the accusation is later extended to cover a member of a *Land* Parliament responsible for dealing with mediate Federal administrative matters under Article 103, subparagraph 2 of the B-VG.

#### Article 73

Where an accusation is made in accordance with Article 143 of the B-VG, the document setting out the accusation shall state the offences which the person accused is alleged to have committed, according to the distinctive elements which by law determine the application of a specific penalty, their description in law and the provisions of the criminal law whose application is sought.

#### Article 74

1. A preliminary investigation shall be held before the date of the public oral hearing is set.
2. An investigating judge appointed by the President from among the members of the Constitutional Court shall conduct the preliminary investigation.
3. Officials shall be relieved of the duty to observe professional discretion while being interviewed by the investigating judge and during the public oral hearing.
4. The investigation shall be carried out as quickly as possible.
5. The preliminary investigation shall be discontinued where the representative body which made the accusation, or the Federal Government in the case of an accusation under Article 142, subparagraph 2, sub-subparagraphs d to g of the B-VG, has decided to withdraw the accusation. The Constitutional Court shall rule on this point in a private sitting.

#### Article 75

1. Following the closure of the preliminary investigation the investigating judge shall submit the files to the President of the Constitutional Court, who shall set a date for the public oral hearing.
2. The day set for the public oral hearing shall be determined in such a way that the accused has at least two weeks to prepare his defence, unless he requests that this period shall be reduced.
3. The accused and his lawyer, and also the persons empowered to defend the accusation, shall be summoned to attend the hearing.

#### Article 76

The investigating judge shall not take part in the public oral hearing.

#### Article 77

The oral hearing must not be held in private unless a hearing in public would be endangering the State security.

#### Article 78

The public oral hearing shall commence with a reading of the accusation by the registrar.

#### Article 79

1. Where the accused person is convicted the Constitutional Court shall also, generally, give a decision on the rights to compensation which have been claimed.
2. The judgment may simply state that compensation is payable and leave the amount to be determined in proceedings in the ordinary courts.

#### Article 80

1. The accusation shall be made before the Constitutional Court within one year from the day on which the person accused left the official post to which the accusation relates.
2. In the case of Article 142, subparagraph 2, sub-subparagraphs a to c of the B-VG, the time which elapsed between the day on which the application

for the accusation to be made was lodged before the competent representative body and the final resolution concerning that accusation shall not be included in the period of one year, provided that it does not exceed six months.

3. The procedure in respect of an accusation decided upon shall not be prevented by the expiry of the term of the representative body concerned or, in the case of an accusation within the meaning of Article 142, subparagraph 2, sub-subparagraphs d to g of the B-VG, by the resignation of the Federal Government.

#### Article 81

The provisions of the Code of Criminal Procedure shall apply by analogy to the procedure in relation to accusations made in pursuance of Articles 142 and 143 of the B-VG, provided that there is no provision to the contrary in this Law.

- J –Complaints against the breach of constitutionally guaranteed rights or against the breach of rights as a result of the application of an unlawful regulation, an unconstitutional law or a treaty which is contrary to the law (Article 144 of the B-VG)

#### Article 82

1. A complaint against an administrative decree in pursuance of Article 144, subparagraph 1 of the B-VG can be lodged only after all administrative remedies have been exhausted, within six weeks following service of the decree delivered at last instance.
2. The complaint shall contain a precise statement of the facts and shall indicate whether the applicant considers that he has been a victim of a breach of a constitutionally guaranteed right or that his rights have been encroached upon owing to the application of an unlawful regulation, an unconstitutional law or an illegal treaty. The legal provision alleged to be unlawful or unconstitutional must be indicated.
3. The impugned decree shall be enclosed in the original, a document of the same nature, first copy or copy; the date of service shall be indicated.

#### Article 83

1. A certified copy of the complaint, including the appendices enclosed, shall be served on the administrative authority which issued the impugned decree; the administrative authority shall be informed that it is at liberty to draw up pleadings in defence within no less than three weeks.
2. For the preparation of the hearing, the parties may introduce fresh arguments and counter-arguments within a period to be determined.
3. This time may be extended only for important reasons; the consent of the opposing party shall neither be necessary nor sufficient.

#### Article 84

1. Following the submission of the pleadings in defence and any other requested arguments, or upon expiry of the time limit, and where the Constitutional Court has not refused to examine the complaint in accordance with Article 19, subparagraph 3, sub-subparagraph 1 in a reasoned decision consisting of a brief statement of the essential legal points of view on the matter and served on the applicant and the administrative authority (Article 83, subparagraph 1), the President of the Constitutional Court shall set a date for the hearing.
2. The appellant, the administrative authority (Article 83, subparagraph 1) and any persons interested on any other basis shall be summoned to attend the hearing.

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Article 85

1. The complaint shall not have suspensory effect.
2. Upon application by the appellant the Constitutional Court, by its decision, shall confer suspensory effect on the complaint, provided that there are no pressing reasons in the public interest why it should not do so and that, after all the conflicting legal interests concerned have been taken into consideration, the appellant would sustain disproportionate harm as a result of the implementation or exercise by a third party of the right conferred by the administrative decree. Where the conditions which determined the decision as to the suspensory effect of the complaint have fundamentally changed the Court will have to give a fresh decision upon application by the appellant, the administrative authority (Article 83, subparagraph 1) or any persons interested on any other basis.
3. The decisions adopted in accordance with subparagraph 2 shall be served on the applicant, the administrative authority (Article 83, subparagraph 1) and the persons interested. Where the suspensory effect is recognised the administrative authority shall suspend the implementation of the impugned administrative measure and adopt the provisions necessary for that purpose; the holder of a right conferred by the impugned decree cannot exercise that right.
4. Where the Constitutional Court is not sitting the decisions in subparagraph 2 shall be adopted by the President of the Constitutional Court upon application by the reporting judge.

## Article 86

Where before the hearing relating to the complaint has been closed, evidence is adduced that the appellant has apparently obtained satisfaction the Constitutional Court, after obtaining the appellant's consent, shall decide that the complaint has become devoid of purpose and discontinue the proceedings.

## Article 87

1. The judgment shall state whether there has been a breach of any constitutionally guaranteed rights by the or whether the applicant's rights have been encroached upon owing to the application of an unlawful regulation, an unconstitutional law or an illegal treaty, and where appropriate shall overrule the impugned administrative decree.
2. Where the Constitutional Court has allowed a complaint the administrative authorities shall be required, in the relevant case, to use whatever legal means are available to restore without delay the legal position in accordance with the legal conception of the Constitutional Court.
3. Where the Constitutional Court refuses to examine the complaint or dismisses the complaint, the Constitutional Court – if, until then, an application to that effect has been lodged by the appellant – or the reporting judge – if that application has been lodged within two weeks following service of the decision or the judgment of the Constitutional Court – shall pronounce that the complaint is transferred to the Administrative Court, in accordance with Article 144, subparagraph 3 of the B-VG. The Constitutional Court shall not make such a pronouncement where the case in question falls outside the jurisdiction of the Administrative Court in pursuance of Article 133 of the B-VG.

## Article 88

The unsuccessful party, or the party which has given satisfaction to the appellant, may be ordered to pay the costs of the proceedings where these have been applied for. The same shall apply by analogy where the appellant withdraws the appeal before the oral hearing without obtaining satisfaction.

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## Section 3

## Final provisions

## Article 89

1. Article 5h in the version published in Federal Law BGBl. No. 334/1993 shall come into force on 1 July 1993.
2. Articles 5e and 5h in the version published in Federal Law BGBl. No. 43/1995 shall come into force on 1 January 1995.
3. Article 5e in the version published in Federal Law BGBl. No. 297/1995 shall come into force on 1 May 1995.
4. Articles 5e, subparagraph 2 and 5h, subparagraph 2 in the version published in Federal Law BGBl. No. 820/1995 shall come into force on 1 January 1996. (Constitutional provision) Article 5i in the version published in Federal Law BGBl. No. 392/1996 shall come into force on 1 August 1996.
5. The versions of the following as published in Federal Law BGBl. No. 201/1996 shall come into force on the following dates:
  1. Articles 5b, subparagraph 2 and 5c, subparagraph 1 on 1 May 1996, and
  2. Article 5h on 1 June 1996.
6. Article 5b, subparagraph 2 in the version valid until the end of 30 April 1996 shall apply to members of the Constitutional Court if the initial steps to remove them from office predate 16 February 1996.
7. *(does not exist)*
8. Articles 5e, subparagraph 2 and 5h, sub-subparagraph 2 in the version published in Federal Law BGBl. I No. 3/1997 shall come into force on 1 January 1997.

## Article 90

The Federal Chancellor shall be responsible for implementing this Federal Law.

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# Belarus

## Constitutional Court

### Editor's note

On 24 November 1996 in Belarus a referendum was held on – among other topics – two proposals – one by the President, the other by parliamentary groups – for amendments to the Constitution. Before the referendum, the Constitutional Court held that the referendum on these points could only be of consultative character.

After this decision but before the referendum, the Venice Commission was invited by Mr Sharetsky, Speaker of the Belarusian Parliament, to give its opinion on the two proposals. The Commission found them to fall short of the minimum democratic standards of the European constitutional heritage and called upon the authorities of Belarus to abide by the decision of the Constitutional Court and to try to find a solution to the constitutional crisis which would be in harmony with European standards.

After the referendum and in spite of the decision of the Constitutional Court, the President signed and promulgated his constitutional draft which had been approved in the referendum. Following these events the President of the Belarusian Constitutional Court resigned together with six others out of the 11 judges. After the replacement of these judges the Constitutional Court decided to revoke its previous decision on the consultative character of the referendum.

The Bureau of the Parliamentary Assembly of the Council of Europe decided on 13 January 1997 to suspend the special-guest status of Belarus with the Assembly.

## Constitution of the Republic of Belarus

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### Chapter 6

#### The Constitutional Court of the Republic of Belarus

### Article 125

Control over the constitutionality of regulatory enactments in the State shall be exercised by the Constitutional Court of the Republic of Belarus.

## Article 126

The Constitutional Court of the Republic of Belarus shall be elected by the Supreme Council of the Republic of Belarus from among qualified lawyers, in the number of 11 judges. The term of office for the members of the Constitutional Court shall be 11 years. The age limit of a member of the Constitutional Court shall be 60 years. Persons elected to the Constitutional Court may not engage in business or carry out other paid activities except teaching or research work provided that they are not on the staff. Persons elected to the Constitutional Court shall be entitled to resign at any time. Direct or indirect pressure on the Constitutional Court or its members in connection with the execution of constitutional supervision shall be inadmissible and shall involve responsibility in law.

## Article 127

The Constitutional Court, on proposals of the President, the Chairman of the Supreme Council, permanent committees of the Supreme Council, at least 70 deputies of the Supreme Council, the Supreme Court, the Supreme Economic Court, the Procurator General, shall decide on

- the conformity between the laws, international agreements, other obligations of the Republic of Belarus and the Constitution, international legal acts ratified by the Republic of Belarus;
- the conformity between the legal inter-state acts, to which the Republic of Belarus is a party, the edicts of the President, the regulation of the Cabinet of Ministers, as well as the orders of the Supreme Court, of the Supreme Economic Court, of the Procurator General, which have regulatory character, and the Constitution, law, international legal acts ratified by the Republic of Belarus.

The Constitutional Court shall be entitled, at its discretion, to consider the issue on the conformity between the regulatory enactments of a State body, public association and the Constitution, laws, international legal acts ratified by the Republic of Belarus.

## Article 128

Regulatory enactments, international agreements and other obligations recognized by the Constitutional Court as unconstitutional, so far as they violate human rights and freedoms, shall be considered null and void, totally or in a special part of them, from the moment of the adoption of the relevant act. Other regulatory enactments of state bodies and public associations, other international agreements or obligations recognized by the Constitutional Court as inconsistent with the Constitution, the laws or international legal acts ratified by the Republic of Belarus shall be considered invalid, totally or in a special part thereof, from the moment determined by the Constitutional Court. The regulatory and legal inter-state acts to which the Republic of Belarus is a party recognized by the Constitutional Court as inconsistent with the Constitution, laws or international legal acts shall be regarded as invalid on the territory of the Republic of Belarus, totally or in a special part thereof, from the moment determined by the Constitutional Court. The Constitutional Court shall pass decisions by a simple majority of votes of full court.

## Article 129

Conclusions of the Constitutional Court shall be final and subject to no appeal or protest.

## Article 130

The Constitutional Court shall be entitled to submit motions to the Supreme Council on the necessity of the amendment to the Constitution, as well as on the adoption and modification of laws. Such motions shall be subject to compulsory consideration by the Supreme Council.

## Article 131

Persons elected to the Constitutional Court may not be arraigned on criminal charges, arrested or otherwise deprived of personal liberty without consent of the Supreme Council, except in the cases of their detainment at the crime scene. Court may be instituted by the Procurator General with consent of the Supreme Council.

## Article 132

The jurisdiction, administration and activities of the Constitutional Court shall be determined by the law.

Law No. 2914-XII of 30 March 1994 "On the Constitutional Court of the Republic of Belarus"

Official Gazette of the Supreme Council of the Republic of Belarus, 1994, No. 15, Art. 220)

## Chapter I

## General provisions

## Article 1

## Functions of the Constitutional Court

Responsibility for reviewing the constitutionality of normative acts in the Republic of Belarus shall lie with the Constitutional Court of the Republic of Belarus.

The functions of the Constitutional Court shall be to guarantee the primacy of the Constitution and its direct application to the territory of the Republic as well as the compliance of acts of state organs with the Constitution, to confirm the lawfulness of the preparation and application of legislation and to rule on other questions provided for in the Constitution and in this Law.

## Article 2

## Basic principles governing the activity of the Constitutional Court

The basic principles governing the activity of the Constitutional Court shall be lawfulness, independence, collegiality, the public and oral nature of proceedings, equality of the rights of the parties and adversarial proceedings.

The Constitutional Court shall be independent in the exercise of its functions.

Any form of pressure on the Constitutional Court or its members in connection with constitutional supervision shall be prohibited and liable to prosecution under law.

## Article 2-1

## Lawfulness

The Constitutional Court shall make its rulings on the basis of the Constitution of the Republic of Belarus, the international legal instruments ratified by the Republic of Belarus as well as laws and other normative acts.

When considering questions concerning the compliance of normative acts with the Constitution of the Republic of Belarus, the Constitutional Court shall proceed on the presumption of their constitutionality.

## Article 2-2

## Independence

The independence of the Constitutional Court shall be guaranteed by specific rules for the election of judges and the termination of their office, by their immunity, by the procedure laid down for the examination of cases and questions falling within the competence of the Constitutional Court, by the secrecy of judges' deliberations, by liability for disrespect for the Constitutional Court or interference in its activities, by the creation of the necessary organisational and technical conditions for the work of the Court, and also by the granting to judges of material and social benefits in keeping with their elevated status.

## Article 2-3

## Collegiality

Matters falling within the competence of the Constitutional Court shall be examined by judges sitting in benches.

## Article 2-4

## Public nature of proceedings

The Constitutional Court shall rule on matters publicly, except in the cases provided for in the third paragraph of Article 26 of this Law.

Judgments of the Constitutional Court shall in all cases be publicly announced.

## Article 2-5

## Oral nature of proceedings

The proceedings at sittings of the Constitutional Court shall be conducted orally. When considering cases, the Constitutional Court shall hear the parties, their representatives, experts, specialists and witnesses and read out the documents relating to the case.

## Article 2-6

## Equality of the rights of the parties and adversarial proceedings

The parties shall enjoy equal rights during consideration of their case by the Constitutional Court.

Constitutional legal proceedings shall be based on the adversarial principle.

## Article 3

## Language of constitutional legal proceedings

Proceedings before the Constitutional Court shall be held in accordance with the Republic of Belarus Law "On languages in the Republic of Belarus".

## Article 4

## Legislation on the Constitutional Court

The organisation and working procedures of the Constitutional Court shall be defined by the Constitution and this Law.

Questions concerning guarantees of the activity of the Constitutional Court and its members may be decided by other legislative texts.

In accordance with this Law, the Constitutional Court shall adopt regulations governing its activities.

## Article 5

## Jurisdiction of the Constitutional Court

The Constitutional Court shall examine cases and issue conclusions as to:

- the compliance with the Constitution and international legal instruments ratified by the Republic of Belarus of laws, international treaties and other international undertakings of the Republic of Belarus;

- the compliance with the Constitution, laws and international legal instruments ratified by the Republic of Belarus of legal acts of intergovernmental institutions joined by the Republic of Belarus, decrees of the President of the Republic of Belarus, decrees of the Cabinet of Ministers of the Republic of Belarus as well as decisions of a normative nature of the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus and the Procurator General of the Republic of Belarus;

The Constitutional Court shall be entitled to consider, at its own discretion, questions concerning the compliance of normative texts of any state organ or public body with the Constitution, laws and international legal instruments ratified by the Republic of Belarus.

The Constitutional Court shall consider questions concerning the constitutionality of the texts referred to in the first part of the present article both as a whole and in respect of their individual provisions.

In the cases provided for in the Constitution, the Constitutional Court shall issue its conclusions as to whether or not the President of the Republic of Belarus has violated the Constitution.

## Article 6

## Procedure for submitting cases for consideration by the Constitutional Court

The Constitutional Court shall consider cases on the basis of the application submitted to it.

Applications to review the constitutionality of an act may be submitted to the Constitutional Court by the President of the Republic of Belarus, the Chairman of the Supreme Council of the Republic of Belarus, the standing committees of the Supreme Council of the Republic of Belarus, a group of no less than 70 deputies of the Supreme Council of the Republic of Belarus, the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus and the Procurator General of the Republic of Belarus.

Other state organs, public associations and also citizens shall apply to the bodies or persons empowered to submit an application for review of the constitutionality of an act.

The Constitutional Court shall be entitled to refuse, giving reasons, an application to review the constitutionality of an act on the grounds provided for in this Law.

A question as to whether the President of the Republic of Belarus has violated the Constitution, provided such a violation is not related to the adoption of a Presidential Decree, shall require the backing of no less than 70 deputies of the Republic of Belarus in order to be considered by the Constitutional Court. The consideration of such a case may not be refused at the initiative of the Constitutional Court.

#### Article 7

Right of the Constitutional Court to submit proposals to state organs

The Constitutional Court shall be entitled to submit to the Supreme Council of the Republic of Belarus, the President of the Republic of Belarus, the Cabinet of Ministers of the Republic of Belarus and other state organs, according to their competencies, proposals as to the necessity of amending and supplementing the Constitution and as to the adoption and amendment of legislative and other normative acts which are subject to obligatory examination. The Constitutional Court shall furthermore be entitled to submit to state organs other proposals deriving from its powers.

#### Article 8

Working system of the Constitutional Court

The sittings of the Constitutional Court shall be held as and when necessary and shall be convened by the President of the Constitutional Court at his own initiative or at the request of no less than three Constitutional Court judges.

#### Article 9

Consequences of an act being declared unconstitutional or a constitutional violation being found against the President of the Republic of Belarus

Normative acts, obligations under international treaties or other undertakings of the Republic of Belarus declared unconstitutional by the Constitutional Court on the grounds that they violate human rights and freedoms shall be considered void either as a whole or in respect of some of their provisions from the time of their adoption.

Other normative acts of state organs and public associations, obligations under international treaties or

other undertakings of the Republic of Belarus declared by the Constitutional Court to be contrary to the Constitution, laws or international legal instruments ratified by the Republic of Belarus shall be considered void either as a whole or in respect of some of their provisions from a date specified by the Constitutional Court.

Normative legal acts of intergovernmental institutions joined by the Republic of Belarus which are declared by the Constitutional Court to be contrary to the Constitution, laws or international legal instruments shall be considered void on the territory of the Republic of Belarus either as a whole or in respect of some of their provisions from a date specified by the Constitutional Court.

The decision on a finding of the Constitutional Court that the President of the Republic of Belarus has violated the Constitution, where such a violation is not related to the adoption of a presidential decree, shall be taken by the Supreme Council of the Republic of Belarus.

#### Article 10

Binding force of the judgments of the Constitutional Court and time limits for considering them

The judgments of the Constitutional Court within its area of competence shall be binding throughout the territory of the Republic of Belarus for all state bodies, enterprises, institutions, organisations, officials and citizens.

The judgments of the Constitutional Court must be considered by the bodies and individuals to whom they are addressed. Those bodies and individuals must reply to the Constitutional Court within the time limit specified by it, unless otherwise stipulated in this Law.

Any refusal to consider a judgment of the Constitutional Court or evasion of the obligation to do so, any non-observance of time limits and any failure to enforce or inappropriate enforcement of a judgment of the Court shall entail liability in accordance with the legislation of the Republic of Belarus.

#### Article 11

Limits of the competence of the Constitutional Court

The limits of the competence of the Constitutional Court to rule on cases shall be determined by the Constitutional Court itself.

In its consideration of cases, the Constitutional Court shall not be bound by the submissions and opinions of the parties.

The Constitutional Court may also give rulings on acts based on an act already reviewed or reproducing certain provisions of that act, even if they are not referred to in the application.

When reviewing an act, the Constitutional Court shall take into consideration both its literal meaning and the meaning attributed to it in its practical application.

The Constitutional Court shall not be entitled to undertake a review or analysis of draft acts whose constitutionality it may be called upon to consider.

## Chapter II

Membership of the Constitutional Court, procedure for election and status of its members

### Article 12

Membership of the Constitutional Court

The Constitutional Court shall consist of a President, a Vice-President and nine judges.

The Constitutional Court shall be competent to give rulings and shall begin work when no less than seven of its members have been elected.

### Article 13

Procedure for election of the Constitutional Court

The Constitutional Court shall be elected by the Supreme Council of the Republic of Belarus.

The President of the Constitutional Court shall be elected by the Supreme Council of the Republic of Belarus on a proposal from the President of the Republic of Belarus.

The Vice-President shall be elected by the Constitutional Court from among its elected judges.

In the event of a judge's departure from the Constitutional Court, another person shall be elected in accordance with the procedure established by the present article.

In the event of the absence of the President and Vice-President of the Constitutional Court or in the event of their inability to exercise their functions, the most

senior judge of the Constitutional Court shall exercise the powers set out in Article 19 of this Law.

### Article 14

Requirements for application for the office of Constitutional Court judge

Citizens of the Republic of Belarus having received higher education in law, holding an advanced legal qualification and possessing high moral standards shall be eligible for the office of Constitutional Court judge. After their election, Constitutional Court judges may be attributed the rank of highly qualified judge.

The age limit for a member of the Constitutional Court shall be 60 years.

### Article 15

Term of office of members of the Constitutional Court

Constitutional Court judges shall be elected for a term of eleven years and may re-elected for another term.

The President of the Constitutional Court shall be elected for a term of five years and may be re-elected to this office for the period remaining until the expiry of his term as a Constitutional Court judge.

### Article 16

Activities incompatible with the office of a Constitutional Court judge

Persons elected to the Constitutional Court may not engage in business activities or other remunerated activities besides teaching and research work on a private basis. They may not be deputies or members of political parties or other public associations pursuing political aims.

### Article 17

Oath to be taken by members of the Constitutional Court

Members of the Constitutional Court may take part in the Court's activities only after taking the oath of office.

Members of the Constitutional Court shall be sworn in by the Chairman of the Supreme Council of the Republic of Belarus.

Each member of the Constitutional Court shall take the following oath:

"I (surname, first name, patronymic) hereby assume an obligation to the people of the Republic of Belarus to protect the constitutional order and guarantee the primacy of the Constitution of the Republic of Belarus honestly, conscientiously and impartially".

#### Article 18

Early termination of the term of office of members of the Constitutional Court

The term of office of a Constitutional Court judge may be terminated by the Supreme Council of the Republic of Belarus before the appointed time in the following cases:

1. on his request to resign;
2. if his state of health prevents him from performing his duties;
3. in the event of his death;
4. when he has reached the age limit set for Constitutional Court judges;
5. if he has forfeited citizenship of the Republic of Belarus;
6. if his actions bring discredit on the Constitutional Court;
7. when a guilty verdict passed in respect of him by a court of law has entered into legal force.

The term of office of the President or the Vice-President of the Constitutional Court may be terminated by the Supreme Council of the Republic of Belarus before the appointed time in the following cases:

1. on his request to resign from the office of President or Vice-President of the Constitutional Court;
2. in case of a decision to institute criminal proceedings against the President or the Vice-President of the Constitutional Court.

#### Article 18-1

Suspension from office of a member of the Constitutional Court

A member of the Constitutional Court shall be deemed as suspended from office in the event of the Supreme Council of the Republic of Belarus consenting to his arrest or to the institution of criminal proceedings against him.

#### Article 18-2

Resignation of Constitutional Court judges

A judge shall be deemed to have resigned in the event of his term of office being terminated on the grounds provided for in points 1, 2 and 4 of the first paragraph of Article 18 of this Law.

A resigning Constitutional Court judge who has completed at least 15 years' service as a member of the Constitutional Court and 25 years of work in all if a man or 20 years of work in all if a woman, or who has worked for at least 8 years as a Constitutional Court judge upon attaining the age of 55 years in the case of men and 50 years in the case of women and has completed 35 years of work in all if a man or 30 years of work in all if a woman, shall be paid, according to their choice, a pension or a life-long tax-free monthly allowance equivalent to 75% of their Constitutional Court judge's salary at the time of payment, due account being taken of the bonuses and supplements received by that individual. Furthermore, the period of work in a specialised legal field previously completed by the Constitutional Court judge in question shall be counted as part of the period of service giving entitlement to the life-long monthly allowance.

The procedure for the calculation and payment of the life-long monthly allowance shall be defined by the President of the Republic of Belarus.

#### Article 19

President of the Constitutional Court

The President of the Constitutional Court shall enjoy all the rights and bear all the obligations of a Constitutional Court judge.

The President of the Constitutional Court shall:

- direct the work of the Constitutional Court and distribute duties among its members;

- call and chair the sittings of the Constitutional Court;
- take measures to encourage or penalise the judges of the Constitutional Court, in accordance with the regulations;
- have overall responsibility for directing the work of the Secretariat of the Constitutional Court and be entitled to engage and dismiss its staff;
- be entitled to resign from office at any time.

The President of the Constitutional Court shall issue instructions on matters relating to the internal activities of the Constitutional Court.

The President of the Constitutional Court shall exercise other functions in accordance with this Law.

#### Article 20

##### Vice-President of the Constitutional Court

The Vice-President of the Constitutional Court shall enjoy all the rights and bear all the obligations of a Constitutional Court judge, and shall perform the duties of the President of the Constitutional Court in the latter's absence or if instructed to do so by the latter.

The Vice-President of the Constitutional Court shall be entitled to resign from office at any time.

#### Article 21

##### Constitutional Court judges

Constitutional Court judges shall:

- be entitled to demand the convening of a sitting of the Constitutional Court, to submit questions for the Court's consideration and express a dissenting opinion in respect of the Constitutional Court's decisions;
- participate in all sittings of the Constitutional Court and be entitled to vote;
- enjoy the other rights and bear the responsibilities provided for in this Law.

Constitutional Court judges shall be entitled to resign from office at any time.

Until a ruling is given on questions being studied or deliberated by the Constitutional Court, none of its members shall be entitled to express an opinion

publicly, unless it is necessary to do so in order to prepare a question for consideration by the Constitutional Court.

Constitutional Court judges shall have equal rights in deciding on all questions falling within the competence of the Constitutional Court.

#### Article 22

##### Entitlement of Constitutional Court judges to attend sittings of state organs

Constitutional Court judges shall be entitled to attend open (and also closed, by invitation) sittings of any state organ.

#### Article 23

##### Immunity of Constitutional Court judges

Constitutional Court judges shall enjoy immunity.

The immunity of Constitutional Court judges shall be guaranteed by a special procedure for settling matters relating to the restriction of their personal rights and freedoms, and shall extend to their home and other legal property as well as the premises used by them in the performance of their duties, transport, means of communication, correspondence, effects and documents.

Persons elected to the Constitutional Court shall not have criminal proceedings instituted against them or be arrested or deprived of their personal freedom in any other manner without the consent of the Supreme Council of the Republic of Belarus, except where they are arrested while committing a crime.

Criminal proceedings against a Constitutional Court judge may be instituted only by the Procurator General of the Republic of Belarus with the consent of the Supreme Council of the Republic of Belarus.

#### Article 24

##### Guarantees of the activity of the Constitutional Court

Funding for the Constitutional Court shall be drawn from the budget of the Republic and shall guarantee the complete independence of legal proceedings before the Court. A separate heading in the annual budget of the Republic shall provide for the funds required to guarantee the work of the Constitutional Court, and the Court shall be free to use those funds as it sees fit.



The premises required by the Constitutional Court to carry out its duties shall be the property of the Republic; the Court shall be responsible for their day-to-day management.

The Constitutional Court shall independently acquire the information facilities and personnel required for its activities.

The physical and technical resources required for the activities of the Constitutional Court, including means of transport and communication, shall be provided by the appropriate state organs in accordance with a procedure established by the President of the Republic of Belarus with the agreement of the Constitutional Court. The existing level of physical and technical resources required for the activities of the Constitutional Court may be reduced only with the consent of the Supreme Council of the Republic of Belarus.

#### Article 25

##### Guarantees of the independence of the Constitutional Court

The independence of Constitutional Court judges shall be guaranteed by their irremovability, their immunity, their equal rights as judges, the procedure for the suspension and termination of the appointment of judges established by this Law, the right to a pension, the obligatory nature of the established procedure for constitutional legal proceedings, the prohibition of any form of interference in court activities, the guarantee of judges' material and social circumstances, and guarantees of security corresponding to their elevated status.

The salaries of the President, Vice-President and judges of the Constitutional Court shall be determined on the same scale as that governing the salaries of the Chairman, First Vice-Chairman and Vice-Chairmen of the Supreme Council respectively.

Constitutional Court judges not possessing living space, sharing flats with several tenants or needing better accommodation for other reasons shall be granted comfortable, accommodation in the city of Minsk at the expense of the budget of the Republic, no later than six months after their election to the post of judge or the advent of the reasons mentioned hereinabove.

If a Constitutional Court judge's term of office ceases before he reaches retirement age or in the cases

provided for in points 1, 2 and 5 of the first paragraph of Article 18 of this Law, he may, at his request, return to his former post or be offered equivalent work if the post is not available. The placing in employment of former Constitutional Court judges shall be the responsibility of the Supreme Council of the Republic of Belarus. In this connection, the length of judges' service in the Constitutional Court shall be counted as part of the period of service completed in their previous work.

Constitutional Court judges, including those who have resigned or retired, shall enjoy the guarantees provided for in legislation on the status of judges in ordinary courts.

In the event of other legislative acts affording Constitutional Court judges greater guarantees of independence than provided for in this Law, the provisions of those acts shall apply.

#### Chapter III

##### Rules of procedure before the Constitutional Court

#### Article 26

##### Sittings of the Constitutional Court

Constitutional Court sittings shall be conducted in a solemn environment, with the observance of all requirements of juridical etiquette.

All persons present in the courtroom shall be bound to show respect for the Constitutional Court and its rules and procedures and shall obey the orders of the presiding official.

Closed sittings may be held in cases where the Constitutional Court decides that they are necessary in the interests of state secrecy.

#### Article 27

##### General rules of procedure of the Constitutional Court

One or more cases may be considered at a sitting of the Constitutional Court. A report shall be prepared on each case and presented by a member of the Constitutional Court.

Sittings of the Constitutional Court shall as a rule continue without interruption, except time allocated for rest or for participants to prepare their final address.

A sitting may be suspended on application by one of the parties for the additional study of material submitted by the other party and also in the event of circumstances obstructing the normal progress of consideration of a case or upon the necessity of considering another question within a certain time limit. In such a case, the presiding official shall announce the suspension of proceedings for a specified time. Proceedings shall continue from the point at which they were suspended.

Proceedings may be discontinued if the application on the basis of which the case was being considered is withdrawn or if the normative act whose constitutionality was disputed is amended or supplemented in such a manner that the grounds bringing the case before the Court no longer apply.

Fresh submission of the case to the Constitutional Court in such circumstances shall be possible only after three months have elapsed since the announcement of the decision to discontinue examination of the case, provided that the grounds leading the Constitutional Court to announce that decision have been removed.

The suspension of the Constitutional Court's examination of one case shall not prevent it from considering other cases.

#### Article 28

Officials presiding over sittings of the Constitutional Court

Sittings of the Constitutional Court shall be chaired by the President of the Constitutional Court or, in his absence or on his instructions, the Vice-President of the Constitutional Court. The judge reporting on the case may not chair the sitting.

The presiding official shall conduct the sitting, take the necessary measures to ensure the orderly nature, completeness and thoroughness of the examination and to record its progress and results; he shall rule out any considerations which are irrelevant to the case; he shall interrupt, after a warning, speeches by the participants in the sitting, should they concern matters unrelated to the case or lying outside the competence of the Court; he shall deny participants the floor if they wilfully breach the order of speaking, use strong or abusive language or otherwise violate the procedure and rules for examining cases in the Constitutional Court.

The presiding official shall be entitled to remove from the courtroom any person committing a breach of order or failing to comply with his lawful instructions.

#### Article 29

Parties and participants in sittings of the Constitutional Court

Participants in Constitutional Court sittings shall be the parties involved, representatives of the parties, witnesses, experts, specialists and translators.

Sittings of the Constitutional Court may be attended by the President of the Republic of Belarus, the Chairman of the Supreme Council, the Prime Minister, the President of the Supreme Court, the President of the Supreme Economic Court, the Procurator General and the Minister of Justice of the Republic of Belarus. They shall be entitled to state their position on all the questions examined.

Parties to Constitutional Court sittings shall be:

- the President of the Republic of Belarus – in the event of a case concerning a violation by him of the Constitution, provided such a violation is not related to the adoption of a Presidential Decree;
- the heads of state organs who signed or issued the act whose constitutionality is disputed, or their representatives;
- the persons who submitted the application for review to the Constitutional Court, or their representatives.

Barristers, specialists and other persons whose authority to act is confirmed in writing by the parties in accordance with the established procedure may participate in sittings as representatives of the parties.

The parties and their representatives shall appear when called before the Constitutional Court and provide explanations and answer questions. The parties shall be entitled to state their own position in respect of the case, put questions to the adverse party, witnesses and experts and also to lodge petitions, submit documents, written comments and other material concerning the case, and have access to the documents, written comments and other material submitted to the Constitutional Court by the adverse party.

The parties, their representatives, witnesses, experts and specialists taking part in sittings of the

Constitutional Court shall be required to state accurately and truthfully all the circumstances of the case which are known to them.

The failure of parties or other participants to appear in a Constitutional Court sitting shall not provide obligatory grounds for discontinuing or suspending examination of the case.

#### Article 30

Responsibility for covering the expenses of parties and participants in Constitutional Court sittings

The parties shall cover the expenses arising from their participation in a sitting of the Constitutional Court from their own means; they may demand reimbursement of their costs through a civil action.

The expenses incurred by participants summoned to appear by the Constitutional Court shall be covered by the budget of the Republic in accordance with the procedure established for this purpose by the juridical system.

#### Article 31

Notification of and summons to Constitutional Court sittings

The parties, and other participants if so decided by the Constitutional Court, shall be sent notice of the sitting, the agenda, and copies of the application, of the acts in question and of opinions on them ten days prior to the start of the sitting at the latest. If necessary, the parties may be provided with other documents and material.

Any person may be called as a witness at the discretion of the Constitutional Court, whereas those called as experts or specialists shall have special qualifications or expertise.

Witnesses, experts and specialists shall be obliged to appear before the Constitutional Court when summoned by it.

#### Article 32

Recording of Constitutional Court sittings

Constitutional Court sittings shall be recorded; the minutes shall include:

- the place and date of the sitting;
- the names of the judges present and absent;

-the surname, first name, patronymic and position of the presiding official;

-the agenda;

-data on parties and participants in the sitting;

-the measures taken by the Constitutional Court in chronological order and their results;

-the explanations and statements of the parties and participants;

-the testimonies of witnesses and experts, the questions put to them and their replies;

-the facts which the parties and participants requested to be included in the minutes;

-references to any breaches of procedure, other manifestations of disrespect for the Constitutional Court, warnings given and penalties imposed;

-questions put to a vote and the results of voting;

-the wording of any decisions given by the Constitutional Court.

The minutes must be drawn up within five days of the end of the sitting. They shall be signed by the official who presided over the Constitutional Court sitting.

The minutes of the Constitutional Court sitting shall be made available to the parties and participants in the sitting. The procedure for consulting the minutes, obtaining copies of them and taking any other action related to their dissemination shall be established by the Constitutional Court.

#### Article 33

Preparation of Constitutional Court sittings

Cases submitted for consideration by the Constitutional Court shall form the subject of a preliminary study. The President shall assign one or more judges to the study of the case and set a time limit for the completion of this work, which, as a rule, shall be no more than two months after the date of receipt of the file by the Constitutional Court. The President of the Constitutional Court may extend this time limit by a maximum of one month if the case is particularly complex or very broad in scope.

The judge assigned to prepare the case (reporting judge) shall be entitled to demand the necessary documents, order checks, investigations and expert appraisals, consult specialists, make inquiries, demand that the initiators of the case make good any shortcomings in the documents presented, and set time limits for compliance with his orders.

The judges shall be notified of the time, place and agenda of the sitting and provided with all the documents necessary for the consideration of the case no later than ten days before the start of the sitting.

#### Article 34

Procedure for the consideration of cases by the Constitutional Court

At the appointed time, the presiding official shall open the sitting and announce the agenda. He shall then ensure that all the parties and participants are present, check where necessary that they have authority to act and inform them of their rights and obligations.

If a party or participant fails to appear at the sitting or does not have duly certified authority to act, the presiding official shall invite the members of the Court to vote on whether the case should be examined or on whether the person in question should participate in its examination.

The consideration of each case shall begin with the report of the reporting judge, who shall state the substance of the case and the reasons and grounds for its examination. After his report, the parties or their representatives shall be heard. Questions may be put to them. Where necessary, the evidence of witnesses, experts and specialists shall be heard and documents relevant to the consideration of the case read out.

Having investigated the explanations, evidence and documents, the Constitutional Court shall withdraw to deliberate. The deliberations of the judges shall be secret. The presiding official shall give the floor to each judge wishing to state his opinion on the case considered. During deliberations, the judges may ask one another to clarify their positions on the case. Upon completion of the deliberations, the presiding official shall put the decision to the vote.

#### Article 35

Passing of Constitutional Court judgments

Constitutional Court judgments shall be passed by open ballot by roll-call of the judges. The presiding official shall be the last to cast his vote.

The presiding official shall put questions to the vote in the order in which they are raised. Judges shall not be entitled to abstain or not take part in voting.

A Constitutional Court judgment shall be deemed as passed if it receives a simple majority of the votes of the full membership of the bench.

#### Article 36

Constitutional Court judgments

Any act taken by the Constitutional Court during a sitting shall be regarded as a decision of the Court.

In the cases provided for in Article 5 of this Law, Constitutional Court judgments shall take the form of conclusions.

Requests to state organs may form part of another judgment or may be conveyed separately in the form of an inquiry or other request.

The analysis of the situation regarding compliance with the constitutional legality of the Republic of Belarus shall take the form of a memorandum from the Constitutional Court to the President of the Republic of Belarus and the Supreme Council of the Republic of Belarus.

#### Article 37

Form of Constitutional Court judgments

Constitutional Court judgments shall take the form of a separate document or appear as part of the minutes.

The Court may postpone the drawing up of the judgment as a separate document for up to two weeks and issue only an excerpt from the minutes setting out the judgment and the order and time limits for its enforcement.

The conclusions of the Constitutional Court shall be drawn up in accordance with the requirements of this Law.

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The memorandum of the Constitutional Court, its inquiries, requests and also other decisions of a procedural nature shall be drafted in accordance with a procedure established by the Constitutional Court.

#### Article 37-1

Procedure for rectifying inaccuracies and patent errors in Constitutional Court judgments

The Constitutional Court shall be entitled, after announcing its judgment, to rectify inaccuracies committed in it in respect of names and titles, minor slips, counting and other drafting errors.

The rectification of inaccuracies, minor slips, counting and other drafting errors committed in the judgment shall be permitted only at a sitting of the Constitutional Court by means of a decision to this effect.

#### Article 38

Delivery of Constitutional Court judgments and their entry into force

The judgments of the Constitutional Court shall be delivered at the Court sitting immediately after the deliberations of the judges; its judgments are final and without appeal or cassation.

The judgments of the Constitutional Court shall enter into force immediately after they are delivered.

#### Article 39

Dissenting opinion of Constitutional Court judges

A Constitutional Court judge disagreeing with the judgment passed shall be entitled to state his dissenting opinion in writing and attach it to the minutes of the sitting. Such opinions shall be published as appendices to Constitutional Court judgments.

#### Article 40

Publication of Constitutional Court judgments

The conclusions of the Constitutional Court shall be subject to obligatory official publication in accordance with the procedure established for acts of the Supreme Council of the Republic of Belarus.

Conclusions of the Constitutional Court shall be sent, no later than three days after their adoption, to the President of the Republic of Belarus, the Supreme Council of the Republic of Belarus, the Prime Minister of the Republic of Belarus, the Chairman of the Supreme Council of the Republic of Belarus, the

President of the Supreme Economic Court of the Republic of Belarus, the Procurator General of the Republic of Belarus, the Ministry of Justice of the Republic of Belarus and the parties to the proceedings.

Judgments of the Constitutional Court in the form of inquiries or requests and also those relating to procedural matters shall be published in accordance with the procedure established by the Constitutional Court.

#### Article 40-1

Time limits for the enforcement of judgments

Constitutional Court judgments shall be enforced immediately after their publication, if they do not specify some other time limit.

#### Article 40-2

Consequences of failure to enforce a judgment

Any persons failing to enforce Constitutional Court judgments, inappropriately enforcing them or impeding their enforcement shall be called to account at law.

#### Article 41

Interpretation of Constitutional Court judgments

Constitutional Court judgments may be officially interpreted only by the Constitutional Court itself. The Court shall give a decision on the interpretation of the judgment concerned, which shall be set out in a separate document.

#### Article 42

Review of a Constitutional Court judgment

A judgment of the Constitutional Court must be reviewed, at its own initiative, upon the discovery of new circumstances which were unknown to the Court at the time of judgment and could substantially affect the essence of that judgment, or in the case of a change in the constitutional rule on which the judgment was founded.

#### Article 43

Conclusions of the Constitutional Court

A conclusion shall be issued by the Constitutional Court after consideration of the questions listed in Article 5 of this Law.

A conclusion of the Constitutional Court shall include:

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- the title of the conclusion and the date and place of its delivery;
- the membership of the Court which delivered the judgment;
- the list of parties and participants in the sitting;
- the question considered and the grounds for its consideration;
- the provisions of the Constitution and this Law establishing the right or obligation of the Constitutional Court to consider the case in question;
- the full title of the act whose constitutionality was reviewed and the source of its publication (receipt);
- the circumstances established during consideration of the case;
- the provisions of the Constitution, international legal instruments and this Law which guided the Court in its judgment;
- the title and date of entry into force of any Constitutional Court judgments referred to in the preparation of the present judgment;
- the wording of the judgment and its grounds;
- the procedure and time limit for enforcement of the judgment and details of its publication.

If the act whose constitutionality is reviewed is declared constitutional in some parts and unconstitutional in others or if in respect of the same case some acts are declared constitutional and the others unconstitutional, this shall be stated in the judgment of the Constitutional Court.

#### Article 44

##### Memorandum from the Constitutional Court

The Constitutional Court shall send an annual memorandum to the President of the Republic of Belarus and the Supreme Council of the Republic of Belarus concerning the state of observance of the constitutional law of the Republic, based on the material examined.

#### Article 45

##### Inquiries and requests of the Constitutional Court

To ensure the procedure and rule on other issues falling within its competence, the Constitutional Court, or, during the preparatory work for consideration of a specific case, one of its judges, shall be entitled to make inquiries and requests to state bodies.

#### Article 46

##### Entitlement of the Constitutional Court to impose fines

The Constitutional Court shall be entitled to impose fines on officials and citizens showing disrespect for the Court.

Fines may be imposed on the following grounds:

- refusal or failure to consider within the set time limit, without valid excuse, the inquiries or requests of the Constitutional Court;
- failure to implement within the set time limit, without valid excuse, orders or requests of a Constitutional Court judge to provide documents and other materials, carry out checks and render aid and assistance in connection with the consideration of a specific case;
- deliberate submission of false information and documents to the Constitutional Court;
- failure to appear without valid excuse, refusal to appear or failure to give notification of the impossibility of appearing at a sitting of the Constitutional Court of a witness, expert or specialist;
- non authorised violation by a participant in the sitting of the order of speaking, the use of strong or abusive language or other disturbances of the procedure for Constitutional Court sittings, refusal to comply with the presiding official's instructions on procedural matters.

For each disturbance the Constitutional Court shall be entitled to impose fines of up to 10 times the minimum wage on citizens and of up to 50 times the minimum wage on officials.

The procedure for implementing Constitutional Court decisions on the collection of fines shall be established by the Constitutional Court.

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#### Article 47

Content of an application for review of the constitutionality of an act

An application for review of the constitutionality of an act shall include:

- information on the applicant(s) of the motion confirming their authority to submit an application to the Constitutional Court;
- the title of the international treaty or the act to be reviewed and information on the sources of its publication;
- the grounds for consideration of the case by the Constitutional Court;
- the position of the parties and its legal basis with reference to the appropriate legislative provisions;
- the list of enclosed documents.

The application shall be signed by an official, a representative of a state body or a group of deputies as provided for in Article 6 of this Law.

The following documents shall be enclosed with an application for review of the constitutionality of an act:

- a duly certified copy of the full text of the international treaty or the act whose constitutionality is to be reviewed as a whole or in part, with the necessary translation and an indication of the source of publication (receipt) of the act;
- a power of attorney or other document confirming the authority of a representative, except in cases where he is empowered as a representative by virtue of his office.

Lists of witnesses and experts whom it is proposed to call before the Constitutional Court, the conclusions of specialists and other documents and material for submission to the Constitutional Court may be enclosed with the application.

Applications and the mandatory enclosures shall be sent to the Constitutional Court in at least 15 copies.

Rulings on whether the President of the Republic of Belarus has violated the Constitution, where such a violation is not related to the adoption of a Presidential

Decree, shall be given in accordance with the provisions of this article.

#### Article 48

Withdrawal of an application for review of the constitutionality of an act

An application for review of the constitutionality of an act may be withdrawn by the applicant before the Constitutional Court begins its consideration of the case.

The decision to discontinue constitutional legal proceedings in connection with the withdrawal of the application for review shall be taken by the Constitutional Court.

#### Article 49

Refusal to consider an application for review of the constitutionality of an act

The Constitutional Court refuses to consider an application for review of an act if:

- the application is submitted by a body or person having no authority to do so;
- the application does not meet the requirements set out in Article 47 of this Law;
- the application does not fall within the competence of the Constitutional Court;
- the constitutionality in whole or in part of the international treaty or other acts mentioned in the application has already been reviewed by the Constitutional Court and, since that review, there has been no change in the Constitution or other legal rules which served as the basis for the Court's judgment;
- a matter dealt with in the international treaty or other act whose constitutionality is disputed is not provided for in the Constitution and the means of properly resolving it cannot be derived from the general principles and meaning of the Constitution;
- a party has not remedied formal defects in an application for review of the constitutionality of an act.

In the event of grounds for refusing to consider an application being established during a sitting of the

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Constitutional Court, the Court shall decide to discontinue its consideration of the case.

#### Chapter IV

Other questions concerning the organisation and activity of the Constitutional Court

#### Article 50

Regulations of the Constitutional Court

On the basis of the provisions of this Law, the Constitutional Court shall adopt regulations establishing rules governing constitutional proceedings, rules of procedure and juridical etiquette, and laying down requirements relating to Secretariat staff, the keeping of records and other aspects of its internal activities.

#### Article 51

Academic Consultative Council at the Constitutional Court

An Academic Consultative Council made up of theorists and other legal experts shall be established at the Constitutional Court. Its staff and regulations shall be approved by the Constitutional Court.

#### Article 52

Constitutional Court Secretariat

The Constitutional Court Secretariat shall perform information-related, organisational, technical and other work required for the functioning of the Constitutional Court.

The Constitutional Court Secretariat shall be a legal entity under the direct control of the Secretary General of the Constitutional Court appointed by the President of the Constitutional Court.

The staff of the Constitutional Court Secretariat shall have the rights and obligations laid down in the legislation on civil servants.

#### Article 53

Court expenditure

Expenditure relating to the reimbursement of remuneration to third parties for consultancy work and expert appraisals performed under contract, compensation for expenses incurred by witnesses and experts appearing before the Constitutional Court and reimbursement of other Court costs, shall be financed from the budget of the Republic.

Expenditure relating to the enforcement of the binding judgments of the Constitutional Court shall be borne by the state organs, enterprises, institutions and organisations responsible for enforcing them.

#### Article 54

Protection of the Constitutional Court

The Constitutional Court shall be protected by the internal affairs authorities of the Republic of Belarus.

#### Article 55

The symbols of the juridical power of the Constitutional Court

The state flag, a depiction of the state emblem and the text of the Constitution of the Republic of Belarus shall be present in the courtroom.

The judges of the Constitutional Court shall sit in gowns, the description and design of which are to be approved by the President of the Republic of Belarus.

#### Article 56

Identity documents issued to Constitutional Court judges

Constitutional Court judges shall be issued with an identity document, the description and design of which shall be established by the Constitutional Court.

No one shall be entitled to demand from a Constitutional Court judge any documents attesting to his status other than this identity document.

#### Article 57

The seat of the Constitutional Court

The permanent seat of the Constitutional Court shall be in the capital of the Republic of Belarus, the city of Minsk.

Constitutional Court sittings shall be held at the Court's permanent seat. The Constitutional Court may however hold sittings elsewhere if it considers it necessary to do so.



## Decree of the Supreme Council of the Republic of Belarus on the procedure for implementing the Republic of Belarus Law “on the Constitutional Court of the Republic of Belarus”

Decree No. 2915-XII of 30 March 1994

Official Gazette of the Supreme Council of the Republic of Belarus, 1994, No. 15, Article 221

The Supreme Council of the Republic of Belarus decrees as follows:

1. The Republic of Belarus Law “on the Constitutional Court of the Republic of Belarus” shall enter into force on the date of its adoption, with the exception of certain provisions which shall enter into force according to the procedure and time limits laid down in this Decree.
2. The Constitutional Court of the Republic of Belarus shall be formed within a month of the date of entry into force of the 1994 Constitution of the Republic of Belarus.
3. Regulations for the Constitutional Court of the Republic of Belarus and other decisions arising from the Republic of Belarus Law “on the Constitutional Court of the Republic of Belarus” shall be adopted within a month of the date of the Court’s formation.
4. Cases may be submitted for consideration by the Constitutional Court of the Republic of Belarus in accordance with Article 6 of the aforementioned Law as from 1 July 1994.
5. The Council of Ministers of the Republic of Belarus shall, by 1 July 1994:
  - allocate to the Constitutional Court the necessary financial, material and technical resources, means of communication and premises;
  - bring Government decisions into line with the aforementioned Law.

## Czech Republic Constitutional Court

### Constitution

- extracts -

#### Article 83

The Constitutional Court shall be the judicial authority (organ) for safeguarding constitutional legality.

#### Article 84

1. The Constitutional Court shall consist of 15 judges, who shall be appointed for a term of ten years.
2. The judges of the Constitutional Court shall be appointed by the President of the Republic with the agreement of the Senate.
3. Eligible for appointment as a judge of the Constitutional Court shall be a blameless citizen (with a clean record) who is qualified to be elected to the Senate, has university-level legal education (a law degree) and has been engaged in the legal profession for at least ten years.

#### Article 85

1. A judge of the Constitutional Court shall take charge of his function by taking a vow directed to the attention of the President of the Republic.
2. The vow of a judge of the Constitutional Court shall be worded as follows: “I promise, upon my honour and conscience, that I will safeguard the inviolability of the natural rights of man and the rights of a citizen, abide by the constitutional laws and decide according to the best of my conviction, independently and impartially.”
3. If a judge refuses to take the vow or if he takes it with a reservation, he shall be regarded as not having been appointed.

#### Article 86

1. A judge of the Constitutional Court cannot be prosecuted without the consent of the Senate. If the Senate refuses to give its consent, the prosecution shall be ruled out for ever.

2.A judge of the Constitutional Court may be detained (arrested) only if he has been caught in the act of committing a criminal offence, or immediately after. The appropriate authority (officer) must immediately notify the Chairman of the Senate about the detention. If the Chairman of the Senate does not give his consent within 24 hours following the detention for the detained person to be committed to court, the authority concerned must release him. At its first subsequent meeting, the Senate shall decide about the permissibility of prosecution with final effect.

3.A judge of the Constitutional Court shall have the right to refuse to testify, even after having ceased to be a judge of the Constitutional Court, about matters which he came to know in connection with the exercise of his function.

#### Article 87

1.The Constitutional Court shall decide:

- a.about the annulment of laws or of their individual provisions, if they are in contradiction with a constitutional law or with an international treaty according to Article 10;
- b.about the annulment of other legal regulations or of their individual provisions, if they are in contradiction with a constitutional law, with a law or with an international treaty according to Article 10;
- c.about a constitutional complaint of the territorial self-government authorities against illegitimate interference by the state (government);
- d.about a constitutional complaint against an effective decision or another form of interference by the authorities of public power affecting the constitutionally guaranteed fundamental rights and freedoms;
- e.about a legal remedy (redress) against a decision concerning the verification of the election of a Deputy or Senator;
- f.in cases of doubt, about the loss of eligibility and about the incompatibility of the exercise of functions of a Deputy or Senator, according to Article 25;

g.about the Senate's constitutional indictment against the President of the Republic according to Article 65(2);

h.about the proposal of the President of the Republic for the annulment of a decision (resolution) of the House of Deputies and of the Senate according to Article 66;

i.about the measures necessary for the implementation of an international tribunal's ruling which is binding for the Czech Republic, in case it cannot be implemented otherwise;

j.about whether a decision on the dissolution of a political party, or another decision concerning a political party's activities, is in conformity with constitutional or other laws;

k.disputes on the respective ranges of competence of state (government) authorities and territorial self-government authorities, unless the law authorises another organ (authority) to deal with such disputes.

2.The law may provide that, instead of the Constitutional Court, it shall be up to the Supreme Administrative Court to decide:

- a.about the annulment of legal regulations or of their individual provisions, if they are in contradiction with the law;
- b.disputes on the respective ranges of competence of state (government) authorities and territorial self-government authorities, unless the law prescribes that such disputes should be dealt with by another organ.

#### Article 88

1.The law shall specify who shall be entitled, and under what conditions, to submit a petition for the institution of proceedings by the Constitutional Court, and it shall also prescribe the procedural rules for them.

2.In their decision-making, the judges of the Constitutional Court shall be bound only by the constitutional laws and international treaties according to Article 10 and by the law mentioned in paragraph 1.

## Article 89

1. A ruling of the Constitutional Court shall become effective as soon as it has been promulgated in the manner prescribed by law, unless the Constitutional Court has decided otherwise about its effectiveness.
2. Effective rulings of the Constitutional Court shall be binding for all authorities and persons.

## Act on the Constitutional Court

Act of 16 June 1993

The Parliament has enacted the following statute of the Czech Republic:

## First heading

## Organisation of the Constitutional Court

## Article 1

The Constitutional Court (hereinafter "Court") shall consist of a Chairperson, two Vice-Chairpersons, and other Justices.

The Chairperson and the Vice-Chairpersons of the Court

## Article 2

From among the Justices of the Court (hereinafter "Justices"), the President of the Republic (hereinafter "President") shall appoint a Chairperson and two Vice-Chairpersons of the Court (hereinafter "Chairperson" and "Vice-Chairpersons").

## Article 3

1. The Chairperson shall:
  - a. represent the Court externally;
  - b. perform the administrative work of the Court;
  - c. call meetings of the Plenum of the Court (hereinafter "Plenum"), fix the agenda for and direct the business of meetings;
  - d. appoint Chairpersons of Panels of the Court (hereinafter "Panels"),

e. perform other duties imposed upon him or her by statute.

2. The Vice-Chairpersons shall act on behalf of the Chairperson in his absence, to the extent and in the order determined by the Plenum.
3. With the consent of the Plenum, the Chairperson may delegate the long-term performance of certain of his duties to the Vice-Chairpersons.

## Justices

## Article 4

1. The office of a Justice is a public office.
2. Justices may not be prosecuted for administrative offences.
3. It is incompatible with the performance of his or her duties for a Justice to hold some other compensated position or to engage in some other profitmaking activity, with the exception of the management of his or her own assets, activities of a scholarly, teaching, literary or artistic nature, provided that such activities are not to the detriment of the office of a Justice, its significance and dignity, and do not tend to undermine confidence in the independence and impartiality of the Court's decisions.
4. The performance of the office of a Justice is also incompatible with membership in a political party or political movement.

## Article 5

A Justice is obliged to maintain secrecy concerning matters about which he learned in connection with the performance of his judicial duties. This obligation continues even after he has left his judicial office.

## Article 6

1. The President shall seek the consent of the Senate with regard to his appointment of a Justice.
2. If the President does not obtain consent under paragraph 1 within 60 days of his request, due solely to the fact that the Senate did not vote on the matter within the above-stated period, then the Senate shall be deemed to have given its consent.

## Article 7

1. A Justice may resign from his or her office by means of a declaration to that effect made before the President. If he or she is prevented from so doing by serious circumstances, he or she may do it by a written declaration in the form of a notarial record.
2. A Justice's office shall terminate on the day after he or she makes a declaration pursuant to paragraph 1 or on the day after such a declaration was delivered to the President.
3. A Justice's office shall also terminate:
  - a. upon the expiration of the term for which he or she was appointed;
  - b. on the day he or she ceases to be eligible for election to the Senate;
  - c. on the day a decision, by which he or she is convicted of the wilful commission of a criminal offence, becomes final;
  - d. upon the announcement by the Court of a resolution under Article 44 terminating his or her office.
4. If a Justice's seat is left vacant due to his or her office terminating pursuant to paragraph 3, the Chairperson shall inform the President of this without delay.

## Assistants to Justices

## Article 8

1. At least one Assistant shall be appointed for each Justice.
2. The Chairperson appoints and dismisses each Assistant on the basis of the proposal of the Justice for whom he or she will work.

## Article 9

1. Any citizen of the Czech Republic may be appointed as Assistant, provided he or she possesses the capacity to perform legal acts, has a character beyond reproach, has completed university education in law, and has been active in the legal profession for at least five years.

2. An Assistant may resign from his position; his duties shall terminate on the day after his letter of resignation is delivered to the Chairperson.

3. An Assistant's position shall also terminate:

- a. upon the termination of the office of the Justice to whom he or she was appointed as Assistant;
- b. on the day a decision, by which the Assistant is convicted of a criminal offence, becomes final;
- c. upon his or her dismissal.

4. An Assistant is obliged to maintain secrecy concerning matters about which he or she learned in connection with the performance of his or her duties. This obligation continues even after he or she has left his or her position. The Chairperson may relieve him or her of this obligation.

## Article 10

### The status of Justices and Assistants in employment relations

Unless this Statute provides otherwise, the provisions of the Labour Code shall apply to the employment relations pertaining to the office of a Justice and the position of an Assistant.

## The Plenum

## Article 11

1. The Plenum shall be composed of all Justices. Unless this Statute provides otherwise, the Plenum may take actions and adopt resolutions when at least ten Justices are present.
2. The Plenum shall make decisions in matters before the Court concerning:
  - a. petitions challenging the validity, pursuant to Article 87(1)(a) of the Constitution of the Czech Republic (hereinafter "Constitution"), of an Act of Parliament (hereinafter "statute"), or of individual provisions thereof;
  - b. petitions challenging the validity, pursuant to Article 87(1)(b) of the Constitution, of other enactments or individual provisions thereof;

c.a constitutional charge, under Article 87(1)(g) of the Constitution, brought by the Senate against the President, as referred to in Article 65(2) of the Constitution;

d.a petition of the President, under Article 87(1)(h) of the Constitution, seeking the annulment of a concurrent resolution of the Assembly of Deputies and the Senate, as referred to in Article 66 of the Constitution;

e.disputes, under Article 87(1)(j) of the Constitution, over whether a decision to dissolve a political party or some other decision relating to the activities of a political party is in conformity with constitutional acts or with statutes;

f.other matters, under Article 87(1) of the Constitution, if the appropriate Panel did not resolve them due to the fact that no proposed resolution received a majority of votes (Article 21(1));

g.the determination of the Court's position on a legal opinion of a Panel which differs from a legal opinion of the Court expressed in an earlier decision (Article 23);

h.additional matters under Article 87(1) of the Constitution, if it reserves decision on them;

i.the regulation of its internal relations;

j.the establishment of Panels and of rules for the distribution of the caseload among them.

## Article 12

1.At a conference each Justice is entitled, prior to the initial vote on a matter, to submit a proposal for resolving the matter.

2.Each Justice is required to vote for one of the proposals for resolving a matter submitted prior to the initial vote.

3.If none of the proposals for resolving a matter receives the necessary majority (Article 13), the Justices shall vote again, but prior to taking the vote, the Justices whose proposals were voted upon, shall state whether they continue to adhere to their positions; at this time, Justices may submit other proposals for resolving the matter.

4.If the procedure under paragraphs 1 to 3 does not result in the adoption of a decision, the Justices shall vote on the two proposals which received the most votes in the preceding round of voting.

5.In matters concerning the discontinuance of disciplinary proceedings (Article 139(1)), objections to a resolution in disciplinary proceedings (Article 142(1–3)), or proposals for a resolution terminating a Justice's office (Article 144(1)), the Justices shall vote by secret ballot.

## Article 13

The Plenum adopts a decision if a majority of the Justices present are in favour of it. If the matter concerns a decision under Article 87(1)(a), (g) or (h) of the Constitution or a decision adopted on the basis of a legal principle which differs from a legal principle enunciated by the Court in an earlier judgment, it is adopted if at least nine Justices present are in favour of it.

## Article 14

A Justice who disagrees with the decision of the Plenum in matters referred to in Article 11(1)(a)-(h), or with its reasoning, has the right to have his or her dissenting opinion noted in the record of discussions and appended to the decision with his or her name stated.

## Panels

## Article 15

1.The Court shall create four three-member Panels for decisions on matters under Article 87(1) of the Constitution which are not within the jurisdiction of the Plenum.

2.The Chairperson and Vice-Chairpersons may not be permanent members of a Panel.

## Article 16

Pursuant to rules laid down by the Plenum, the Chairperson shall fix the distribution of the caseload among Panels for a calendar year by means of a work schedule.

## Article 17

- 1.The Chairperson appoints the Chairpersons of the Panels for a period of one year. A Justice may not be appointed to this position in two successive years.
- 2.The member of a Panel who is senior by age shall act as the Chairperson of a Panel when he or she is absent.

## Article 18

- 1.When a member of a Panel is absent, the Justice designated for that Panel by the work schedule shall temporarily act in place of that Panel member.
- 2.The Chairperson or the Vice-Chairpersons may act as substitute members of a Panel.

## Article 19

- 1.The Chairperson of a Panel shall call meetings of the Panel and lead discussions in them.
- 2.A Panel is competent to take actions and adopt resolutions when all of its members are present; it adopts resolutions by a majority vote.

## Article 20

- 1.At a conference, each member of a Panel is entitled, prior to the initial vote on a matter, to submit a proposal for resolving the matter.
- 2.Each member of a Panel is required to vote for one of the proposals for resolving the matter submitted prior to the initial vote.
- 3.The voting shall be conducted so that each member of a Panel orally states with which of the submitted proposals for decision he or she agrees.

## Article 21

- 1.If none of the proposals for decision on the merits of the matter receives a majority of votes pursuant to the procedure in Article 20, the Chairperson of the Panel shall, without undue delay, submit the matter to the Plenum for its decision (Article 11(2)(f)).

- 2.With regard to other issues, if there is a tie vote in a Panel, the vote of the Chairperson shall be decisive.

## Article 22

A member of a Panel who disagrees with the Panel's decision or with its reasoning in a matter, has the right to have his or her dissenting opinion noted in the record of discussions and appended to the decision with his or her name stated.

## Article 23

If in connection with making its decisions, a Panel adopts a legal principle differing from a legal principle of the Court stated in an earlier judgment, it shall submit the issue to the Plenum for its consideration. The Plenum's determination is binding on the Panel in further proceedings.

## Article 24

In matters submitted to the Plenum (Article 11(2)(f)), the Chairperson of the Court may open the envelope containing the record of the conference and of votes only with the consent of the Plenum.

## Article 25

## Ensuring peace and order

Assemblies are forbidden to be held within 100 meters of the Constitutional Court building or any other place where the Court is conducting proceedings.

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## Article 26

### The seat of the Court

The city of Brno shall be the seat of the Court.

### Second heading

### Proceedings before the Court

## Chapter One

### General provisions

## Article 27

### The institution of proceedings

- 1.A petition to institute proceedings before the Court may be submitted by any person so authorised by this Statute (hereinafter “petitioner”).
- 2.The proceedings commence on the day the petition is delivered to the Court.

### Parties and secondary parties to proceedings

## Article 28

- 1.The petitioner and those specified by this Statute shall be parties to proceedings.
- 2.Persons to whom this Statute grants the status shall be secondary parties, unless they waive this status. They shall have the same rights and duties as parties to proceedings.
- 3.If doubt should arise as to whether a person qualifies as a secondary party, the Court shall resolve the issue by a ruling.
- 4.If in connection with its decisionmaking activities, a court is a party or a secondary party to proceedings before the Court, the term “court” shall be understood to mean the relevant panel or a single judge.

## Article 29

In proceedings before the Court, a party or a secondary party may be represented only by an attorney, or by a commercial lawyer or notary to the extent provided for in special statutes and enactments. A party may have only one counsel in the same matter.

## Article 30

- 1.A natural or a legal person who is a party or a secondary party to proceedings before the Court must be represented by an attorney, or by a commercial lawyer or notary to the extent provided for in special statutes and enactments.
- 2.Unless this Statute provides otherwise, the person authorised, by special statutes and enactments, to act on behalf of a governmental body or office shall act for that body or office in proceedings before the Court. This does not affect their right to be represented by an attorney, or by a commercial lawyer or notary to the extent provided for by special statutes and enactments.
- 3.The Chairperson of a Panel shall act on behalf of a court.

## Article 31

- 1.In proceedings before the Court, the counsel for a party under Article 29 or Article 30(1) is not authorised to have himself represented by some other person.
- 2.It must be explicitly stated in the power of attorney authorising a person to act as a representative under Article 29 or Article 30(1) that the power of attorney is given for the purpose of representation before the Court.

## Article 32

### Rights and duties of parties

Parties and secondary parties are entitled to express their views on the petition instituting proceedings, make submissions to the Court, see the file with the exception of voting records, make excerpts from and copies of it, take part in any oral hearing in the matter, put forward evidence and be present during the taking of evidence done outside of an oral hearing.

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## Article 33

## The language of proceedings

1. The Czech language shall be used in proceedings before the Court. Individuals may use their native language during an oral hearing or some other proceeding in which individuals take part.
2. If a party or a secondary party who is an individual takes part in proceedings, or if a witness or an expert witness gives evidence before the Court, in a language other than Czech, the Court shall call upon the assistance of an interpreter; with the agreement of the participants, an interpreter is not necessary if the evidence is given in the Slovak language. The fact that an interpreter is used should be stated in the record.
3. Similarly, the Court shall call upon an interpreter if a deaf, mute or deaf-mute person is taking part, if it is not possible to communicate with him or her in some other reliable manner.

## Petitions to institute proceedings

## Article 34

1. A petition to institute proceedings should be submitted in writing to the Court. The following must be evident from the petition: the person who is making it, the matter to which it relates, and the remedy which is sought. The petition must be signed and dated. Furthermore, the petition should include an objective description of the most important facts and indicate the evidence which the petitioner will introduce, and it must clearly state what the petitioner is claiming; the petition must contain other things provided for by this Statute.
2. A sufficient number of copies of the petition to institute proceedings should be submitted so that the Court can retain one copy and one copy can be delivered to each party or secondary party referred to in the petition.

## Article 35

1. A petition to institute proceedings is inadmissible if it relates to a matter upon which the Court has already passed judgment and in other instances provided for by this Statute.

2. A petition shall also be inadmissible in instances when the Court has already taken some action in the same matter; if one is submitted by an authorised petitioner, he has the right to take part, as a secondary party, in the proceeding concerning the earlier submitted petition.

## The exclusion of a Justice

## Article 36

1. A Justice shall be excluded from the consideration and judgment of a matter if his or her impartiality may be doubted due to the fact that he or she has some connection to the matter, a party, a secondary party, or the representative of any of them.
2. A Justice shall also be excluded if he or she was active in the same matter while performing some other office or profession, prior to becoming a Justice of the Court.
3. Participation in the preparation, consideration and adoption of a statute or some other enactment is not considered to come under the category of activities of paragraph 2.

## Article 37

1. A party to proceedings may declare, at the beginning of the first oral hearing at the latest, his or her objection to any of the Justices whom he or she considers to be biased. The objection must be supported by the reasons. A Justice to whom an objection is made is required to give his or her opinion on it.
2. A Justice may declare that he considers himself to be biased in a matter; he shall state his reasons in the declaration.

## Article 38

1. If the proceedings are before the Plenum, the Plenum shall decide whether to exclude the Justice; the Justice whom the decision on exclusion concerns shall not vote. If the proceedings are before a Panel, another Panel, as designated by the work schedule, shall make the decision.
2. With regard to the exclusion of an Assistant to a Justice, a court reporter, an expert witness or an



interpreter, the provisions of Articles 36 and 37 apply as appropriate. If the matter is being decided by the Plenum, the Chairperson shall make the decision whether to exclude him or her, and if the matter is being decided by a Panel, the Chairperson of that Panel shall make the decision.

#### Article 39

##### Urgency of a matter

The Court need not consider petitions in the order in which they were submitted to the Court if it decides by resolution that a matter, to which a particular petition relates, is urgent. The provisions of Article 97(3) and Article 113 shall not be affected by this section.

#### Article 40

##### The assignment of petitions

- 1.If the petition concerns a matter that the Court deals with in the Plenum, then the petition shall be assigned to the Justice designated by the court schedule (hereinafter "Rapporteur").
- 2.If the petition concerns a matter within the jurisdiction of a Panel, it shall be assigned to a Justice who is a permanent member of a Panel, designated as the Rapporteur by the work schedule.
- 3.If the Justice, designated under paragraphs 1 or 2 as the Rapporteur, is excluded from that matter by resolution, the Chairperson shall assign the petition to another Rapporteur designated for that purpose by the work schedule.

#### Article 41

##### The work of Assistants to a Justice

Justices may assign to their Assistant:

- a.the task of refusing submissions which, according to their contents, are manifestly not a petition to institute proceedings and of notifying the person who made the submission accordingly;
- b.should the petition to institute proceedings not meet the requirements of this Statute, the task of notifying the petitioner accordingly and of setting for him a deadline by which the defects in the petition must be cured.

##### The work of Rapporteurs

#### Article 42

- 1.If the Rapporteur does not find there to be grounds for rejecting a petition under Article 43, he or she shall prepare the matter for consideration on the merits by the Plenum or by his or her Panel.
- 2.The Rapporteur shall see to the necessary procedural work of the case; in particular, he or she shall see to the gathering of documentary evidence and the examination of witnesses, possibly even by means of another court, if such evidence was proposed by one of the parties and if, according to the current status of the proceeding, it might help to establish the facts of the case.
- 3.The Rapporteur shall, without delay, see to it that the petition is delivered to the other parties, and when appropriate also to secondary parties, with the request that they give their view upon it by the deadline which he or she sets or which is provided for by this Statute.

#### Article 43

- 1.Without holding an oral hearing and without the parties being present, the Rapporteur shall reject the petition by ruling, if:
  - a.the petitioner fails to cure defects in the petition by the designated deadline;
  - b.the petition was submitted after the deadline set for its submission by this Statute;
  - c.the petition is manifestly unfounded;
  - d.the petition was submitted by a person who is clearly not authorised to submit it;
  - e.it is a petition over which the Court has no jurisdiction; or
  - f.the submitted petition is inadmissible, unless this Statute provides otherwise.
- 2.The ruling under paragraph 1 must be in writing, must state the reasons justifying it and must state that an appeal against it is not permissible.

## Oral hearings

### Article 44

1. In matters dealt with by the Court under Article 87(1) of the Constitution, an oral hearing shall be held.
2. Unless the Statute provides otherwise, the Court may, with the consent of the parties, dispense with an oral hearing, if further clarification of the matter cannot be expected from such a hearing.

### Article 45

1. Oral hearings before the Court shall be public; attendance by the public may be limited or dispensed with entirely, but only if this is required by outweighing interests of the State or of the parties to the proceedings, or on moral grounds.
2. Even if the public is excluded, the Court may, for important reasons, permit particular persons to be present at the hearing; however, it shall advise them of their duty to maintain secrecy concerning facts about which they learned during the course of the hearing, especially facts which are the subject of government, economic, official or commercial secrets, and it shall advise them concerning the criminal consequences of violating this duty.
3. Even if the public is not excluded, the Court may deny access to the hearing to minors and to persons who might disturb the dignified course of the hearing.

### Article 46

A summons to appear at an oral hearing must be delivered to parties, to secondary parties, and to their representatives sufficiently in advance of the hearing to allow them time to prepare, usually at least five days.

### Article 47

At the oral hearing, the Justice who is presiding over the hearing (hereinafter "presiding Justice") shall first of all give the floor to the Rapporteur, who shall inform the Court of the contents of the petition to institute proceedings and of the results of the proceeding before the Court up until that time; his or her report must not contain an opinion concerning how the petition should be decided.

## The Taking of Evidence

### Article 48

1. The Court shall admit all evidence necessary to establish the facts of the case. It shall decide which of the proffered evidence it is necessary to admit and may also admit evidence other than that which has been submitted. It may appoint an individual Justice to hear certain evidence outside of the oral hearing. It may also request another court to hear certain evidence.
2. All courts, public administrative bodies, and other State institutions shall, at the request of the Court, grant it assistance in procuring documentary proofs for use in its decisionmaking.
3. A record shall be drawn up of all evidence which is heard outside of the oral hearing, and it shall be signed by the Justice, the court reporter, and other persons taking part. The results of such a presentation of evidence must always be communicated during the oral hearing.

### Article 49

1. Any means which can serve to establish the facts of the case may be used as evidence. This includes, in particular, the testimony of witnesses, expert opinions, the reports and statements of State authorities and legal persons, documents, results of inquests, as well as the testimony of parties.
2. It is not necessary to take evidence concerning generally known facts or facts known to the Court as a result of its official activities.
3. After proceedings are instituted, evidence may be safeguarded upon application to the Court if there is concern that it would not be possible to procure it later, or only with great difficulty. The Rapporteur shall have the evidence at risk safeguarded by the court within the jurisdiction of which the evidence is found.

## Article 50

1. Every citizen who is summoned is obliged to appear before the Court and testify as a witness. He or she must testify truthfully and withhold nothing. He or she may refuse to testify only where such testimony could expose him or her or persons close to him or her to criminal prosecution.
2. Should the decision of the Court turn upon the assessment of facts for which expert knowledge is necessary, after hearing from the parties, the Court shall appoint one or more experts whom it shall question or to whom it shall assign the task of preparing a written expert opinion.

## Article 51

1. A witness or an expert may not refer to a duty of secrecy which is placed upon him or her by statutes or other enactments if by ruling the Court relieves him of that duty in this case.
2. The Court shall relieve witnesses or experts of this duty only if the duty to protect government, economic, commercial or official secrets is concerned. In other cases, the duty of secrecy shall be retained, unless the witness or expert is relieved of this duty by the person whom this duty is meant to benefit.

## Article 52

## Adjournment of oral hearings

1. An oral hearing may be adjourned only for important reasons, which must be stated. If an oral hearing is adjourned, the presiding Justice shall, as a rule, indicate the day on which it shall continue.
2. When the oral hearing begins again, the presiding Justice shall give a report of what has occurred in the proceeding up until then and about evidence already taken.

## Article 53

## Conferences and votes

1. Only the Justices and a court reporter may be present at the Plenum's conference and during voting by the Plenum; only members of a Panel and a court reporter may be present at a Panel's conference or during the voting by a Panel.
2. If the Plenum so decides, Justices may only take part in conferences and votes if they were present for the whole oral hearing immediately preceding a conference or a vote.

## Judgments, rulings, and resolutions of the Court

## Article 54

1. The Court shall decide the merits of the matter by a judgment and all other issues by a ruling or a resolution.
2. A judgment shall present reasons justifying the decision and shall include the statement that no appeal from a decision of the Court is permissible.

## Article 55

The Rapporteur shall prepare a draft of a judgment, ruling, or resolution; however, if a proposal for a decision is adopted which differs considerably from the Rapporteur's draft, the judgment, ruling, or resolution shall be prepared by a Justice designated by the presiding Justice.

## Article 56

Judgments shall always be announced publicly in the name of the Republic. Judgments of the Plenum shall be announced by the Chairperson, and judgments of a Panel shall be announced by the Chairperson of that Panel.

## Article 57

1. The Court's judgments shall be published in the Collection of Laws of the Czech Republic (called *Sbírka zákonů České republiky* hereinafter "Collection of Laws") if they concern:
  - a. petitions, under Article 87(1)(a) or (b) of the Constitution, challenging the validity of a

statute or other enactment, or proposing the severing of individual provisions thereof;

b.a constitutional charge, under Article 87(1)(g) of the Constitution, against the President as referred to in Article 65(2) of the Constitution;

c.a petition by the President, under Article 87(1)(h) of the Constitution, seeking the annulment of a concurrent resolution of the Assembly of Deputies and of the Senate, as referred to in Article 66 of the Constitution.

2.The Court shall publish, in the Collection of Laws, the statement of the judgment and so much of the reasoning of the judgment as makes clear the legal principles relied on by the Court, as well as the reasons which led to them. The Court may decide not to publish in the Collection of Laws the reasoning of a judgment in a matter declaring a statute or other enactment invalid, or severing individual provisions thereof, if such statute or other enactment was not promulgated in the Collection of Laws or in the analogous preceding collection.

3.If a legal principle of general significance is announced by the Court in a judgment of the type that is not published in the Collection of Laws, the Court may decide to publish this legal principle in the Collection of Laws.

4.As soon as the final written version of it is ready, the Chairperson shall present to the editor of the Collection of Laws each judgment of the Court that is to be published in the Collection of Laws.

#### Article 58

1.Judgments under Article 57(1)(a) are enforceable on the day they are published in the Collection of Laws, unless the Court decides otherwise.

2.Judgments under Article 57(1)(b) and (c) are enforceable when they are announced; the same applies to the Court's judgments, under Article 87(1)(e) of the Constitution, in remedial actions against a decision concerning the election of a Deputy or a Senator and its judgments, under Article 87(1)(f) of the Constitution, in cases of doubt concerning a Deputy or Senator's loss of eligibility for office or the incompatibility of some other position or activity with holding that office.

3.Other judgments are enforceable upon the personal delivery of a copy of the final written version to each party.

#### Article 59

The Collection of judgments, rulings and resolutions of the Court

1.Every judgment adopted by the Court in a calendar year shall be published in the Collection of Judgments, Rulings, and Resolutions of the Court (called in Czech *Sbírka nálezu a usnesení Ústavního soudu*, hereinafter "Collection of Decisions"), which the Court shall issue annually, for use by the public, after the end of each calendar year. The Collection of Decisions may be published in instalments during the course of the year.

2.Judgments shall be placed in the Collection of Decisions in the order in which they were adopted, and they shall be consecutively numbered in this way, also within the framework of a calendar year.

3.The Court shall publish, in the Collection of Decisions, the statement of the judgment and so much of the reasoning of the judgment as makes clear the legal principles relied on by the Court, as well as the reasons which led to them. Information about the identity of the parties and the secondary parties, their representatives, witnesses and experts shall not be published.

4.Rulings and resolutions may also be published in the Collections of Decisions if they were adopted by the Plenum. The provisions of paragraphs 1 through 3 apply analogously.

5.The Chairperson shall direct the publication of the Collection of Decisions. He or she may assign this duty to one of the Vice-Chairpersons.

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6.Until a judgment, or a ruling or resolution chosen for publication in the Collection of Decisions, is made public, its final version designated for the Collection of Decisions shall be available at the Court for perusal by any person.

#### Article 60

##### The delivery of decisions and notices

- 1.Judgments, rulings, resolutions, notices of defects in a petition, summonses to parties to an oral hearing and other notifications to parties or their representatives shall be delivered to them in person.
- 2.Written documents under paragraph 1 need not be delivered to secondary parties provided they concern only parties to the proceeding.
- 3.In other cases, the Rapporteur shall decide upon the means of delivery, according to the nature of the matter.

#### Article 61

##### Disciplinary measures

- 1.The Chairperson, in matters before the Plenum, or the Chairperson of a Panel, in matters before a Panel, may by ruling impose a disciplinary fine of up to 100 000 K\_ upon anyone who seriously impedes the progress of the proceeding, in particular by failing to appear before the Court without a reasonable excuse or by disobeying its orders, or upon anyone who disrupts the order of the Court or who makes a grossly offensive submission.
- 2.The execution of an enforceable ruling of the Court concerning the imposition of a disciplinary fine shall be governed by a special statute or some other enactment.
- 3.The Justice who imposed a disciplinary fine may subsequently remit it, even after the proceeding has concluded.
- 4.Disciplinary fines shall accrue to the State.

#### Article 62

##### Costs of proceedings

- 1.Proceedings before the Court are not subject to court fees.
- 2.The costs of proceedings arising from the taking of evidence before the Court and the costs of interpreting shall be charged to the budget of the Court.
- 3.The costs of proceedings before the Court which are incurred by a party or a secondary party, shall be borne by that party or a secondary party, unless this Statute provides otherwise.
- 4.In justifiable cases according to the results of the proceeding, the Court may decide to impose upon a party or a secondary party the obligation to pay, in whole or in part, the costs of proceedings incurred by another party or a secondary party.
- 5.The cash outlays of a party, a secondary party or their representatives, the loss of wages of a party or secondary party or attorney's fees shall be considered as a party's or secondary party's costs of proceedings.

#### Article 63

##### The application of rules of Court procedure

Unless this Statute provides otherwise, the appropriate provisions of the Code of Civil Procedure, as well as statutes or other enactments issued for its implementation, shall be applied in proceedings before the Court.

#### Chapter Two

##### Specific provisions concerning proceedings before the Court

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## First Part

Proceedings challenging the validity of a statute or some other enactment

## Article 64

### The submission of petitions

1.A petition, under Article 87(1)(a) of the Constitution, challenging the validity of a statute, or individual provisions thereof, may be submitted by:

- a.the President;
- b.a group of at least 41 Deputies or a group of at least 17 Senators;
- c.a Panel of the Court in connection with deciding a constitutional complaint;
- d.anyone who submits a constitutional complaint under the conditions stated in Article 74 of this Statute.

2.A petition, under Article 87(1)(b) of the Constitution, challenging the validity of some other enactment, or individual provisions thereof, may be submitted by:

- a.the government;
- b.a group of at least 25 Deputies or a group of at least 10 Senators;
- c.a Panel of the Court in connection with deciding a constitutional complaint;
- d.anyone who submits a constitutional complaint under the conditions stated in Article 74 of this Statute;
- e.a representative body of a higher self-governing region.

3.The head of a county office or a representative body of a higher self-governing region may also submit a petition challenging the validity of an enactment, or individual provisions thereof, issued by a municipality situated within the region over which that body has jurisdiction.

4.In connection with their decisionmaking under Article 95(2) of the Constitution, courts are also

authorised to submit petitions challenging the validity of a statute or individual provisions thereof.

5.The Plenum may institute proceedings to annul a statute or some other enactment, or individual provisions thereof, if there are grounds to do so under Article 78(2).

6.The petition of a group of Deputies or of a group of Senators under paragraph 1(b) or paragraph 2(b) must be signed by the required number of Deputies or Senators.

7.Where the term “statute” is used in this part, it shall also refer to those statutory measures of the Senate which were ratified by the Assembly of Deputies pursuant to Article 33(5) of the Constitution. Regarding petitions to institute proceedings submitted by a court in connection with its decisionmaking, the term “constitutional act” shall also refer to international treaties under Article 10 of the Constitution (hereinafter “Article 10 Treaties”).

## Article 65

### Jurisdiction to act on a matter

If both the Plenum and one or more Panels, have jurisdiction to act upon the same petition, the Plenum shall act upon it and resolve the matter.

## Article 66

### Inadmissible petitions

1.A petition is inadmissible if a statute or some other enactment, or individual provisions thereof, the validity of which is challenged, lost force and effect prior to the delivery of the petition to the Court, or if at that point it had not yet been promulgated either in the Collection of Laws or in some other legally prescribed manner.

2.In addition, a petition is inadmissible if the constitutional act, the statute or the Article 10 Treaty, with which the enactment under review is alleged to be incompatible, lost force and effect prior to the delivery of the petition to the Court, or if at that point it had not yet been promulgated in the Collection of Laws.

## Article 67

## Discontinuance of proceedings

- 1.If the statute or other enactment, or individual provisions thereof, the validity of which is challenged, loses force and effect prior to the completion of proceedings before the Court, the proceedings shall be discontinued.
- 2.If a petition challenges the validity of a statute or some other enactment, or individual provisions thereof, due to its alleged incompatibility with a constitutional act, a statute or an Article 10 Treaty, the proceeding shall likewise be discontinued if the constitutional act or statute loses force and effect or if the Article 10 Treaty ceases to be binding on the Czech Republic.

## Article 68

## Advancement of the proceedings

- 1.If a petition has not been rejected or if grounds for its dismissal have not arisen during the course of the proceedings, the Court is obliged to act upon it and to resolve the matter, even without the submission of further petitions.
- 2.In arriving at its decision, the Court shall assess the contents of the statute or other enactment from the perspective of its conformity with a constitutional act or an Article 10 Treaty, or with a statute if some other type of enactment is concerned, and ascertain whether it was adopted and passed in the manner prescribed by and within the powers laid down in the Constitution.

## Article 69

## Parties to proceedings

The body which issued the statute or other enactment, the validity of which is challenged, shall also be a party to the proceedings; without delay, the Rapporteur shall send it the petition to institute proceedings with the request to submit its views on the petition within 30 days of receiving it.

## Judgments and their legal consequences

## Article 70

- 1.If after holding proceedings, the Court comes to the conclusion that a statute, or individual provisions thereof, is not in conformity with a constitutional act or an Article 10 Treaty, or that some other enactment, or individual provisions thereof, is not in conformity with a constitutional act, a statute or an Article 10 Treaty, it shall declare in its judgment that such statute or other type of enactment, or individual provisions thereof, shall be annulled or severed on the day specified in the judgment.
- 2.If after holding proceedings, the Court comes to the conclusion that no grounds have been adduced for the invalidation of the statute or other enactment, or individual provisions thereof, it shall reject the petition.
- 3.If the Court annuls a statute, or severs individual provisions thereof, on the basis of which implementing regulations were passed, then at the same time, the Court shall state in its judgment which of the implementing regulations, or which individual provisions thereof, shall lose force and effect simultaneously with the statute.

## Article 71

- 1.If, on the basis of a statute or some other enactment which the Court has annulled, a court had passed in criminal proceedings a judgment which has acquired legal effect but has not yet been enforced, the invalidation of this statute or other enactment shall constitute grounds for reopening the proceedings in accordance with the provisions of the law on criminal procedure.
- 2.Other legally effective decisions issued on the basis of a statute or some other enactment which has been annulled, remain unaffected; however, rights and duties arising from such decisions may not be enforced.
- 3.The provisions of paragraphs 1 and 2 also apply where a part of a statute or some other enactment, or any of the provisions thereof, was invalidated.
- 4.Otherwise, rights and duties flowing from legal relations created prior to the invalidation of the

statute or other type of enactment remain unaffected.

## Second Part

### Proceedings on constitutional complaints

#### Constitutional complaints

#### Article 72

1.A constitutional complaint may be submitted:

a.pursuant to Article 87(1)(d) of the Constitution, by a natural or legal person, if he or she alleges that his or her fundamental rights and basic freedoms guaranteed by a constitutional act or an Article 10 Treaty (hereinafter “constitutionally guaranteed fundamental rights and basic freedoms”) were infringed as a result of a final decision in proceedings to which he or she was a party, of a measure or of some other action by a public authority (hereinafter “action by a public authority”);

b.pursuant to Article 87(1)(c) of the Constitution, by a representative body of a municipality or a higher self-governing region (hereinafter “self-governing region”), if it alleges that the guaranteed right of its self-governing region to self-government was infringed as the result of an unlawful encroachment by the State.

2.A constitutional complaint may be submitted within a period of 60 days. If the law affords a remedy for the protection of rights (Article 75(1)), this period begins on the day when the decision as to the final available avenue of legal recourse acquires legal force or, if no such remedy is available, on the day when the events which are the subject of the constitutional complaint took place.

3.Unless otherwise stated in this Statute, the general provisions of this Statute concerning petitions shall also apply to constitutional complaints, and the general provisions of this Statute concerning petitioners shall apply to persons who submit a constitutional complaint (hereinafter “complainants”).

4.A copy of the decision in the final recourse afforded by law (Article 75(1)) for the protection of rights must be attached to the complaint.

#### Article 73

1.A political party may submit a petition, under Article 87(1)(j) of the Constitution, if it alleges that a decision dissolving it or some other decision relating to its activities is not in accord with a constitutional act or statute.

2.A petition under paragraph 1 may be submitted within a period of 30 days. This time period starts to run on the day when the decision as to the final recourse afforded by law for the protection of rights (Article 75(1)) acquires legal force.

3.For proceedings on a petition under paragraph 1, the procedure set out in this division shall be followed.

#### Article 74

A complainant may submit, together with the constitutional complaint, a proposal to annul a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint, if the complainant alleges it to be inconsistent with a constitutional act or an Article 10 Treaty, or with a statute, if the complaint concerns some other enactment.

#### Article 75

1.A constitutional complaint is inadmissible if the complainant failed to exhaust all procedural remedies afforded him by law for the protection of his rights; a petition for permission to reopen proceedings is not considered to be such a remedy.

2.The Constitutional Court shall not reject a constitutional complaint, even though it does not satisfy the condition stated in the preceding paragraph, if:

a.the significance of the complaint extends substantially beyond the personal interests of the complainant, so long as it was submitted within one year of the day when the events which are the subject of the constitutional complaint took place, or

b.proceedings for the grant of standing under paragraph 1 are subjected to considerable delay, which gives rise to or may give rise to



serious and unavoidable detriment to the complainant.

#### Article 76

##### Parties and secondary parties to proceedings

1. The complainant and the State body or other public authority, against the action of which the constitutional complaint is directed, shall be parties to proceedings on the constitutional complaint.
2. Secondary parties shall be the remaining parties to prior proceedings which produced the decision against which the complaint is directed. If the complaint concerns criminal proceedings, the parties to those proceedings shall be secondary parties.
3. The Court may grant the status of a secondary party to other persons who demonstrate a legal interest in the outcome of the proceedings.

#### Article 77

##### Discontinuance of proceedings

The complainant may withdraw his constitutional complaint only up until the time when the Court retires for its final conference; in such a case, the Court will discontinue the proceedings.

#### Article 78

##### Interruption of proceedings

1. If the complainant submitted, together with the constitutional complaint, a proposal to have a statute or some other enactment repealed pursuant to Article 74, the Panel shall interrupt the proceedings and submit a proposal to have the statute or other enactment repealed to the Plenum for its decision under Article 87(1)(a) or (b) of the Constitution. If the Plenum has jurisdiction to consider a constitutional complaint, it shall also consider a proposal to have some other enactment repealed under Article 87(1)(b) of the Constitution.
2. If in connection with deciding a constitutional complaint, a Panel comes to the conclusion that a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint, is inconsistent with a

constitutional act or an Article 10 Treaty, or with a statute if the complaint concerns some other enactment, it shall interrupt the proceedings and submit to the Plenum a proposal, pursuant to Article 87(1)(a) or (b) of the Constitution, to have that statute or other enactment repealed. Should the Plenum come to such a conclusion in connection with deciding a constitutional complaint, it shall institute and carry out proceedings under Article 87(1)(a) or (b) of the Constitution.

#### Article 79

##### Exclusion of suspensive effect

1. Constitutional complaints shall not have suspensive effect. A petition under Article 73(1), in appeal from a decision dissolving a political party or disallowing its activities shall have suspensive effect.
2. Upon a motion of the complainant, the Court may suspend the enforceability of a contested decision, if this would not be inconsistent with important public interests and so long as the complainant would, by reasons of the enforcement of the decision or the exercise of the right granted to a third person by the decision, suffer a disproportionately greater detriment than that which other persons would suffer during the suspension.

#### Article 80

##### Provisional measures

1. If a constitutional complaint is directed at some action of a public authority other than a decision by it, then in order to avert potential serious harm or detriment or to prevent a potential intervention by force, or on the grounds of other serious public interests, the Court may issue an injunction against the public authority from continuing in its actions ("provisional measures").
2. The Court may order provisional measures without oral proceedings. In especially urgent cases, the views of other parties or of secondary parties on the proposal under paragraph 1 are not required.
3. The Court's ruling on provisional measures shall lose force and effect as a result of the Court's pronouncement of a judgment on the matter, in so far as the Court has not already cancelled them

because the reasons for which they were imposed had ceased to exist.

#### Article 81

##### Relation to prior proceedings

The Court is not bound by findings of fact made in earlier proceedings.

#### Article 82

##### The judgment and its legal consequences

1. In its judgment, the Court shall hold either that it grants the constitutional complaint in its entirety, rejects it in its entirety, or grants it in part and rejects it in part.

2. If the Court grants the constitutional complaint, it shall declare in its judgment:

a. for constitutional complaints under Article 87(1)(d) of the Constitution, which of the constitutionally guaranteed rights or freedoms and which provision of a constitutional act or Article 10 Treaty was infringed, and which action by a public authority resulted in the infringement;

b. for constitutional complaints under Article 87(1)(c) of the Constitution, what the infringement of the legally guaranteed right to self-government consists in, which constitutional act or statute was infringed, and which action by a public authority resulted in the infringement;

c. for petitions under Article 87(1)(j) of the Constitution, in what way is a decision to dissolve a political party or some other decision affecting its activities incompatible with a constitutional act or a statute.

3. If it grants the constitutional complaint of a natural or legal person under Article 87(1)(d) of the Constitution, the Court shall:

a. annul the contested decision of the public authority, or

b. if a constitutionally guaranteed fundamental right or basic freedom was infringed as the result of an action by a public authority other than a decision, issue an injunction against the authority from continuing to infringe this right

or freedom and order it, to the extent possible, to restore the situation that existed prior to the infringement.

4. If it grants the constitutional complaint of a representative body of a self-governing region under Article 87(1)(c) of the Constitution, the Court shall:

a. annul the contested decision of the State body,

b. if the guaranteed right to self-government was infringed as the result of an action by the State other than a decision, issue an injunction against the relevant State body from continuing to infringe the right to self-government and order it, to the extent possible, to restore the situation that existed prior to the infringement.

5. If the Court grants a political party's petition pursuant to Article 87(1)(j) of the Constitution, the Court shall overturn the contested decision.

#### Article 83

##### Reimbursement of attorney's fees

1. Should the personal situation or financial means of the complainant justify it, especially if he or she has insufficient financial means to pay the costs connected with his or her representation (Article 29 and Article 30(1)) (hereinafter "attorney's fees"), and if the constitutional complaint was not rejected, then on the basis of the complainant's motion submitted prior to the first oral hearing, the Rapporteur shall rule that the complainant's attorney's fees shall be paid by the State, in whole or in part.

2. The Rapporteur shall rule on the complainant's motion and shall deliver the ruling to the complainant and his or her representative. If the Rapporteur grants the motion in full, the ruling need not include a statement of his or her reasons.

3. The Court shall pay for the attorney's fees from its budget.

4. Until the completion of the proceedings, the Rapporteur may quash or amend, possibly even with retroactive effect, the ruling under paragraph 2, if it is discovered that the situation of the complainant does not justify or did not justify the ruling made under paragraph 1.

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## Article 84

### Payment of attorney's fees

1. After the conclusion of the proceedings, the Court shall pay the amounts described in Article 83 to the counsel. In justified cases, it shall grant the counsel, upon his or her motion, a reasonable advance payment.
2. If the Court awards a complainant, whose attorney's fees are paid by the State (Article 83), reimbursement of the costs of the proceedings, then the person to whom such reimbursement was made is obliged to pay the Czech Republic that portion of the reimbursed costs which the plaintiff was awarded in payment of his or her attorney's fees. The Court shall resolve this issue in the ruling concerning the reimbursement of the expenses of the proceedings.
3. The amounts paid as reimbursed expenses of such proceedings shall become revenue of the State budget.

## Third Part

Proceedings in remedial actions against a decision concerning certification of the election of a Deputy or a Senator

### Remedial actions

#### Article 85

1. A remedial action, under Article 87(1)(e) of the Constitution, against a decision concerning the certification of the election of a Deputy or a Senator (hereinafter "remedial action") may be brought by:
  - a. a Deputy, a Senator, or the electoral party for which the Deputy or Senator stood as a candidate, against a decision that he or she was not validly elected;
  - b. a person whose electoral complaint, pursuant to the law on elections, was granted against a decision of the appropriate chamber of the Parliament, or a body thereof, concerning the certification of the validity of a Deputy's or Senator's election.

2. A person authorised to bring a remedial action may lodge one within ten days of the day he or she was notified of a decision pursuant to paragraph 1.

#### Article 86

The Court shall always hold an oral hearing in remedial actions under Article 85.

#### Article 87

In all other respects, the general provisions of this Statute concerning petitions to institute proceedings shall apply to remedial actions, and the general provisions of this Statute concerning petitioners shall apply to the persons who bring a remedial action.

#### Article 88

### Parties and secondary parties to proceedings

1. The body which adopted the decision that a Deputy or a Senator was or was not validly elected shall also be a party to the proceedings in a remedial action.
2. If a Deputy or Senator lodges a remedial action under Article 85(1)(a), the electoral party for which that Deputy or Senator stood as a candidate shall be a secondary party to the proceedings. If a remedial action is brought by an electoral party, the Deputy or Senator to whom the remedial action under Article 85(1)(a) relates shall be a secondary party to the proceedings.
3. A Deputy or Senator shall also be a secondary party to a remedial action under Article 85(1)(b), if the remedial action is brought against the certification of his or her election.

#### Article 89

### The exclusion of suspensive effect

Remedial actions against a decision concerning the certification of the election of a Deputy or a Senator shall not have suspensive effect.

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## Article 90

## Dismissal of an action

1. In a remedial action under Article 85(1)(a), the Court shall dismiss the action if the party who brought the action withdraws it.
2. In a remedial action under Article 85(1)(b), the Court shall dismiss the action if the party who brought the action withdraws it or if the Deputy or Senator to whom the action relates relinquishes his or her seat.
3. The Court shall also dismiss the action in the event that the Deputy or Senator to whom the action relates dies. If that person's spouse or direct lineal relation seeks the continuation of the action within one month of the death, the case shall be resumed.

## Article 91

## The judgment and its legal consequences

1. In its judgment, the Court shall either grant or deny the remedial action.
2. If the Court grants the remedial action, it shall declare in its judgment that,
  - a. the Deputy or Senator was validly elected, if it is deciding an action under Article 85(1)(a), or
  - b. the Deputy or Senator was not validly elected, if it is deciding an action under Article 85(1)(b).
3. Upon the Court's pronouncement of its decision to grant the action pursuant to Article 56, the decisions of other authorities which contradict the Court's decision shall lose all force and effect.
4. The presiding Justice shall prepare a certificate of the statement of the judgment, which he or she shall present to all parties and secondary parties attending.

## Fourth Part

Proceedings in cases of doubt concerning a Deputy or Senator's loss of eligibility for office or the incompatibility under Article 25 of the Constitution of some other position or activity with holding that office

## Article 92

## Submission of Petitions

1. Where doubt exists whether or not a Deputy or Senator has lost the right to his or her seat for the reasons stated in Article 25(d) or (f) of the Constitution, petitions requesting a determination of whether the Deputy or Senator has lost the right to his or her seat may be submitted to the Court by:
  - a. the Deputy or Senator whose seat is at issue;
  - b. the Chairperson of the Assembly of Deputies, if the petition concerns a Deputy, or the Chairperson of the Senate, if it concerns a Senator;
  - c. a group of at least 20 Deputies, if the petition concerns a Deputy, or a group of at least 10 Senators, if it concerns a Senator.
2. The provisions of Article 64(4) apply analogously.

## Article 93

## Parties to the proceedings

In proceedings concerning whether a Deputy or Senator has lost the right to his or her seat, the Deputy or Senator whose seat is at issue shall always be a party, as shall the Chairperson of the Assembly of Deputies, if the petition concerns a Deputy, or the Chairperson of the Senate, if it concerns a Senator, even if he or she is not the petitioner.

## Article 94

## Proceedings

1. The Court shall always hold an oral hearing for petitions under Article 92(1).
2. The Court shall discontinue the proceedings, if the petitioner withdraws his or her petition or if the Deputy or Senator whose seat is at issue acknowledges that he or she has lost his or her seat.
3. The Court shall also discontinue the proceedings in the event of the death of the Deputy or Senator to whom the appellate remedy relates. If that person's spouse or direct lineal relation seeks the

continuation of the proceedings within one month of the death, the proceedings shall be resumed.

#### Article 95

#### Judgments

1. In its judgment, the Court shall hold that the Deputy or Senator has lost his or her seat for the reasons stated in Article 25(d) or (f) of the Constitution, or it shall declare that the petitioner has not adduced facts which would constitute grounds for the loss of a seat under Article 25(d) or (f).

2. The presiding Justice shall prepare a certificate of the statement of the judgment, which he shall present to all parties attending.

#### Fifth Part

#### Proceedings on a constitutional charge brought against the President

#### Article 96

#### High treason

For the purposes of this Statute, high treason shall consist of actions by the President directed against the sovereignty and territorial integrity of the Republic, as well as actions against its democratic order.

#### Article 97

#### Constitutional charges

1. Pursuant to Article 87(1)(g) of the Constitution and on the basis of a charge by the Senate, the Court shall decide whether the President has committed high treason. The proceedings are instituted upon the delivery of the charge to the Court.

2. A constitutional charge against the President pursuant to Article 65(2) of the Constitution (hereinafter "constitutional charge") must contain a precise description of the conduct by which the President is alleged to have committed high treason, together with a statement of the evidence upon which the charge is based.

3. The Court shall deal with the constitutional charge immediately, giving it priority over all other matters.

4. The general provisions of Chapter One of this heading of the Statute shall not be applicable to proceedings on a constitutional charge with the exception of Articles 36 to 43, Articles 52 to 59, and Article 61.

#### Article 98

#### Dismissal of the charge

1. If, prior to the Court's retiring for its final conference, the Senate delivers to the Court a resolution withdrawing the charge, the Court shall dismiss the charge.

2. The Court shall also dismiss the charge in the event that the President dies after the proceedings are instituted. If the President's spouse or direct lineal relation seeks the continuation of the proceedings within one month of his death, they shall be resumed.

3. The fact that the President resigns from office after the proceedings have been instituted is not grounds for dismissal of the charge.

#### Article 99

#### Representation in the proceedings

The Chairperson of the Senate, or a person to whom the Senate entrusts the duty, shall act before the Court on behalf of the Senate in proceedings on a constitutional charge.

#### Article 100

#### Defence counsel

If the President is defending a constitutional charge, he has the right to choose for himself one or more defence counsel, at least one of whom shall be an attorney.

#### Oral hearings

#### Article 101

1. The Rapporteur shall, as required, complete the investigation carried out by the Senate and make preparations for the oral hearing.

2. The Court shall always hold an oral hearing for a constitutional charge.

## Article 102

The Court shall deliver the constitutional charge to the President and notify him and the representative of the Senate of the time and venue of the oral hearing at least ten days in advance thereof. At the same time, it shall make known to the President that the hearing will be conducted in his absence if he fails to appear at it without proper justification or if he leaves prematurely during the course of the hearing without adequate explanation.

## Article 103

1. The presiding Justice shall open the oral hearing by stating the matters with which the proceedings will deal, after which he or she shall determine whether the persons who were summoned to or notified of the oral hearing have appeared, and then he or she shall ascertain their identity.
2. If the President or the representative of the Senate (hereinafter "the parties") is of the opinion that measures taken by the presiding Justice during the proceedings have prejudiced the hearing, he or she may request the Plenum to make a decision on that issue.
3. If any of the summoned persons fail to appear, the Court shall, after hearing the parties, decide whether it is possible to conduct the oral hearing or whether it is necessary to adjourn it.
4. After the tasks required in the preceding provisions have been carried out, the representative of the Senate, at the request of the presiding Justice, shall read out the constitutional charge. After the charge is read out, the presiding Justice shall give the President and his defence counsel the opportunity to express their views on the charge; the evidentiary phase of the hearing shall be conducted thereafter.
5. The President, his defence counsel, and the representative of the Senate have the right to express their views upon the evidence presented, question the witnesses and experts and submit proposals for supplementing the evidence.
6. If no further evidence is proposed or if it is decided that no further evidence will be taken, the presiding Justice shall bring to a close the evidentiary phase of the hearing and give the representative of the

Senate and thereafter the President and his defence counsel the opportunity to make a closing statement. The Court shall then retire for its final conference.

7. If from a consideration of the closing statements or if during the final conference, the Court finds it is necessary to clarify additional matters, it may adopt a resolution to supplement the evidence and resume the proceedings.
8. After the supplementary taking of evidence, the presiding Justice shall once again give the floor to the representative of the Senate and to the President and his defence counsel for an additional closing statement.

## Article 104

## The judgment and its legal consequences

1. After the conclusion of the oral hearing, the Court shall either uphold the charge and find that the President committed high treason, or it shall acquit him of the constitutional charge.
2. As soon as a judgment upholding the charge is announced pursuant to Article 56, the President shall lose the presidency as well as eligibility to reacquire it in the future. He shall have no right to the remuneration or other benefits that, pursuant to special statute, the president should receive after leaving office.
3. The presiding Justice shall prepare a certificate of the statement of the judgment, which he shall present to all parties attending.

## The reopening of proceedings

## Article 105

1. The person who, according to the judgment of the Court, committed high treason, may request that the Court reopen the proceedings on the constitutional charge, if:
  - a. the Court's judgment was influenced by the criminal act of another person;
  - b. he introduces new facts or evidence which, without fault on his part, he was not able to present in the original proceedings and which of themselves, or in conjunction with facts and

evidence already known earlier, might have led to his acquittal on the constitutional charge.

2. After the death of the person mentioned in paragraph 1, his spouse or direct lineal relation may request that the Court reopen the proceedings on the constitutional charge.

#### Article 106

Without an oral hearing, the Court shall make a decision on the request to reopen the proceedings. The reopened proceedings shall be conducted on the basis of the original constitutional charge.

#### Article 107

Even if the person mentioned in Article 105(1) is absolved of the constitutional charge in reopened proceedings, he shall not regain the lost presidency.

#### Article 108

Unless this Statute provides otherwise, the Court shall apply the relevant provisions of the Code of Criminal Procedure in proceedings on a constitutional charge.

#### Sixth Part

Proceedings on a petition of the President proposing the annulment of a joint resolution of the Assembly of Deputies and Senate pursuant to Article 66 of the Constitution

#### Article 109

##### Submission of the petition

1. If the Assembly of Deputies and the Senate adopt a concurrent resolution pursuant to Article 66 of the Constitution declaring that, the President is unable, for valid reasons, to carry out the duties of his or her office, the President may apply to the Court to annul this resolution.
2. The President may submit a petition under paragraph 1 from the day on which the Assembly of Deputies and Senate adopted the concurrent resolution pursuant to Article 66 of the Constitution until ten days when, in accordance with a concurrent resolution of the Assembly of Deputies and Senate, the President may once again carry out duties of his or her office.

#### Article 110

##### Dismissal of the proceedings

The President may withdraw the petition under Article 109 up until the time when the Court retires for its final conference. In such a case, the Court shall dismiss the petition. The Court shall also dismiss the petition if the President dies.

#### Article 111

##### Parties to the proceedings

The Assembly of Deputies and the Senate shall also be parties to the proceedings.

#### Article 112

##### Requests for evidence

At the Court's request, the Assembly of Deputies and the Senate shall, without delay, submit to the Court the evidence which served as the basis of their resolution, and possibly present additional evidence concerning the fact that, at the time the resolution was adopted and during the period it has been in effect, the President was or is unable, for valid reasons, to carry out the duties of the Presidency.

#### Article 113

##### Oral hearings

The Court shall open an oral hearing concerning the petition of the President, pursuant to Article 109, within five days of the day the petition is delivered to it at the latest.

#### Article 114

##### Provisional measures

Upon the motion of the President, the Court may, as a provisional measure, suspend the exercise of powers pursuant to Article 66 of the Constitution and, in the case of statutes not yet promulgated pursuant to Article 52 of the Constitution, suspend the promulgation of statutes with regard to which the President was not able to exercise his power under Article 50(1) of the Constitution.

## The judgment and its legal consequences

### Article 115

1. The Court shall make a decision upon a petition under Article 109 within 15 days of its delivery.
2. The Court shall decide whether, at the time the Assembly of Deputies and the Senate adopted a concurrent resolution pursuant to Article 66 of the Constitution, the President was unable, for valid reasons, to carry out the duties of the Presidency and, if necessary, for how long this impediment to his exercise of the Presidency continued.
3. If the Court decides that, at the time the Assembly of Deputies and the Senate adopted a concurrent resolution pursuant to Article 66 of the Constitution, there were not any valid reasons which prevented the President from carrying out the duties of the Presidency or that they ceased to exist while this resolution was in effect, in its judgment it shall annul such concurrent resolution of the Assembly of Deputies and the Senate as a whole, or with regard to the relevant time period.
4. If the Court decides that, at the time the Assembly of Deputies and the Senate adopted a concurrent resolution, there were valid reasons which prevented the President from carrying out the duties of the Presidency and that they had not yet ceased to exist by the time the Court adopted its judgment, it shall reject the President's petition to annul the concurrent resolution of the Assembly of Deputies and the Senate.

### Article 116

If during the time when, according to the findings of the Court, there were not any valid reasons which prevented the President from carrying out the duties of the Presidency, the Prime Minister, the Chairperson of the Assembly of Deputies or the Chairperson of the Senate, as the case may be, effected any acts pursuant to Article 66 of the Constitution, such acts shall not lose force and effect.

### Seventh Part

Proceedings concerning measures necessary to implement a decision of an international court

## Article 117

### International courts

For the purpose of this Statute, the term "international court" shall mean any international institution authorised to make decisions on complaints about violations of human rights and basic freedoms, the decisions of which are binding in the Czech Republic pursuant to ratified and promulgated international treaties on human rights and basic freedoms by which the Czech Republic are bound.

The submission of the petition and the rules of proceedings

### Article 118

If on the basis of a complaint submitted to it, an international court has decided that a constitutionally guaranteed right or freedom of a natural or legal person was infringed by the actions of a public authority of the Czech Republic and if such infringement is based on a statute or some other enactment in force, the government shall submit to the Court a petition to have such statute or other enactment repealed, or individual provisions thereof severed, if there is no other way to assure it will be repealed or amended.

### Article 119

In these proceedings, the Court shall follow the procedure set out in the First Part of this Chapter as appropriate.



## Eighth Part

Proceedings in jurisdictional disputes between a State body and a body of a self-governing region

### Article 120

#### Submission of petitions

1. In proceedings in a jurisdictional dispute between a state body and a body of a self-governing region under Article 87(1)(k) of the Constitution, the Court shall decide the dispute between the state body and the body of the self-governing region over jurisdiction to issue a decision, to take measures or other actions (hereinafter “decisions”) in the matter referred to in the petition to institute proceedings (hereinafter “jurisdictional dispute”).

2. A petition to institute proceedings in a jurisdictional dispute may be submitted by:

a. a state body in a jurisdictional dispute between that state body and a self-governing region or in a jurisdictional dispute between state bodies;

b. a representative body of a self-governing region in a jurisdictional dispute between that self-governing region and the state or in a jurisdictional dispute between self-governing regions.

### Article 121

#### Parties

State bodies and self-governing regions, which are referred to in a petition to institute proceedings, or which assert that they have jurisdiction to issue decisions in the matter referred to in the petition, or which disclaim such jurisdiction, shall also be parties to the proceedings in a jurisdictional dispute.

### Article 122

#### Inadmissible petitions

1. The petition is inadmissible if, according to a particular statute, some other authority has jurisdiction to resolve the jurisdictional dispute.

2. Furthermore, the petition is inadmissible if the bodies between which the jurisdictional dispute arose are both subordinate to the same superior body which,

in turn, has jurisdiction to resolve jurisdictional disputes.

### Article 123

#### Dismissal of the petition

If the petition is not rejected pursuant to Article 120(2), the petitioner may withdraw it only with the consent of the Court; in such cases the Court shall dismiss the petition.

#### The judgment and its legal consequences

### Article 124

1. In its judgment, the Court shall declare which body has jurisdiction to render a decision in the matter referred to in the petition to institute proceedings.

2. If the case involves a jurisdictional dispute between a state body and a self-governing region, the Court shall decide whether the matter falls within the jurisdiction of the state or of the self-governing region.

### Article 125

1. If a body which is a party to the proceedings in a jurisdictional dispute issued a decision in the matter referred to in the petition to institute the proceedings and if, according to the Court, another body has jurisdiction to issue such a decision, in its judgment the Court shall quash that decision.

2. If a body which is a party to the proceedings in a jurisdictional dispute issued a decision in which it disclaimed jurisdiction and if, according to the findings of the Court, it has jurisdiction to issue a decision in the matter, in its judgment the Court shall quash that decision.

	grounds for instituting the disciplinary proceedings occurred.
Third heading	
Wage conditions for Justices and Assistants	Article 135
Articles 126-130	
Repealed by Act No. 236/1995 Sb.	
Article 131	
The wage conditions for Assistants are governed by special statutes and other enactments.	While disciplinary proceedings for a disciplinary infraction are in progress, a Justice may not perform any act connected with the performance of his or her judicial duties. If the Justice is the Chairperson of a Panel or a member of a Panel, the Chairperson shall designate which of the other Justices shall act as a substitute member of the Panel. If the Justice is the Chairperson, one of the Vice-Chairpersons shall carry out his or her duties.
Fourth heading	Article 136
Disciplinary infractions and disciplinary proceedings	
Disciplinary infractions	The provisions of Article 135 apply analogously for the period during which a Justice is being criminally prosecuted.
Article 132	Article 137
Justices are held accountable for disciplinary infractions.	1.The Chairperson shall present his or her ruling instituting disciplinary proceedings to the Plenum.
Article 133	2.A Justice against whom disciplinary proceedings have been instituted must be given the opportunity to give his or her views on the grounds for the ruling instituting the disciplinary proceedings and to take part in all of the Plenum's dealings in the matter with the exception of conferences and votes.
1.A disciplinary infraction is any conduct by a Justice which lowers the esteem and dignity of his office or tends to undermine confidence in the independent and impartial decisionmaking of the Court, as well as any other culpable failure to fulfil the duties of a Justice.	
2.Any conduct which satisfies the elements of an administrative offence under special statutes and other enactments is also a disciplinary infraction.	Article 138
Disciplinary proceedings	The relevant provisions of the Code of Criminal Procedure shall be applied as appropriate to the taking of evidence in disciplinary proceedings.
Article 134	Article 139
1.The Chairperson may by ruling decide to institute disciplinary proceedings. The Reasons must be supplied for the ruling and it shall be delivered to the Justice against whom the disciplinary proceedings have been instituted.	1.The Plenum shall discontinue disciplinary proceedings if it finds it to be without merit. No further disciplinary proceedings may be instituted in the same matter.
2.The Plenum, on the joint proposal of at least three Justices, may adopt a resolution instituting disciplinary proceedings against the Chairperson.	2.If the disciplinary proceedings are not discontinued, the Plenum shall select, from among its members, a five member disciplinary panel, which shall act upon the matter and decide it.
3.Disciplinary proceedings may be instituted within one year of the day the conduct, constituting the	Article 140

1. At its first meeting, the disciplinary panel shall select, from among its members, a Chairperson to direct the business of its meetings. The disciplinary panel is competent to take actions and adopt resolutions when all of its members are present; it adopts resolutions by a majority vote. The provisions of Article 20 shall apply analogously.

2. In its decisionmaking, the disciplinary panel is bound by the grounds for the disciplinary proceedings stated in the ruling instituting the proceedings.

3. A Justice against whom disciplinary proceedings have been brought has the right to take part in the dealings of the disciplinary panel, with the exception of conferences and votes, to give his or her views on the grounds for the disciplinary proceedings and on the evidence taken, to question witnesses and experts and to submit proposals for supplementing the taking of evidence.

#### Article 141

The disciplinary panel shall decide either to reprimand the Justice for the conduct referred to in the ruling instituting the disciplinary proceedings or to dismiss the disciplinary proceedings if a disciplinary infraction is not proven.

#### Article 142

1. The Chairperson or the Justices who submitted the proposal to institute the disciplinary proceedings pursuant to Article 134(2), may submit objections to the resolution of the disciplinary panel dismissing the proceedings within 15 days of its delivery. The Plenum shall decide about the objections either by confirming the resolution of the disciplinary panel or by quashing it and returning the matter to the panel for further action; the Plenum's orders to supplement the proceedings are binding on the disciplinary panel.

2. If no objections to the resolution of the disciplinary panel, as referred to in paragraph 1, were submitted or if the Plenum confirmed that resolution, the Justice shall be treated as if no disciplinary proceedings had been instituted against him or her. No further disciplinary proceedings may be instituted in the same matter.

3. This Justice may, within 15 days of the day the resolution is delivered, submit objections to the

resolution of the disciplinary panel reprimanding him or her for his or her conduct. The Plenum shall decide on the objections either by confirming the resolution of the disciplinary panel, quashing it, or returning the matter to the panel for further action; the Plenum's orders to supplement the proceedings are binding on the disciplinary panel.

#### Other decisionmaking

#### Article 143

This heading shall also apply, as appropriate, in deciding whether:

- a.a Justice holds a position or engages in some other profitmaking activity which is incompatible with holding the office of a Justice;
- b.a Justice is a member of a political party or political movement;
- c.a Justice has failed to take part in the work of the Court for a period exceeding one year.

#### Article 144

- 1. If it is proven in disciplinary proceedings that a Justice has engaged in such conduct that his continuance in office would be incompatible with the mission of the Court and with the status of its Justices, and if no objections were submitted to the resolution of the disciplinary panel reprimanding the Justice for his or her conduct or if the Plenum confirmed that resolution, the Plenum will decide whether to terminate the Justice's office. The Chairperson of the disciplinary panel may submit a proposal for such a resolution.
- 2. The consent of at least nine Justices is required to adopt a resolution under paragraph 1. The Plenum may take actions on and adopt resolutions concerning the proposal if at least 12 Justices are present.

#### Fifth heading

#### Transitional and concluding provisions

#### Article 145

- 1. If an action of a public authority
  - a. of the Czech Republic, or

b. of the Czech and Slovak Federal Republic within an area of jurisdiction which, as of 1 January 1993 pursuant to constitutional acts or statutes, devolved upon the governmental bodies of the Czech Republic,

occurred prior to 1 January 1993 and if the period for submitting a constitutional complaint to the Constitutional Court of the Czech and Slovak Federal Republic prescribed in Article 55(3) of Act No. 491/1991 Sb., commenced after 2 November 1992, a constitutional complaint contesting that action may be submitted to the Court within 60 days of the day this Statute came into effect.

2. If the Court determines that the constitutional complaint brought does not contest an action of one of the public authorities referred to in paragraph 1, it shall dismiss the complaint.

#### Article 146

1. A constitutional complaint or a petition under Article 72(1) may be submitted, under the conditions prescribed in this Statute, against actions of a public authority which occurred between 1 January 1993 and the day this Statute came into effect.

2. The provisions of Article 72(2) and Article 73(2) shall apply analogously to the period for submitting constitutional complaints or petitions under paragraph 1, provided that the period for their submission, which otherwise would have commenced prior to the day this Statute came into effect, shall not commence until that day.

#### Article 147

The Court shall act upon and decide constitutional complaints which, pursuant to constitutional acts, statutes, and other enactments on the Constitutional Court of the Czech and Slovak Federal Republic, were submitted to that court prior to 1 January 1993 and upon which that constitutional court did not make a decision, so long as they concern actions of a public authority referred to in Article 145(1).

#### Article 148

1. The Court shall act upon and decide constitutional complaints under Articles 145 to 147 in accordance with this Statute.

2. In ascertaining whether the complainant's constitutionally guaranteed fundamental rights and basic freedoms were infringed, the Court shall proceed on the basis of the Charter of Fundamental Rights and Basic Freedoms and of international treaties on human rights and basic freedoms by which the Czech Republic is bound.

#### Article 149

The Court shall commence its activities when the twelfth Justice has taken the oath. The Chairperson shall summon the Justices to a meeting within 15 days of the day the twelfth Justice takes his or her oath. Until the time the Chairperson and Vice-Chairpersons are appointed, the duties of the Chairperson and the Vice-Chairpersons shall be performed by the Justice who is senior by age.

#### Article 150

This statute shall come into effect on 1 July 1993.

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# Estonia

## Supreme Court

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### Constitution

- extracts -

#### Article 4

The activities of the *Riigikogu* (the parliament of Estonia), the President of the Republic, the Government of the Republic and the courts shall be organised on the principle of separation and balance of powers.

#### Article 83

If the President of the Republic is incapable of performing his or her duties for an extended period as decided by the Supreme Court, or if he or she is temporarily unable to perform them as in the cases specified by law, or if his or her powers have terminated prematurely, then his or her duties shall temporarily transfer to the Chairman of the *Riigikogu*.

During the time that the Chairman of the *Riigikogu* is performing the duties of the President of the Republic, his or her authority as a member of the *Riigikogu* shall be suspended.

The Chairman of the *Riigikogu*, acting as President of the Republic, does not have the right, without the consent of the Supreme Court, to declare extraordinary elections to the *Riigikogu* or to refuse to proclaim laws.

If the President of the Republic is unable to perform his or her official duties for longer than three consecutive months, or if his or her authority has terminated prematurely, the *Riigikogu* shall elect a new President of the Republic within fourteen days, pursuant to Article 79 of the Constitution.

#### Article 107

Laws shall be proclaimed by the President of the Republic.

The President of the Republic may refuse to proclaim a law passed by the *Riigikogu* and, within fourteen days after its receipt, return the law, together with his or her reasoned resolution, to the *Riigikogu* for a new debate and decision. If the *Riigikogu* again passes the law which is returned to it by the President of the Republic,

unamended, the President of the Republic shall proclaim the law or shall propose to the Supreme Court to declare the law unconstitutional. If the Supreme Court declares the law constitutional, the President of the Republic shall proclaim the law.

### Chapter XIII

#### The courts

#### Article 146

Justice shall be administered solely by the courts. The courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws.

#### Article 147

Judges shall be appointed for life. The grounds and procedure for the release of judges from office shall be provided by law.

Judges may be removed from office only by a court judgment.

Judges shall not hold any other elected or appointed office, except in the cases prescribed by law.

The legal status of judges and guarantees for their independence shall be provided by law.

#### Article 148

The court system shall be consist of:

1. county and city courts, and administrative courts;
2. circuit courts;
3. the Supreme Court.

The creation of specialised courts with specific jurisdiction shall be provided by law.

The formation of emergency courts shall be prohibited.

#### Article 149

County and city courts, and administrative courts are courts of first instance.

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Circuit courts are appellate courts and shall review judgments of the courts of first instance by way of appeal proceedings.

The Supreme Court is the highest court in the State and shall review court judgments by way of cassation proceedings. The Supreme Court is also the court of constitutional review.

Rules regarding court administration and rules of court procedure shall be established by law.

#### Article 150

The Chief Justice of the Supreme Court shall be appointed to office by the *Riigikogu*, on the proposal of the President of the Republic.

Justices of the Supreme Court shall be appointed to office by the *Riigikogu*, on the proposal of the Chief Justice of the Supreme Court.

Other judges shall be appointed to office by the President of the Republic, on the proposal of the Supreme Court.

#### Article 151

The rules of court procedure regarding representation, defence, state prosecution, and supervision of legality shall be provided by law.

#### Article 152

In a court proceeding, the court shall not apply any law or other legislation that is in conflict with the Constitution.

The Supreme Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution.

#### Article 153

Criminal charges may be brought against a judge during his or her term of office only on the proposal of the Supreme Court, and with the consent of the President of the Republic.

Criminal charges may be brought against the Chief Justice and justices of the Supreme Court only on the proposal of the Legal Chancellor, and with the consent of the majority of the membership of the *Riigikogu*.

## Estonian Law on Constitutional Review Court Procedure

### I – General Provisions

#### Article 1

##### Task of the Law

This Law shall establish the procedures of the constitutional review court and the authority of the courts.

#### Article 2

##### The constitutional review court

1. The Supreme Court shall be the constitutional review court. The constitutional review court panel shall be formed within the Supreme Court.
2. The procedures for the formation and the number of members in the constitutional review panel shall be established by the Law on Courts.
3. In the cases stipulated in paragraph 3 of Article 9 of this Law, the general assembly of the Supreme Court shall try constitutional review cases.
4. The rules for the work of the constitutional review panel and the general assembly shall be established by the Rules of the Supreme Court.

#### Article 3

##### The principle of constitutional review

1. The Supreme Court shall declare any legal act to be null and void, wholly or in part, if it contradicts the provisions and spirit of the Constitution.
2. The Supreme Court shall not try legal disputes, which in accordance with the law are within the authority of other courts, as constitutional review cases.

#### Article 4

##### The authority of the Supreme Court in constitutional review

1. The Supreme Court, in the cases and in accordance with procedures stipulated in this Law, shall try:
  1. whether laws adopted by the *Riigikogu* and which have entered into force are in accordance with the Constitution, and whether resolutions adopted by the *Riigikogu* and which have

entered into force are in accordance with the Constitution and the law;

2.in accordance with Article 107 of the Constitution, whether laws which have not been proclaimed and have not entered into force are in accordance with the Constitution;

3.whether the edicts issued by the President of the Republic in accordance with Article 109 of the Constitution and which have entered into force are in accordance with the Constitution;

4.whether legislative acts adopted by the executive and local government representative bodies and which have entered into force are in accordance with the Constitution and the law;

5.whether foreign treaties concluded by the Republic of Estonia, but which have yet to enter into force, are in accordance with the Constitution;

6.in accordance with Article 2 of the Law on the Application of the Republic of Estonia Constitution, whether legal acts adopted prior to the entering into force of the Constitution are in accordance with the Constitution.

2.The Supreme Court shall not express a prior opinion on whether laws which are being drafted or the drafts of other legal acts or foreign treaties are in accordance with the Constitution and the law.

3.The Supreme Court shall try a constitutional review case in regard to whether a legal act or foreign treaty stipulated in this Article is in accordance with the Constitution and the law, only to the extent as this requested in the petition.

#### Article 5

##### Constitutional review in the trial of court cases

1.If in the trial of a case, a court concludes that the applicable law or other legal act contradicts the Constitution, the court shall declare it to be in contradiction with the Constitution and shall not apply it.

2.If a court with its decision has declared a law or other legal act to be in contradiction with the Constitution and has refused to apply it, the court shall so inform the Supreme Court and the Legal Chancellor, by which constitutional review

proceedings in the Supreme Court shall be initiated.

#### Article 6

##### Who has the right to directly petition the Supreme Court for constitutional review

1.The following shall have the right to directly petition the Supreme Court for the court to determine whether a law, other legal act or foreign treaty is in accordance with the Constitution or the law:

1.the President of the Republic, in the cases stipulated in Article 107 of the Constitution;

2.the Legal Chancellor, in the cases stipulated in Article 142 of the Constitution and to determine whether a foreign treaty is in accordance with the Constitution;

3.any court, in the cases stipulated in Article 5, paragraph 2 of this Law.

2.The proposal shall be made to the Supreme Court in the form of a motivated petition.

#### II – Rules of procedure

#### Article 7

##### Public trials

1. The trial of constitutional review cases shall be public.

2.The court may decide to hold its session, wholly or in part, in closed session, if this is necessary to protect a State secret.

3.The court, after issuing a warning, may remove persons from the courtroom who disturb order in the court and thereby obstruct the trial of the case.

4.Persons present in the courtroom may make tape recordings of the session and may make written notes.

5.Court permission shall be required to film, photograph, videotape or transmit radio and television broadcasts.

6.The secretary of the panel or of the general assembly may be present during the adoption of a court decision, who shall be prohibited from disclosing

any opinions or positions expressed in the course of deliberation and voting.

#### Article 8

##### Language of court proceedings

1. Court proceedings shall be held in the official language of the State.
2. Documents composed in other languages shall be made public as translations in the official language of the State.
3. Parties to the case who do not have a command of the official language of the State may appear before the court through an interpreter in their native language or in another language which they command.

#### Article 9

##### Collectiveness

1. The Supreme Court shall resolve constitutional review cases collectively, in the sessions of either the constitutional court panel or the general assembly.
2. The constitutional court panel shall try cases in a composition of at least three members.
3. A case may be transferred to the general assembly for trial, if at least one judge on the panel has a dissenting opinion.
4. The general assembly of the Supreme Court shall have a quorum if at least eleven of its members are present, including at least three members of the constitutional review panel.

#### Article 10

##### Due dates for submitting petitions and the trial of a case

1. A petition to the Supreme Court to determine whether a law or other legal act is in accordance with the Constitution or any other law may be made as of the day the same enter into force. In cases stipulated in Article 107 of the Constitution, a petition for constitutional review may be made in regard to a law which has not yet entered into force.

2. A petition to determine whether a foreign treaty is in accordance with the Constitution or the law may be made as of one day after the day of its signing.

3. The court shall try the case and shall announce its decision within two months from the time a petition is correctly filed with the Supreme Court. This due date may be extended by the general assembly of the Supreme Court by no longer than two months.

4. In cases stipulated in Article 107 of the Constitution, the court shall try the case and shall announce its decision within one month from the time a petition is correctly filed with the Supreme Court. This due date may not be extended.

#### Article 11

##### The content and form of petitions to the Supreme Court

1. Petitions to determine whether a disputed law, other legal act or foreign treaty is in accordance with the Constitution or the law must indicate:

1. to whom the petition is addressed;
2. name and mailing address of the petitioner;
3. the exact title and provisions of the law, other legal act or foreign treaty which allegedly contradict the Constitution, its date of adoption, date of signing or date of conclusion and place of publication;
4. the provisions of the Constitution which the disputed law, legal act or foreign treaty contradicts;
5. motivation for the petition.

2. The text of the disputed law, other legal act or foreign treaty shall be included with the petition together with other documents on which the petition is based. The petition shall be signed by the official stipulated in Article 6 or, in the cases stipulated in Article 5, by the chairman of the respective court.

3. The Supreme Court shall have the right to demand supplementary documents and explanations from the petitioner.

4. Eight copies of the petition and supplementary documents shall be included with the originals.



## Article 12

## Refusal to accept a petition

The Supreme Court shall justifiably refuse to accept or review a petition, if:

- 1.the petition is not within the authority of the court of constitutional review;
- 2.the petition is filed by a person not stipulated in Article 6 of this Law;
- 3.the petition does not meet the requirements established in Article 11. The court may demand that inaccuracies in content and form be corrected on a petition. If the petitioner corrects inaccuracies in content and form, the Supreme Court shall accept the case for trial.

## Article 13

## Demand for the position of the body which adopted the legal act

The Supreme Court shall send a copy of the petition to the body which adopted the law or other legal act and may demand that the body present its position within a determined period of time.

## Article 14

## Parties to the case

- 1.Parties to the trial of a petition in the Supreme Court shall be:

- 1.the official who filed the petition or his or her representative;
- 2.a representative of the body which adopted the disputed law or other legal act.
- 2.Parties to the case shall be notified of the time and place of the trial, however their absence from the trial shall not obstruct the trial of the case.
- 3.If the Supreme Court deems the appearance of a party to the case to be obligatory, the court, in the event of the party's failure to appear, may postpone the trial of the case.
- 4.In their capacity of office, the Legal Chancellor and the Minister of Justice, or their representatives, may participate in the court sessions of a constitutional review case, with the right to speak.

## Article 15

## Preparations for trial

- 1.The following shall be subpoenaed or summoned to court:

- 1.the parties to the case;
- 2.experts to give testimony, as the Supreme Court sees fit.
- 2.Persons who are to appear in court shall be sent a subpoena or summons in due time before the trial. The subpoena or summons shall indicate that appearance before the court is obligatory and the consequences for failure to appear.

- 3.The Supreme Court shall have the right:

- 1.to demand additional documentation and explanations from the body which adopted the legal act;
- 2.to appeal to international organisations for consultation.
- 4.The courts and State and local government bodies shall be obligated to present required documentation and explanations to the Supreme Court within a determined period of time.

## Article 16

## Trial procedures

- 1.Trial procedures shall be determined by law and by the Rules of the Supreme Court.
- 2.The chairman of the constitutional review panel shall be the Chairman of the Supreme Court, or, in his or her absence, the senior member of the panel.
- 3.Sessions of the constitutional court panel or of the general assembly of the Supreme Court shall open with a presentation by a member of the court panel and with a statement by the petitioner or his or her representative.
- 4.Experts summoned to the court shall present an opinion and the parties to the case shall have the right to question the expert.
- 5.Members of the Supreme Court may in the course of the trial question the member who makes the

presentation, the parties to the case, and the experts.

#### Article 17

##### Trial records

A record of the course of the trial and of statements made shall be made in accordance with procedures established in the Rules of the Supreme Court.

#### Article 18

##### Passing and announcing a decision

1. Decisions shall be made with justification and in observance of the confidentiality of meetings.
2. Judges shall resolve any disagreement in regard to a decision through a vote. No judge shall have the right to refuse to vote or to abstain. In the case of a tied vote, the deciding vote shall be cast by the chairman, who shall vote last.
3. Decisions shall be recorded in writing and shall be signed by the Chairman of the Supreme Court, or, in the case of his or her absence, by the senior member of the panel who participated in the trial of the case.
4. The dissenting position of a judge in the minority, which must be submitted by the time the decision is announced, shall be included with the decision.
5. Parties to the case shall be notified of the time of the announcement of the court decision after the trial of the case has concluded. The decision shall be announced no later than two weeks after the trial concludes.
6. A copy of the decision shall be forwarded to the parties to the case.

#### Article 19

##### Authority of the Supreme Court in the trial of a case

1. The Court shall have the right:
  1. to decide against a petition;
  2. to decide for a petition and to declare a law or other legal act null and void, either wholly or in part;
  3. to declare a foreign treaty to be in contradiction with the Constitution;

4. to declare a law to be in contradiction with the Constitution, in the trial of cases stipulated in Article 107 of the Constitution.

2. If a law or other legal act is declared null and void in part, the court decision must indicate exactly which parts of the law or other legal act are declared null and void.

#### Article 20

##### The entering into force of a decision

1. A decision shall enter into force as of the day of its announcement.
2. Decisions shall be final and shall not be subject to appeal.

#### Article 21

##### Interpretation of Supreme Court decisions

1. Decisions made in constitutional review cases shall be interpreted by the Supreme Court.
2. The interpretation shall be recorded in writing.

#### Article 22

##### Correction of errors

1. After a decision has been announced, the court which adopted the decision shall have the right, on its own initiative or at the request of a party to the case, to correct spelling errors in the decision, inadequate phrasing or apparent inaccuracies.
2. All erroneous copies which have been issued shall be recalled and shall be corrected or substituted by the court which made the decision.

#### Article 23

##### Obligatory force of court decisions

Supreme Court decisions shall have obligatory force for all Republic of Estonia State and government bodies, local governments, courts, officials, legal persons and natural persons.

#### Article 24

##### Publication of decisions

1. Supreme Court decisions shall be published in the *Riigi Teataja*.

2.If the Supreme Court deems necessary, decisions shall be released to the press for publication.

#### Article 25

##### Trial expenses

Expenses related to the trial of a case shall be defrayed from the State budget.

#### Article 26

##### Fines

1.If a person who is obligated to appear before the court fails to appear before the court without a justifiable excuse, or if a person obstructs or disrupts the work of the court or displays apparent disrespect for the court, the Supreme Court may impose a fine of up to 200 days salary.

2.The order to fine shall be executed in accordance with procedures established by law for executing court decisions.

#### Article 27

##### The entering into force of this Law

This Law shall enter into force as of the day of its publication in the *Riigi Teataja*.

## Law on Courts

### - extracts -

#### Part I

##### General provisions

#### Article 1

##### Judicial power in the Republic of Estonia

1.In the Republic of Estonia, justice shall be administered by the courts, as the sole bearers of judicial power.

2.Justice shall be administered on first instance by county, city and administrative courts, on second instance by district courts and on the highest level by the Supreme Court.

3.Special courts for some categories of court cases may be created by law.

4.The establishment of emergency courts shall be prohibited.

#### Article 2

##### The legal basis of the judicial system

In the Republic of Estonia, the judicial system shall be established by the Constitution and this Law.

#### Article 3

##### The tasks of the courts

The task of the courts shall be to protect the rights and liberties of all persons in accordance with the Republic of Estonia Constitution and laws.

#### Article 4

##### The right to protection by the courts

1.Citizens shall have the right to protection by the courts if their life, health, personal liberty, property, honour and dignity or other rights and liberties, which are guaranteed by the Constitution, are violated. Justice shall be administered on the principle of the equality of citizens before the law and the courts.

2.Citizens of foreign States and stateless persons shall have the right to protection by the courts equal to that of Estonian citizens on the territory of the Republic of Estonia, if not otherwise prescribed in the Republic of Estonia's international treaties.

3.Legal persons shall have the right, in accordance with the Constitution, to bring a case before the courts for the protection of their rights and liberties which have been violated.

#### Article 5

##### The language of court proceedings

1.Court proceedings shall be held in Estonian. Court proceedings may also be held in another language, if the court and the parties to the case have a command of that language.

2.Parties to a case who do not understand the language of the court proceedings shall be guaranteed the right to examine materials in the case and to participate in court proceedings through an interpreter. They shall have the right to appear before the court in their native language or in another language of their choice which they command.

## Article 6

## Public trials in the courts

1. Court sessions shall be public. The court may, in accordance with rules established for court proceedings, decide to hold its sessions, wholly or in part, in closed session, for the protection of State or business secrets, public morals or the family life or privacy of persons, or where the interests of a minor, a victim or justice so require.
2. Court decisions shall be made public, unless the interests of a minor, a matrimonial partner or a victim require otherwise.

## Part II

## The court system

## Chapter III

## The highest court

## Article 23

## The Supreme Court

1. The Supreme Court shall be the highest court of the Republic of Estonia.
2. The Supreme Court shall review court decisions on final appeal.
3. The Supreme Court shall also be the court for constitutional supervision.

## Article 24

## The composition of the Supreme Court

1. The Supreme Court shall serve with the following composition:
  1. civil court panel;
  2. criminal court panel;
  3. administrative court panel;
  4. constitutional supervision court panel;
5. the general assembly of the Supreme Court, which shall include all members of the Supreme Court.

2. The Chairman of the Supreme Court shall be appointed by the *Riigikogu*, on proposal by the President of the Republic. Members of the Supreme Court shall be appointed by the *Riigikogu*, on proposal by the Chairman of the Supreme Court.

3. In the absence of the Chairman of the Supreme Court, he or she shall be substituted by the senior chairman of the panel present. In the absence of a chairman of a panel, he or she shall be substituted by the senior member of the same panel present, if the said chairman has not appointed a substitute for the period of his or her absence.

## Article 25

## Court panels of the Supreme Court

1. The chairmen and members of the civil, criminal and administrative court panels of the Supreme Court shall be confirmed into office by the general assembly of the Supreme Court from amongst its composition, on proposal by the Chairman of the Supreme Court.
2. If necessary, the Chairman of the Supreme Court shall have the right to include members of a panel stipulated in paragraph 1 of the present Article in the composition of another panel for the review of a case.

## Article 26

## The constitutional supervision court panel

1. The constitutional supervision court panel of the Supreme Court shall consist of five judges and shall be elected by the general assembly of the Supreme Court for a term of five years.
2. The chairman of the constitutional supervision court panel shall be the Chairman of the Supreme Court, who shall preside over the panel.
3. Members of the constitutional supervision court panel shall be elected on proposal by the Chairman of the Supreme Court from the civil, criminal and administrative court panels – one member from each; in addition, one member shall be elected from amongst the jurists in the Republic of Estonia.
4. Members of the constitutional supervision court panel may not be elected for more than two terms.

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## Article 27

### The general assembly of the Supreme Court

1. The general assembly of the Supreme Court shall consist of the Chairman of the Supreme Court and the members of the Supreme Court. The Minister of Justice shall participate in sessions of the general assembly of the Supreme Court, with the right to speak.
2. The general assembly of the Supreme Court shall have a quorum if at least two thirds of its members are present. The general assembly's orders shall be adopted by a simple majority of votes of the members of the general assembly present and shall be signed by the Chairman of the Supreme Court.
3. The general assembly of the Supreme Court:
  1. shall re-examine the decisions of the Supreme Court, in the cases prescribed by law;
  2. shall confirm the composition of the court panels of the Supreme Court;
  3. shall determine the panels of district courts, the number of members in the panels and their judges, and the chairmen of the panels, and shall approve the appointment to office of chairmen of district courts, chairmen of the courts of first instance and their judges, as well as the territory over which each court has jurisdiction;
  4. shall initiate and try disciplinary actions against the Chairman of the Supreme Court, on the demand of at least two thirds of the members of the Supreme Court;
  5. shall make proposals to the *Riigikogu* or the President of the Republic to recall a judge from office;
  6. shall review the applications of candidates for judge and shall recommend persons to become candidates for judge;
  7. shall confirm the regulations for the work and direction of the judge's examination committee;
  8. shall coordinate the number of lay judges in county and city courts with the Minister of Justice, according to the territory over which each court has jurisdiction;
  9. shall confirm the procedures for disciplinary proceedings against judges;
  10. shall confirm the regulations for the Supreme Court;
  11. shall coordinate the imposition of a certain category of cases to be tried by a specific court with the Minister of Justice;
  12. shall make decisions regarding granting special vacations to members of the Supreme Court.
4. The Chairman of the Supreme Court shall convene and preside over the general assembly of the Supreme Court.
5. In the cases prescribed in point 4 of paragraph 3 of the present Article, the general assembly shall be convened and shall be presided over by the senior chairman of a panel present.

## Article 28

### Procedures for the resolution of disputes arising from the application of laws

1. If fundamental questions regarding the application of a law arise within the composition of a court during the trial of a specific court case, the case shall be assigned to the general assembly of the Supreme Court for trial.
  2. Court cases shall also be assigned to the general assembly of the Supreme Court for trial if the composition of the court does not agree with an earlier position taken by the general assembly of the Supreme Court on the application of a law.
  3. Court cases shall be assigned to the general assembly of the Supreme Court for trial by a court order.
  4. Court cases assigned to the general assembly of the Supreme Court for trial in the present Article shall be presented by the chairman of the court which initiated the dispute.
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# Latvia

## Constitutional Court

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### Constitution

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#### Article 85

The Constitutional Court shall function in Latvia within the jurisdiction set forth by law. The Constitutional Court shall review cases concerning the compliance of laws and other legal norms with the Constitution, as well as other cases placed under its jurisdiction by law. The Constitutional Court shall be empowered to declare laws and other normative acts or parts of same as null and void. The judges of the Constitutional Court shall be confirmed by the *Saeima* for the term set forth by law, upon a secret vote of the majority of no less than 51 parliamentarians.\*

\* The June 5, 1996 amendment published in *Latvijas Vēstnesis*, No.100, June 12, 1996.

### Law on the Constitutional Court

Law adopted by the *Saeima* on June 5, 1996.

#### Chapter I

##### General provisions

#### Article 1

##### The Constitutional Court

1. The Constitutional Court is an independent institution of judicial power, which within the jurisdiction set forth in the Constitution of the Republic of Latvia (hereinafter – the Constitution) and in this Law, shall review cases concerning the compliance of laws and other legal norms with the Constitution, as well as other cases placed under its jurisdiction by this Law.
  2. The Constitutional Court shall hear cases pursuant to the Constitution and this Law only.
  3. The Constitutional Court shall be a juridical person.
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## Article 2

## Independence of the Constitutional Court

Direct or indirect interference with the actions of the Constitutional Court in relation to judging shall not be permissible.

## Article 3

## Composition of the Constitutional Court

The Constitutional Court shall have seven judges.

## Article 4

## Confirmation of a judge of the Constitutional Court

1. Judges of the Constitutional Court shall be confirmed by the *Saeima*. Three judges of the Constitutional Court shall be confirmed upon the recommendation of not less than ten members of the *Saeima*, two – upon the recommendation of the Cabinet of Ministers, but two judges of the Constitutional Court upon the recommendation of the Plenum of the Supreme Court. The Plenum of the Supreme Court may select candidates for the office of a judge of the Constitutional Court only from among Republic of Latvia judges.

2. Any citizen of Latvia who has a university level legal education and at least five years' working experience in a legal profession or in a scientific or educational field in a judicial specialty in a research or higher educational establishment, may be confirmed a judge of the Constitutional Court. A person who may not be nominated for the office of a judge under Article 55 of the Law "On Judicial Power", must not be appointed as a judge of the Constitutional Court.

3. The application for the office of a judge of the Constitutional Court shall be accompanied by the following documents signed by the nominee:

1. the consent to be nominated for the office of a judge of the Constitutional Court;
2. the statement that the restrictions under Article 55 of the Law "On Judicial Power" do not apply to the nominee.
4. Lists of nominees for the office of judges of the Constitutional Court shall be published in the newspaper *Latvijas Vēstnesis* not later than five

days after their submission to the *Saeima* Presidium, indicating:

1. the submitter of the nominees;
2. the following information concerning each nominee for the office of a judge of the Constitutional Court;
  - a. full name;
  - b. year and place of birth;
  - c. place of residence (district or city);
  - d. higher educational establishments (year of graduation, specialty);
  - e. former places of employment and positions.

## Article 5

## The oath of a judge of the Constitutional Court

1. After confirmation by the *Saeima*, the judge of the Constitutional Court shall swear before the President of State the oath prescribed in the Law "On Judicial Power".
2. A judge of the Constitutional Court shall take up his/her duties of office after swearing the oath.
3. In the event a judge of another court, who has already sworn the oath, is confirmed a judge of the Constitutional Court, he/she shall not swear the oath again, and shall take up the duties of his/her office immediately after confirmation.

## Article 6

## The Robe and Badge of Office of a judge of the Constitutional Court

A judge of the Constitutional Court shall perform his/her duties of office at Court sessions wearing the Robe and Badge of Office.

## Article 7

## Term of office of a judge of the Constitutional Court

1. The term of office of a judge of the Constitutional Court shall be ten years as of the day when he/she took up his/her duties of office pursuant to Article 5 of this Law.

2.A judge of the Constitutional Court may not be removed from office during his/her term except in cases provided for in Article 10 of this Law.

3.One and the same person may not be a judge of the Constitutional Court for more than 10 years concurrently.

4.If a person, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term, is confirmed a judge of the Constitutional Court, he/she, after the expiry of the term of office of a judge of the Constitutional Court, shall have the right to return to his/her previous position, unless he/she has reached the age-limit allowed for a judge to hold office.

#### Article 8

Resignation of a judge of the Constitutional Court before expiry of his/her term of office

1.Independently from the period of holding the office, a judge of the Constitutional Court shall retire from the office of a judge upon reaching the age of seventy.

2.A judge of the Constitutional Court may resign from office before expiry of his/her term at his/her own discretion, notifying the Constitutional Court in writing.

#### Article 9

Suspension of the authority of a judge of the Constitutional Court

1.If the *Saeima* has agreed to criminal prosecution of a judge of the Constitutional Court, the authority of this judge shall be suspended until the time the verdict in the relevant case comes into legal effect or the relevant criminal case is dismissed.

2.If a judge of the Constitutional Court is charged with disciplinary liability because he/she has committed an act incompatible with the status of a judge, the Constitutional Court may suspend the authority of this judge until completion of the investigation, but not longer than for one month.

#### Article 10

Releasing or discharging from office a judge of the Constitutional Court

1.A judge of the Constitutional Court may be released from office following a ruling of the Constitutional Court, if he/she is unable to continue working because of reasons of health.

2.A judge of the Constitutional Court is removed from office, if he/she is convicted of a crime and the verdict has come into legal effect.

3.A judge of the Constitutional Court may be released from office following a ruling of the Constitutional Court, if he/she is in breach of the requirements of Article 34 of this Law, has committed a shameful act which is incompatible with the status of a judge, or regularly fails to perform his/her duties of office and has been charged with disciplinary liability in this regard.

#### Article 11

Procedure for confirming a new judge of the Constitutional Court if the authority of office of a previous judge has terminated

Upon termination of authority of office of a judge of the Constitutional Court, the *Saeima* shall confirm another judge upon recommendation of the institution which recommended the confirmation of the judge whose authority of office has terminated.

#### Article 12

Chairperson of the Constitutional Court and his/her Deputy

The Chairperson of the Constitutional Court and his/her deputy shall be elected for a period of three years from among the members of the Constitutional Court by an absolute majority vote of the entire total of the judges. The voting shall be by secret ballot.

#### Article 13

Obligations and rights of the Chairperson of the Constitutional Court and his/her Deputy

1.The Chairperson of the Constitutional Court shall preside at the sessions of the Constitutional Court, organize the work of the Court and represent the Constitutional Court.



2. The Deputy Chairperson of the Constitutional Court shall assist the Chairperson of the Constitutional Court in performing the duties of the Chairperson indicated in Paragraph 1 of this Article and shall substitute for the Chairperson of the Constitutional Court in his/her absence.

3. The Chairperson of the Constitutional Court may delegate some of his/her duties to a judge.

4. The Chairperson of the Constitutional Court and his/her Deputy may give orders to judges of the Constitutional Court in matters of performing organizational duties of office only.

#### Article 14

##### Rules of the Constitutional Court

The structure and work procedures of the Constitutional Court shall be set out in the Rules of the Constitutional Court which shall be adopted by an absolute majority vote of the entire total of the judges.

#### Article 15

##### The seal of the Constitutional Court

The Constitutional Court shall have a seal bearing the large coat-of-arms of the Republic of Latvia and the name of the Court.

#### Chapter II

##### Authority of the Constitutional Court

#### Article 16

##### Cases to be reviewed by the Constitutional Court

The Constitutional Court shall review cases regarding:

1. compliance of laws with the Constitution;
2. compliance with the Constitution of international agreements signed or entered into by Latvia;
3. compliance of resolutions of the *Saeima* with the Constitution and other laws;
4. compliance with the Constitution and other laws of regulations and other normative acts of the Cabinet of Ministers, also compliance with the Constitution, other laws and regulations of the Cabinet of Ministers, of normative acts issued by institutions or officials subordinated to the Cabinet of Ministers;

5. compliance of acts of the President of State, Chairperson of the *Saeima* and the Prime Minister with the Constitution and other laws;

6. compliance with the Constitution and other laws of other normative acts issued by institutions or officials confirmed, appointed or elected by the *Saeima*;

7. compliance with the Constitution, other laws and regulations of the Cabinet of Ministers, of binding regulations and other normative acts issued by the *Dome* (Council) of municipalities;

8. compliance with the law of an order by which a minister duly authorized by law to do so, has rescinded binding regulations issued by the *Dome* (Council) of a municipality;

9. compliance of the national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution.

#### Article 17

##### The right to submit an application

1. The following shall have the right to submit an application to initiate a case regarding compliance of laws with the Constitution (Clause 1 of Article 16), compliance with the Constitution of international agreements signed or entered into by Latvia (Clause 2 of Article 16), and compliance of resolutions of the *Saeima* with the Constitution and other laws (Clause 3 of Article 16):

1. the President of State;
2. not less than one-third of the members of the *Saeima*;
3. the Cabinet of Ministers;
4. the Plenum of the Supreme Court.

2. The following shall have the right to submit an application to initiate a case regarding compliance of regulations and other normative acts of the Cabinet of Ministers with the Constitution and other laws, and compliance with the Constitution, other laws and regulations of the Cabinet of Ministers, of normative acts issued by institutions or officials subordinated to the Cabinet of Ministers (Clause 4 of Article 16):

- 1.the President of State;
- 2.the *Saeima*;
- 3.not less than one-third of the members of the *Saeima*;
- 4.the Plenum of the Supreme Court;
- 5.the Prosecutor General;
- 6.the *Dome* (Council) of a municipality.

3.The following shall have the right to submit an application to initiate a case regarding compliance of acts of the President of State, the Chairperson of the *Saeima* and the Prime Minister with the Constitution and other laws (Clause 5 of Article 16):

- 1.the President of State;
- 2.the *Saeima*;
- 3.not less than one-third of the members of the *Saeima*;
- 4.the Cabinet of Ministers.

4.The following shall have the right to submit an application to initiate a case regarding compliance with the Constitution and other laws of normative acts issued by other institutions or officials confirmed, appointed or elected by the *Saeima* (Clause 6 of Article 16):

- 1.the *Saeima*;
- 2.not less than one-third of the members of the *Saeima*;
- 3.the Plenum of the Supreme Court;
- 4.the Prosecutor General;
- 5.the *Dome* (Council) of a municipality.

5.The following shall have the right to submit an application to initiate a case regarding compliance with the Constitution, other laws and regulations of the Cabinet of Ministers, of binding regulations and other normative acts of the *Dome* (Council) of municipalities (Clause 7 of Article 16):

- 1.ministers duly authorized by law;
- 2.the Plenum of the Supreme Court;
- 3.the Prosecutor General.
- 6.The right to submit an application to initiate a case regarding compliance with the law of an order by which a minister duly authorized by law to do so, has rescinded the binding regulations issued by the *Dome* (Council) of a municipality (Clause 8 of Article 16) shall belong to the relevant *Dome* (Council).
- 7.The following shall have the right to submit an application to initiate a case regarding compliance of the national legal norms of Latvia to those international agreements entered into by Latvia, which are not contrary to the Constitution (Clause 9 of Article 16):

- 1.the President of State;
- 2.not less that one-third of the members of the *Saeima*;
- 3.the Cabinet of Ministers;
- 4.the Plenum of the Supreme Court;
- 5.the Prosecutor General.

### Chapter III Proceedings

#### Article 18 Submission of application

1.An application to the Constitutional Court to initiate a case (hereinafter the application) shall be made in writing. The application must indicate:

- 1.the applicant's name;
- 2.the institution or official who issued the act which is disputed;
- 3.an account of the true circumstances of the case;
- 4.the legal justification of the application;
- 5.the claim presented to the Constitutional Court.

2. Disputing several acts in one application shall be permissible only if:

1.a normative act or a part thereof and legal norms of lesser legal force issued pursuant to same are disputed;

2.the acts issued by an institution (official) are disputed because the establishment of the institution, or election, confirmation or appointment of the official did not take place as prescribed by law, or the institution or official has violated the law in a manner which renders the said acts invalid.

3.The application shall be signed by the applicant. If the application is submitted by an institution, it shall be signed by the head of it. If the application is submitted by not less than one-third of the members of the *Saeima*, it shall be signed by each of these members.

4.The application must be accompanied:

1.if the application is submitted by an institution – by a decision of the institution;

2.by explanations and documents necessary to determine circumstances of the case;

3.if the application is submitted by not less than one-third of the members of the *Saeima* by an authorization of the person entitled to perform the procedural actions on behalf of the applicant pursuant to Paragraph 2, Article 23 of this Law.

#### Article 19

Special provisions for accepting an application by the *Dome* (Council) of a municipality

1.The application by the *Dome* (Council) of a municipality pursuant to Clause 6, Paragraph 2 and Clause 5, Paragraph 4 of Article 17 of this Law shall be accepted only if the municipality is of the opinion that the regulations of the Cabinet of Ministers or other normative acts regulating municipal operations are contrary to the Constitution, the Law “On Municipalities” or other laws.

2.The application by the *Dome* (Council) of a municipality pursuant to Paragraph 6 of Article 17

of this Law shall be accepted as provided for in Article 49 of the Law “On Municipalities”.

#### Article 20

Initiating a case or refusal to initiate a case

1.Upon receiving an application, the Chairperson of the Constitutional Court or a judge authorized by him/her, shall determine whether:

1.the case comes under the jurisdiction of the Constitutional Court (Article 16);

2.the applicant is entitled to submit an application (Article 17);

3.the application complies with the general (Article 1(8) and specific (Article 1(9) requirements for accepting an application.

2.If the case comes under the jurisdiction of the Constitutional Court, if the applicant is entitled to submit the application and the application complies with the general and specific requirements for accepting an application, the judge shall adopt a decision to initiate the case.

3.If the case does not come under the jurisdiction of the Constitutional Court, or the applicant is not entitled to submit the application, or the application does not comply with the general and specific requirements for accepting an application, the judge shall adopt a decision to refuse to initiate the case.

4.The decision to initiate or to refuse to initiate a case shall be adopted by the judge within one month from the date the application was submitted. In complicated cases the Constitutional Court consisting of three judges may adopt a decision to extend this term to two months.

5.If a decision is adopted to initiate a case, within three days of adopting the decision:

1.a copy of the decision shall be forwarded to participants in the case;

2.a copy of the application shall be forwarded to the institution or official who issued the act which is disputed;

3.the institution or official who issued the act which is disputed shall be requested to submit a written

reply describing the true circumstances and legal justification of the case by the date set by the judge of the Constitutional Court;

4.a copy of the decision shall be forwarded for publication in the newspaper *Latvijas Vēstnesis*.

6.If a decision is adopted to refuse to initiate a case, a copy of the decision shall be forwarded to the applicant within three days of its adoption, but in a case when the application is submitted by not less than one-third of the members of the *Saeima* to their authorized representative.

#### Article 21

Procedure by which a decision to refuse to initiate a case is appealed

1.A decision to refuse to initiate a case may be appealed to the Constitutional Court by the applicant within two weeks of receiving a copy of the decision.

2.The Constitutional Court consisting of three judges shall review the appeal within a month of receiving the appeal and adopt a decision to satisfy it and initiate the case, or dismiss the appeal.

3.If a decision is adopted to satisfy the appeal and initiate the case, within three days of its adoption:

1.a copy of the decision shall be forwarded to participants in the case;

2.a copy of the application shall be forwarded to the institution of official who issued the act which is disputed;

3.the institution or official who issued the act which is disputed is requested to submit a written reply describing the true circumstances and legal justification of the case by the date set by the Constitutional Court;

4.a copy of the decision shall be forwarded for publication in the newspaper *Latvijas Vēstnesis*.

4.If a decision is adopted to dismiss the appeal, a copy of the decision shall be forwarded to the applicant within three days of adopting it, but in the case when the application is submitted by not less than

one-third of the members of the *Saeima* – to their authorized representative.

#### Article 22

Preparing a case for review

1.After the case is initiated, the Chairperson of the Constitutional Court shall ask one of the judges to prepare it for review.

2.In preparing the case, if necessary, the judge shall:

1.request additional explanations and documents from the applicant, the institution or official who issued the act which is disputed, or any state or municipal institution, office or official;

2.invite specialists (experts) to give their opinion.

3.The case shall be prepared within not more than three months. In especially complicated cases the Constitutional Court consisting of three judges may adopt a decision to extend this term but not more than by two months.

4.The preparation of the case shall be completed by a decision of the Chairperson of the Constitutional Court to forward the case for review, setting the time and place for the session of the Constitutional Court.

5.The Court session shall be set down not later than three months after the adoption of the decision to forward the case for review.

6.Not later than 15 days before the session:

1.participants in the case shall be notified of the time and place of the session;

2.notice of the time and place of the session shall be forwarded for publication in the newspaper *Latvijas Vēstnesis*.

#### Article 23

Representation at the Constitutional Court

1.Participants in the case – the applicant and the institution or official who issued the act which is disputed – may be represented by their respective representatives.

2.If the application is submitted by not less than one-third of the members of the *Saeima*, they shall be

considered one procedural person. They may perform procedural actions by the agency of one authorized representative only. This authorization shall be confirmed by the Office of the *Saeima*.

3. Participants in the case may employ the assistance of a sworn advocate.

#### Article 24

Rights of the participants in the case to examine case material

Following adoption of the decision to forward the case for review, participants in the case – the applicant and the institution or official who issued the act which is disputed – may examine the case material.

#### Article 25

Composition of the Court

1. The entire Constitutional Court shall review cases concerning:

1. compliance of laws with the Constitution;
2. compliance with the Constitution of international agreements signed or entered into by Latvia;
3. compliance of resolutions of the *Saeima* with the Constitution and other laws;
4. compliance with the Constitution and other laws of regulations and other normative acts of the Cabinet of Ministers;
5. compliance of acts of the President of State, Chairperson of the *Saeima* and the Prime Minister with the Constitution and other laws.

2. Matters not mentioned in Paragraph 1 of this Article shall be reviewed by three judges of the Constitutional Court.

3. If the entire Constitutional Court reviews a case, it shall include all the judges of the Constitutional Court who are not excused from participating in the Court session because of health or other justified reasons. In this case there may not be less than five judges of the Constitutional Court. The session shall be chaired by the Chairperson of the Constitutional Court or his/her deputy.

4. If a case is reviewed by three judges of the Constitutional Court, the participating judges are selected

by the Chairperson of the Constitutional Court, and these judges shall elect the Chairperson of the session from their midst.

#### Article 26

The procedure for reviewing cases

The procedure for reviewing cases is provided for by this Law and the law on the procedures of the Constitutional Court.

#### Article 27

Openness of Constitutional Court sessions

1. Sessions of the Constitutional Court shall be open except in cases when this is contrary to the interests of protecting state secrets. The decision to review a case in a closed session shall be adopted by the Constitutional Court.

2. A case shall be reviewed at a closed session observing all the provisions for proceedings. The Court verdict shall be announced publicly in all events.

3. Persons younger than sixteen years of age shall not be admitted to the courtroom unless they are witnesses in the case under review.

#### Article 28

Sessions of the Constitutional Court

1. A session of the Constitutional Court is opened by the chairperson of the Court session. He/she shall announce the members of the Court, participants in the case and other persons involved in the case, and check their identity and authorizations.

2. The review of the case in essence begins with the report of a judge.

3. After the report, participants in the case describe the true circumstances of the case and the legal justification. The applicant is given the floor first.

4. Afterwards, if necessary, opinions of experts are heard and witnesses are questioned.

5. Next follow Court debates.

6. The session of the Constitutional Court ends with the announcement by the Chairperson of the Court session of the time the verdict will be announced.

7. The process of the Constitutional Court session shall be recorded on audio tape, and from it a stenographic report shall be prepared. The stenographic report shall be attached to the court record. The court record shall be signed by all the judges of the Constitutional Court participating in the case.

#### Article 29

##### Closing of proceedings

Proceedings in the case may be closed before the verdict is announced by a decision of the Constitutional Court:

1. upon a written request of the applicant;
2. if the disputed legal norm (act) is no longer in effect;
3. if the Constitutional Court finds that the decision to initiate the case does not comply with the provisions of Paragraph 1, Article 21 of this Law.

#### Article 30

##### Reaching the verdict of the Constitutional Court

1. Following the session of the Constitutional Court, the judges shall meet to reach a verdict in the name of the Republic of Latvia.
2. The verdict shall be reached by a majority vote. The judges may vote only "for" or "against".
3. In the event of a tie vote the Court shall reach a verdict that the disputed legal norm (act) complies with the legal norm of higher force.
4. The verdict shall be announced not later than 15 days after the session of the Constitutional Court. The verdict shall be forwarded to the participants in the case not later than three days after the verdict is announced.
5. The verdict shall be signed by all the judges participating in the session of the Constitutional Court.
6. A judge who had voted against the opinion given in the verdict shall present his/her individual opinion in writing, which is attached to the case file, but is not announced at the Court session.

#### Article 31

##### Contents of the verdict of the Constitutional Court

The verdict of the Constitutional Court shall indicate:

1. time and place of reaching the verdict;
2. membership of the Constitutional Court and secretary of the Court session;
3. participants in the case (indicating the applicant);
4. provision of this Law pursuant to which the Constitutional Court has reviewed the case;
5. the disputed legal norm (act);
6. circumstances established by the Constitutional Court;
7. arguments and proof justifying the conclusions of the Constitutional Court;
8. arguments and proof by which the Constitutional Court rejects this or other proof;
9. provision of the Constitution or other law pursuant to which the Constitutional Court considered whether the disputed legal norm (act) complies with the legal norm of higher force;
10. ruling of the Constitutional Court whether or not the disputed legal norm (act) complies with the legal norm of higher force;
11. a statement that the verdict of the Constitutional Court is final and may not be appealed.

#### Article 32

##### Force of a verdict of the Constitutional Court

1. The verdict of the Constitutional Court is final. It shall come into legal effect at the time of announcement.
2. A verdict of the Constitutional Court shall be binding on all state and municipal institutions, offices and officials, including the courts, also natural and juridical persons.
3. Any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as

of the date of announcing the verdict of the Constitutional Court, unless the Constitutional Court has ruled otherwise.

- 4.If the Constitutional Court has recognized any international agreement signed or entered into by Latvia as incompatible with the Constitution, the Cabinet of Ministers is immediately obliged to see that the agreement is amended, denounced, suspended or the accession to that agreement is recalled.

#### Article 33

##### Publication of the verdict of the Constitutional Court

- 1.The verdict of the Constitutional Court shall be published in the newspaper *Latvijas Vēstnesis* not later than within five days of being announced. The deciding part of the verdict shall also be published in the gazette *Latvijas Republikas Saeimas un Ministru Kabineta Zinotājs*.
- 2.Once a year the Constitutional Court shall publish a collection of verdicts of the Constitutional Court, including all verdicts in full and individual opinions of judges attached to cases.

#### Chapter IV

##### Status of a judge of the Constitutional Court

#### Article 34

##### Restrictions concerning other paid employment and participation in public affairs

- 1.A judge of the Constitutional Court may not fill another office or have other paid employment except in a teaching capacity. He/she may not be a member of the *Saeima* or the *Dome* (Council) of a municipality.
- 2.The office of a judge of the Constitutional Court is incompatible with membership in a political organization (party) or the association of same. A judge of the Constitutional Court may be a member of a public organization or the association of same, however, he/she must use this right so as not to harm the dignity and reputation of a judge, the independence of the Court, and impartiality.

#### Article 35

##### Immunity of a judge of the Constitutional Court

- 1.A judge of the Constitutional Court may not be criminally prosecuted or arrested without the consent of the *Saeima*.
- 2.A judge of the Constitutional Court may be detained, forcibly brought in and subjected to a search with the consent of the Constitutional Court only. These matters shall be reviewed by three judges of the Constitutional Court.
- 3.A judge of the Constitutional Court may be charged with disciplinary liability in case of administrative violations.

#### Article 36

##### Disciplinary liability of a judge of the Constitutional Court

- 1.A judge of the Constitutional Court may be charged with disciplinary liability for:
  - 1.violating the restrictions provided for in Article 34 of this Law;
  - 2.failure to perform his/her duties of office;
  - 3.unbecoming conduct;
  - 4.an administrative violation.
- 2.A disciplinary case may be initiated by the Chairperson of the Constitutional Court, his/her deputy or not less than three judges of the Constitutional Court.
- 3.A disciplinary case shall be prepared for review by a judge appointed by the Chairperson of the Constitutional Court or his/her deputy.
- 4.A disciplinary case shall be reviewed by the entire Constitutional Court with all the judges of the Constitutional Court who are not excused for health or other justified reasons, participating. The judge against whom the disciplinary case is initiated, is not part of the court. In this case the court must consist of not less than four judges. The session shall be chaired by the Chairperson of the Constitutional Court or his/her deputy.

5. The Constitutional Court shall adopt a decision on a disciplinary case by a majority vote. In the event of a tie vote the case shall be dismissed.

6. When reviewing a disciplinary case, the Constitutional Court may:

1. impose disciplinary punishment;

2. recommend the removal of the judge of the Constitutional Court from office pursuant to Paragraph 3, Article 10 of this Law;

3. dismiss the disciplinary case.

7. Disciplinary punishment which the Constitutional Court may impose on a judge shall be:

1. reproof;

2. admonition;

3. reduction of basic salary for a period of one year, withholding up to 20% of the basic salary.

8. Disciplinary punishment does not exclude criminal and material liability of the judge of the Constitutional Court.

#### Chapter V

Financing of the Constitutional Court, remuneration of and social guarantees for judges

##### Article 37

Financing of the Constitutional Court

The Constitutional Court shall be financed from the state budget.

##### Article 38

Remuneration of judges of the Constitutional Court

1. The salary of a judge of the Constitutional Court, the Chairperson of the Constitutional Court and his/her deputy shall be equal to the salary of a judge of the Supreme Court, the Chairperson of the Supreme Court and his/her deputy, respectively.

2. The Chairperson of the Constitutional Court shall receive additional remuneration for performing the duties of a chairperson, equal to the additional remuneration set for the Chairperson of the Supreme Court for performing the duties of

Chairperson; the deputy Chairperson of the Constitutional Court for performing the duties of a deputy Chairperson shall receive an additional remuneration equal to the additional remuneration set for the deputy Chairperson of the Supreme Court for performing the duties of a deputy chairperson.

3. In addition to their basic salary, judges of the Constitutional Court shall receive additional remuneration provided for in legislative acts currently in effect for judges of the Supreme Court with the first class of qualification.

##### Article 39

Social guarantees for judges of the Constitutional Court

All social guarantees and relief provided for judges in normative acts currently in effect shall also apply to judges of the Constitutional Court.

#### Chapter VI

Officials and employees of the Constitutional Court

##### Article 40

Officials and employees of the Constitutional Court

1. The list of positions of officials and employees of the Constitutional Court shall be established by the Chairperson of the Constitutional Court within the limits of the Court's budget.

2. The employment relations between the Constitutional Court and its officials and employees shall be regulated by the Latvian Labour Code.

3. All benefits and social guarantees provided for officials and employees of the judiciary by the Law "On Judicial Power" and other normative acts currently in effect shall apply to the officials and employees of the Constitutional Court.

##### Transitional provisions

1. Until the day when the law on the procedures of the Constitutional Court is enforced, the procedure for reviewing the cases shall be regulated by this Law and the Rules of the Constitutional Court.

2. The first session of the first Constitutional Court shall be called by the Minister of Justice within three days as of the day when at least five judges of the



Constitutional Court have assumed their office. The Minister of Justice shall chair the sessions of the first Constitutional Court until the Acting Chairperson of the Constitutional Court is elected, but if all the judges of the Constitutional Court have assumed office at the time when the session of the first Constitutional Court is convened, the Minister of Justice shall chair the session until the Chairperson of the Constitutional Court is elected.

3.If, at the time when the first session of the first Constitutional Court is convened, all the judges of the Constitutional Court have assumed office, the Constitutional Court shall elect the Chairperson of the Constitutional Court according to the ~~procedure set in Article 12 of this Law. If not all the~~ judges of the Constitutional Court have assumed office at this time, the Constitutional Court shall, by a simple majority vote, elect the Acting Chairperson Of the Constitutional Court from among the judges which have assumed office. Only a judge of the Constitutional Court who has assumed office may be elected the Acting Chairperson of the Constitutional Court.

4.The Acting Chairperson of the Constitutional Court shall have full powers of the Chairperson of the Constitutional Court until the time when the Chairperson of the Constitutional Court is elected.

5.The Cabinet of Ministers shall give all the required support for the Constitutional Court to start its work. The Constitutional Court shall be provided with premises within one month as of the day when this Law takes effect.

## Liechtenstein State Tribunal

### Constitution of the Principality of Liechtenstein

- extracts -

#### E – The State Tribunal

##### Article 104

A State Tribunal shall be set up, by a special law, as a court of public law to protect rights accorded by the Constitution, to decide in conflicts of jurisdiction between the law courts and the administrative authorities, and to act as a disciplinary court for members of the Government.

The said court shall have jurisdiction to determine whether laws are in conformity with the Constitution and whether Government regulations are in conformity with the laws; in such cases it may declare their annulment. It shall finally act as an administrative court and as an electoral tribunal.

## Article 105

The State Tribunal shall consist of a President and four other members entitled to vote; the members shall be elected by the Diet in such a manner as to ensure a majority of natives of Liechtenstein; two of its members must be trained in the law. The election of the President, who must be a native of Liechtenstein, shall be subject to confirmation by the Prince.

## Article 106

The members of the State Tribunal shall enjoy the protection of judicial independence.

## Chapter IX

The maintenance of the Constitution and final provisions

## Article 112

Should any doubts arise with regard to the interpretation of certain clauses of the Constitution which cannot be removed by agreement between the Government and the Diet, the State Tribunal shall decide in respect thereof.

## Law on the State Tribunal

Law passed on 5 November 1925

Liechtenstein Law Gazette (*Liechtensteinisches Landesgesetzblatt* – LGBl.) 1925 No. 8 issued on 19 December 1925

With reference to Articles 2, 59, 62, 93, 104, 105, 106 and 112 of the Constitution and with the approval of the Prince, the Diet decided at its sitting of 5 November 1925 as follows (introductory provisions subsequently amended (LGBl. 1966 No. 24 and 1983 No. 7):

## Title 1

## General principles

## Article 1

## A – General provisions

1. For the protection of public law, a State Tribunal shall be established. It shall have its seat in Vaduz and be endowed with the following powers:

2. The decisions of the State Tribunal shall, without prejudice to review proceedings, be final.
3. However, complaints concerning a denial of justice or a delay in hearing a case shall, as long as the decision in question has not yet been taken, be admissible at any time and be addressed to the Diet.
4. The provisions of the Courts Organisation Act and the rules relating to appeals laid down in the Code of Administrative Procedure, in so far as the appellate authority does not function as a supervisory body, shall also apply.

## B – Composition and organisation

### Article 2

#### I – General provisions

1. The State Tribunal shall consist of the President, his deputy, four additional members and their substitutes, all of whom shall exercise their functions on a part-time basis.
2. The President, the Vice-President, two additional members and their deputies must have been born in Liechtenstein; at least two members and their deputies must be trained in the law.

### Article 3

#### II – Incompatibility

1. The office of President, a judge or a substitute judge is incompatible with the office of a member of the Government, including the Secretary to the Government (*Regierungssekretär*), or the position of a civil servant pursuant to Article 83, paragraph 1 of the Constitution or a lower court judge (*Landrichter*).
2. If a conflict of functions arises the person elected shall decide within fourteen days which position he wishes to fill.
3. If he or she fails to do so in spite of the Government's request this shall be considered to be a refusal to accept the election.

### Article 4

#### III – Elections

1. The members of the State Tribunal and their substitutes shall be elected by the Diet for a term of five years.
2. If, for some reason, the State Tribunal cannot be properly constituted even after convoking the substitutes, the necessary supplementary elections shall be held.
3. With the exception of the question of nationality, the same rules shall apply to eligibility for election to the State Tribunal as to the Diet.

4. In order to be valid, the election of the President and his deputy shall also require the endorsement of the Prince.

5. If the President and his deputy are prevented for any reason from exercising their functions, the Tribunal shall appoint a Chairperson of Liechtenstein nationality from its midst, if necessary one of the substitutes.

### Article 5

#### IV – Auxiliary organs and Tribunal Registry

1. The Government shall appoint a government representative (*Vertreter des öffentlichen Rechts*) where the law provides for this to be done or if, in the Government's opinion, the public interest so requires.
2. The State Tribunal's administrative business shall, if it is not carried out by the President or a person appointed by him or the State Tribunal, be conducted by the Chancery.

#### V – Withdrawal from sittings

### Article 6

#### 1 – General provisions

1. Those members and substitutes of the State Tribunal who belong at the same time to another Liechtenstein court or to the Diet must withdraw from a sitting when a matter is to be considered on which the authority to which they belong has taken a decision or in which they have another interest.
2. Moreover, the rules on withdrawing from appeal proceedings before the Administrative Tribunal in administrative criminal matters shall apply *mutatis mutandis* to the members and auxiliary organs of the State Tribunal, when the latter has to take a decision on a motion of the Diet directed against a member of the Government for a violation of the Constitution or the law or on any other action taken by the Diet for the dismissal of, or payment of damages by, a member of the Government or a public servant for breach of duty or in disciplinary proceedings.
3. In all other cases, such as proceedings for safeguarding constitutionally guaranteed rights, the rules on withdrawing from or excluding appeal

proceedings before the Administrative Tribunal in the case of administrative matters shall apply *mutatis mutandis*.

- 4.If the proceedings concern a matter in which the preconditions set out in both the first and second paragraphs of this article coincide, the existence of a ground for withdrawal from ordinary administrative proceedings or administrative criminal proceedings shall suffice for withdrawal from these appeal proceedings.

5.Repealed by LGBl. 1987 No. 73.

## Article 7

### 2 – Proceedings

- 1.Whether a ground for excluding a member exists shall be decided by the President before the sitting. When that ground is only subsequently asserted, the State Tribunal itself shall decide.
- 2.The State Tribunal shall itself decide on any obligation for its members to reimburse costs in proceedings to deal with a challenge for bias, this decision being subject to the legal remedies permitted by this Law.

## VI – Independence of judges

## Article 8

### 1 – General provisions

- 1.The members of the State Tribunal shall be independent in the exercise of their office and only subject to the Constitution and the laws (Article 106 of the Constitution).
- 2.In the exercise of their judicial office they may not accept any orders or advice from the Prince, the Government or any other authority. Moreover, their deliberations shall remain secret.

## Article 9

(Amended by LGBl. 1983 No. 10)

### 2 – Removal from and suspension from office

- 1.Members may, without prejudice to their right to resign, only be removed or suspended from or appointed to office by the State Tribunal itself.

- 2.A member's removal or suspension from office shall be permissible when he is legally incapacitated or is suffering from any physical or mental disease that renders him unfit to carry out his office for some time or when he has been convicted for a dishonourable criminal act or other crime or has been convicted for an offence that disqualifies him from being elected to the Diet, even if only a suspended sentence is imposed.

- 3.When a judge becomes ineligible to stand as a candidate or vote in elections to the Diet as a result of being legally incapacitated or of a conviction for a criminal offence that has become final in law he shall cease to hold office. Moreover, a judge shall, by law, be temporarily suspended from office when he is being investigated for a criminal offence that entails the loss of his eligibility or for an offence or a crime within the meaning of the criminal law.

- 4.If a judge has been removed from office or the State Tribunal is temporarily not fully constituted as a result of a judge's provisional suspension, a substitute shall be appointed in accordance with the Constitution.

## C – Jurisdiction

## Article 10

### I – General provisions

- 1.The State Tribunal shall adjudicate as the court of first and last instance (in cases in which it has original jurisdiction) or as an appellate court hearing appeals against decisions or orders of judicial and administrative authorities (in cases that subsequently fall within its jurisdiction) or as a court required to give an opinion.
- 2.Where the State Tribunal has jurisdiction, it shall, in case of doubt, give judgment as an administrative court of first instance with no possibility of appeal, unless otherwise laid down in individual provisions.
- 3.Unless there is any provision to the contrary, no appeal may be made to the Administrative Tribunal after a complaint concerning the same matter has been lodged with the State Tribunal and the latter has jurisdiction to hear it.

4. In cases of doubt, the question of territorial jurisdiction shall be determined according to the provisions relating to the exercise of jurisdiction.

5. The State Tribunal may reserve the right to function as a supervisory body and carry out the relevant measures.

II – The State Tribunal as a court of first and last instance

#### Article 11

##### 1 – The State Tribunal as a Constitutional Court

The State Tribunal shall have jurisdiction as a court of first and last instance determining complaints:

1. involving the protection of citizens' constitutionally guaranteed rights (Articles 28 ff. of the Constitution);
2. involving an examination of the constitutionality of the laws and the legality of Government decrees;
3. involving an interpretation of the Constitution following an application by the Government or the Diet.

#### Article 12

##### 2 – The State Tribunal as a court resolving conflicts of jurisdiction

The State Tribunal shall rule as the court of first and last instance on applications concerning conflicts of jurisdiction between judicial and administrative authorities, including the Administrative Tribunal. The jurisdiction of the State Tribunal cannot be disputed.

#### Article 13

##### 3 – The State Tribunal as an administrative court

The State Tribunal shall give judgment as the court of first and last instance on administrative disputes referred to it under the law for a decision.

#### Article 14

(Amended by LGBl. 1966 No. 24)

##### 4 – The State Tribunal as a court for the impeachment of Government ministers and as a disciplinary tribunal

(Title amended by LGBl. 1983 No. 7)

1. The State Tribunal shall have jurisdiction as the court of first and last instance in respect of the assessment of applications directed against its members for a violation of the Constitution or other laws and in respect of disciplinary proceedings held in accordance with Article 104, paragraph 1 of the Constitution.

2. *Repealed by LGBl. 1983 No. 7.*

#### Article 15

##### III – The State Tribunal as an appellate court

Decisions or orders of a judicial or administrative authority in matters involving both private and criminal law may only be challenged before the State Tribunal when the latter has jurisdiction under the aforementioned provisions and as long as they have not become final in law (Article 104 of the Constitution).

## Article 16

## IV – Legal opinions

At the request of the Government or the Diet, the State Tribunal shall provide legal opinions on general questions of constitutional and administrative law, the subject-matter of legislation and draft laws, and on the interpretation of laws and decrees.

## Title 2

## Proceedings before the State Tribunal

## Part 1

## General principles

## Article 17

## A – General provisions

In cases in which the State Tribunal gives judgment as the Constitutional Court, as a court resolving conflicts of jurisdiction or as an administrative court, proceedings before it shall be subject to the rules governing simple administrative procedure, including the procedure for enforcing administrative decisions. In all other cases, unless exceptions are provided for, the rules governing administrative criminal proceedings and the execution of administrative decisions shall apply.

## Article 18

## B – Parties to proceedings

1. The authorities against whose decisions or orders proceedings have been instituted shall, unless the law provides otherwise, also be parties to proceedings before the State Tribunal and shall in all cases be furnished with the files in order to make their observations.
2. Decisions shall be duly served on the parties and the authority whose decision or order has been challenged.

## Article 19

## C – The Court's position in the case of a complaint to a supervisory authority

When an admissible complaint is made to a supervisory authority in addition to a complaint or application to the State Tribunal, the proceedings before the latter shall, as a rule, be discontinued until the complaint to the authority has been dealt with.

## Article 20

## D – Petitions

1. All petitions to the State Tribunal shall be lodged in at least two copies. However, when several parties are involved one copy shall be submitted for each party and one for the State Tribunal.
2. Petitions to the State Tribunal may either be submitted to the Government for transmission to the President of the State Tribunal or directly to him.

## Article 21

## E – Presence of the public

Hearings before the full bench of the State Tribunal shall be held in public. However, the public shall be excluded from all cases in respect of which its exclusion is laid down in the rules of the Code of Civil Procedure, the Code of Criminal Procedure or other laws, or where special rules require facts and circumstances to be kept secret, such as the duty of secrecy in tax matters, as well as when the interests of the State so require.

## Article 22

## F – Costs and fees

1. The rules on the levying of court costs and administrative fees shall apply with respect to costs and fees payable.
2. Petitions to the State Tribunal shall be subject to the stamp duty payable for litigation.

## Part 2

The State Tribunal as the Constitutional Court, a court resolving conflicts of jurisdiction or as an administrative court

### A – As a court of first and last instance

#### I – Institution of proceedings

#### Article 23

(Amended by LGBl. 1982 No. 57)

##### 1 –a –In the case of rights guaranteed by the Constitution

##### b –In the case of rights guaranteed by the European Convention on Human Rights

An appeal may, after all other remedies have been exhausted, be lodged with the State Tribunal against a decision or order of a court or an administrative authority within fourteen days from the service of that decision or order:

a. for a violation of a right guaranteed by the Constitution, whether resulting from the incorrect application of a law or ordinance or from the unconstitutionality of a law or ordinance or from the illegality of an ordinance;

b. for a violation of a right enshrined in the European Convention on Human Rights, of 4 November 1950.

The appeal shall be accompanied by the original or a certified copy of the decision or order concerned.

### 2 – Annulment of laws and ordinances

#### Article 24

##### a – Laws

1. A request to have a law annulled as unconstitutional either in whole or in part, with effect for all citizens, may be made by the Government or a local authority at any time.

2. This request shall contain an application for the law to be annulled as unconstitutional either in whole or in part and be supported by the relevant grounds.

3. The State Tribunal shall, at any time, decide of its own motion or at the request of a party whether a law is constitutional when it is required to apply its provisions in a particular case either directly or, in response to a preliminary or interpolated question, indirectly. In all other cases, however, it shall only decide in response to an application made by a person or body entitled to file it and in accordance with the foregoing paragraphs.

##### b – Ordinances

#### Article 25

##### aa – When an ordinance is applied

1. The State Tribunal shall, at any time, decide of its own motion or at the request of a party whether the provisions of an ordinance are constitutional or legal when it is required to apply them in a particular case either directly or, in response to a preliminary or interpolated question, indirectly. In all other cases, however, it shall only decide in response to an application made by a person or body entitled to do so.

2. An application to annul as unconstitutional or illegal an ordinance or individual provisions thereof may be made by a court or local authority when it is required in a particular case to apply them either directly or indirectly.

#### Article 26

##### bb – Public challenge

Within one month of the publication of an ordinance in the Liechtenstein Law Gazette, one hundred persons possessing the right to vote may, without proving any special interest in doing so, challenge as unconstitutional or illegal the ordinance or individual provisions thereof and apply for their annulment.

#### Article 27

##### cc – Proceedings

1. The application must contain a request for all or individual provisions of the ordinance to be annulled and a statement of the grounds for that request.

2. If the ordinance has ceased to be valid, only its unconstitutionality or illegality may be established.

## Article 28

## c – Comparison with other courts

1. Other courts may not examine the validity of duly promulgated laws. They may, however, examine the constitutionality or legality of ordinances if they have cause to apply them.
2. Any court may, when a law is claimed to be unconstitutional or illegal in pending proceedings or when a provision of an ordinance appears to be unconstitutional or illegal, suspend the proceedings and submit the question to the State Tribunal for consideration.
3. *Repealed by LGBl. 1968 No. 21.*

## Article 29

## 3 – Interpretation of provisions of the Constitution

1. An application to the State Tribunal for it to interpret individual provisions of the Constitution may be made by the Government or the Diet.
2. Such an application must contain a precise description of what is to be interpreted and detailed grounds for that request.

## 4 – Conflicts of jurisdiction

## a – Affirmative conflicts

## Article 30

## aa – Authorities entitled to file applications

1. An application for a decision to resolve a conflict of jurisdiction that arises as a result of both a court and an administrative authority claiming to have the right to decide on a particular matter (affirmative conflict) may be made by an appellate administrative authority or, if it is not dealing with the matter, the Government.
2. If such a conflict arises between a judicial or administrative body and the Diet or one of its committees, the judicial or administrative bodies concerned shall be entitled to file an application to have it resolved.

## Article 31

## bb – Proceedings

1. The application shall be made within a period of thirty days, which period may not be extended, from the day on which the authority has taken official cognisance of the conflict of jurisdiction. However, it may only be made as long as the court or the Administrative Tribunal has not taken a decision on the case that has become final in law.
2. The authority making the application shall immediately notify the court or other authority concerned that it has done so. After the court has received such notification the relevant proceedings before it shall, by law, be suspended until the State Tribunal has ruled on the issue and the decision has become final (Article 35).
3. If the time-limit expires without being utilised the Diet or one of its committees shall have jurisdiction if they claim it. All other cases shall fall within the jurisdiction of the courts.

## Article 32

## b – Negative conflicts of jurisdiction

An application for a decision to resolve a conflict that arises as a result of a court and an administrative authority refusing to accept jurisdiction in the same case (negative conflict of jurisdiction) may only be lodged by a party involved.

## Article 33

## c – Disputes as to jurisdiction

Disputes as to jurisdiction within judicial or administrative authorities shall follow the sequence of courts or administrative channels.



## Article 34

## 5 – Administrative disputes

1. In proceedings to deal with administrative disputes in which the State Tribunal acting as administrative court gives judgment as the court of first and last instance (administrative cases in which it has original jurisdiction), the complaint to which those proceedings relate shall be lodged by applying *mutatis mutandis* the rules concerning the filing of writs laid down in the Code of Civil Procedure, without a prior attempt at mediation being necessary.
2. An application may also be made in respect of the existence or non-existence of a right or legal relationship if the plaintiff has a legal interest therein.
3. Applications may also be made in respect of changes to rights or legal relationships.
4. If an application is made to the State Tribunal acting as administrative court in its capacity as the appellate court responsible for dealing with a complaint concerning a decision or order made by an administrative authority (administrative cases in which it has subsequent jurisdiction) the appeal proceedings shall be conducted in accordance with the rules of simple administrative procedure laid down in the Code of Administrative Procedure (Article 40).

## Article 35

## 6 – Precautionary measures

1. After an appeal or other application has been lodged, the official entrusted with the preliminary proceedings or the President of the State Tribunal is entitled to order, at the request of a party, the precautionary measures necessary to maintain the status quo or to safeguard for the time being a legal position that is under threat.
2. In particular, for the duration of the proceedings the Court may grant a postponement of the execution of a judgment that has already been approved, allow the execution of a judgment until security has been provided or take other measures in proceedings to secure a legal position.

3. Where the law permits an appeal to be made to the Court during proceedings begun before a judicial or administrative authority, that appeal shall, if there are no provisions to the contrary, lead, by operation of law, to the suspension of those proceedings.

4. The authority whose decision is being challenged, the President of the State Tribunal or the official conducting the preliminary proceedings shall have the right to take precautionary measures and measures to protect a legal position.

## Article 36

## II – Preliminary proceedings

1. Provided that the case is not ready for judgment, decisions or orders of the State Tribunal shall be taken on the basis of preliminary proceedings conducted by the President, a member or other official in accordance with the rules laid down in the Code of General Administrative Procedure.
2. If the application is not immediately revealed to be inadmissible or ill-founded, both the other party and the authority that issued the challenged decision or order shall be informed and given an appropriate time-limit for consulting the files at the offices of the Government or the judge leading the inquiry and for issuing a reply.
3. In order to prepare the hearing, the parties may also be allowed to make and reply to further observations within a period to be determined.

## III – Final proceedings

## Article 37

## 1 – General provisions

1. The rules concerning final proceedings held in accordance with the principles of simple administrative procedure laid down in the Code of General Administrative Procedure apply to proceedings before and decisions of the State Tribunal, unless otherwise provided for by law or, in the State Tribunal's opinion, an oral final hearing does not appear necessary.
2. If an oral final hearing is held, the parties and others affected by the proceedings shall be summoned to appear before the Court.

- 3.If at any time in the proceedings before the State Tribunal the respondent administrative authority proves that the appellant's claim has in the meantime been satisfied, the proceedings shall, after the appellant has been heard, be discontinued by the State Tribunal. Once proceedings have been discontinued they may not be re-opened.

## 2 – Decisions

### Article 38

#### a – Safeguarding constitutionality and legality

- 1.In its decision on a complaint about a violation of rights guaranteed by the Constitution the Court shall state whether such a violation has taken place and, if so, set aside the unconstitutional decision or order concerned either in whole or in part.
- 2.If the violation has occurred as a result of the unconstitutionality of a law or the unconstitutionality or illegality of a decree the relevant provisions shall be repealed.
- 3.If a law is challenged as being unconstitutional the Court shall state in its decision whether the entire contents of the law or certain parts of it are unconstitutional and must therefore be repealed.
- 4.The same applies to a decision given when a decree has been challenged as unconstitutional or illegal.

### Article 39

#### b – In all other cases

- 1.In a case involving the interpretation of provisions of the Constitution, the Court shall determine in its decision how these provisions are to be interpreted.
- 2.A decision on a conflict of jurisdiction shall only contain the Court's ruling on the jurisdiction.
- 3.A decision on an administrative dispute shall be worded in the manner corresponding to that of a judgment in a civil case.

### Article 40

#### B – The State Tribunal as an appellate court

- 1.Unless there are provisions to the contrary, appeals to the State Tribunal, the proceedings and the determination of such appeals shall be subject to the rules relating to appeal proceedings held in accordance with the principles of general administrative procedure.
- 2.However, in this case the Court shall, unless otherwise provided by law, only decide on legal issues and not on questions regarding the exercise of discretion.
- 3.The provisions of Articles 35 and 37 (final paragraph) shall apply *mutatis mutandis*.

### Article 41

(Amended by LGBl. 1979 No. 34)

#### C – Appeals against the Court's own decisions

- 1.An application for restoration (restitution to the original condition, re-opening of proceedings) may be made against all decisions or orders of the State Tribunal in accordance with the rules of simple administrative procedure.
- 2.*Repealed by LGBl. 1987 No. 73.*

### Article 42

#### D – Effect of the decision

- 1.A decision of the State Tribunal shall become final and enforceable fourteen days after its service.
- 2.If a judicial or administrative authority has to make a decision or order following a decision of the State Tribunal it shall be bound by the latter's interpretation of the law.
- 3.If the State Tribunal reverses one of its earlier judgments setting aside a challenged decision or order made by a lower authority and referring the matter back to the latter for a new decision, the earlier decision or order made by that lower authority shall, by operation of law, regain its validity.

4.If a case has been suspended as a result of proceedings before the State Tribunal it shall be resumed either of its own motion or at the request of a party after the decision of the State Tribunal has become final in law.

5.With the exception of criminal cases, and provided that the decision or order of the State Tribunal has not been enforced, an application to quash a decision or order of the State Tribunal or to have the proceedings re-opened may, without prejudice to any claim for damages, not be based on the fact that a law or decree has been repealed in whole or in part as a result of the decision of the State Tribunal.

#### Article 43

#### E – Enforcement

1.If decisions or orders of the State Tribunal are subject to enforcement they shall be duly enforced in accordance with the rules relating to the procedure for executing administrative decisions.

2.If the State Tribunal decides to repeal a law or decree the Government shall, without delay, announce the ruling in the Law Gazette by reference to the State Tribunal's decision. The repeal shall then become final in law, unless the State Tribunal specifies a particular period, which shall not exceed six months, in its decision (*amended by LGBl. 1979 No. 34*).

3.Furthermore, the Government shall have abstracts or the entire texts of decisions of the State Tribunal printed each year, unless it is in the interests of public order and morals or any other interest of the State or for the protection of the constitutional or legal rights of a party not to publish them (*amended by LGBl. 1979 No. 34*).

#### Part 3

#### Impeachment of ministers and disciplinary proceedings

#### A – Impeachment of ministers

#### Article 44

#### I – Preconditions

1.Impeachment proceedings under Article 62 (g) of the Constitution against members of the Government (*Ministeranklage*) for a violation of the Constitution and the ordinary laws are only permissible when the violation has been committed in the execution of official duties either intentionally or as a result of gross negligence and the Diet has taken a decision to proceed with a majority of at least two-thirds of its members.

2.The Diet shall not lose the right to institute impeachment proceedings as a result of the accused's resignation or dismissal from service, irrespective of whether it takes place before or after the charge has been brought.

3.The charge may not be brought if at least three years have passed since the commission of the violation or if the member concerned has died.

#### Article 45

#### II – Proceedings in general

1.Unless rules have been enacted that deviate from this Law, the provisions of the Code of Criminal Procedure relating to criminal cases shall apply *mutatis mutandis* to proceedings to impeach a minister.

2.Proceedings for violations of the Constitution or of other laws may be joined to disciplinary proceedings or proceedings for damages or may be carried out separately.

3.When special disciplinary proceedings are before the Disciplinary Board or criminal proceedings are before a criminal judge (*Strafrichter*), the State Tribunal may postpone its decision pending the termination of the other proceedings or, conversely, may order the criminal judge to postpone his decision pending the decision of the State Tribunal.

4. Proceedings in which the charge has already been adopted shall not be interrupted by the conclusion of the Diet's legislative session or by the termination of the office of the relevant member.

#### Article 46

### III – The Indictment

If the Diet decides to lay a charge, the President of the Diet shall send the Chairman of the State Tribunal an indictment which must contain the identity of the accused, the offence for which the charge is laid, the relevant provision of the Constitution or other law which has allegedly been violated, the factual evidence that constitutes the basis of the charge, and the identity of the legal counsel entrusted with representing the prosecution before the State Tribunal.

### IV – Pre-trial hearings

#### Article 47

#### 1 – General provisions

1. A trial must be preceded by pre-trial hearings carried out without delay either by the Chairman of the State Tribunal or by an examining magistrate appointed either by the Chairman or by the State Tribunal.
2. Pre-trial hearings shall be discontinued if the Diet has decided to withdraw the charge.
3. In preparation for the trial the President may order further investigations.

#### Article 48

#### 2 – Rights of the accused

1. The arrest, temporary detention or the bringing of the accused before the examining magistrate for a violation of the Constitution or of ordinary law is prohibited.
2. The accused shall in all cases be given the opportunity to make a statement on the charge before the trial. Applications by the prosecuting counsel, the accused or his legal representative for evidence to be heard before the trial shall, where possible, be granted.

3. All civil servants shall be released from their obligation to observe secrecy when being questioned by the investigating judge and during the trial.

### V – The trial

#### Article 49

#### 1 – General provisions

1. When pre-trial hearings have been completed the President of the State Tribunal shall fix a date for the trial and summons to court the accused, his defence counsel and persons entrusted with representing the prosecution. The date for the trial shall be fixed so as to give the accused, if he does not request the period to be shortened, at least fourteen days for the preparation of his defence.
2. The public shall only be excluded from the trial if this presents a danger to State security.
3. The trial shall begin with the reading out of the charge by the Clerk of the Court.
4. If the accused does not attend or absents himself from the trial, the hearing may be held and a decision taken in the absence of the accused, or else the Court may order that he be brought before it or prevented from leaving.

#### Article 50

#### 2 – Judgments

1. The State Tribunal shall declare in its judgment whether the accused has culpably infringed a certain rule of the Constitution or an ordinary law in the exercise of his official duties or whether he is to be acquitted of the charge.
2. In the case of a deliberate violation of official duties the State Tribunal may declare the accused's loss of office if he is still in office.
3. In the event of the conviction of the accused, the State Tribunal shall also adjudicate on his rights to receive his salary, a pension, etc., provided that it does not wish to conduct separate proceedings in its capacity as an administrative court (*amended by LGBI. 1966 No. 24*).

4. A duly convicted member of the Government may be ordered to pay all or part of the costs of the proceedings. Conversely, however, the State Tribunal may rule that the State shall reimburse an accused who has been acquitted for all or part of his expenses, subject to the recovery of damages from any guilty persons.

#### Article 51

(Amended by LGBl. 1987 No. 73)

#### VI – Right of appeal

The remedies available against decisions taken are restitution and the re-opening of the proceedings, in accordance with the rules of the Code of Criminal Procedure.

#### Article 52

#### VII – Execution and pardon

1. The enforcement of decisions shall take place in accordance with the rules on administrative procedure, supplemented by the provisions of the Code of Criminal Procedure.
2. In addition, the Government shall publish the operative part of the decision in the publications designated for official announcements.
3. The Prince may only exercise at the request of the Diet his right of pardon or mitigation of sentence in favour of a member of the Government who has been convicted as a result of carrying out his official duties (Article 12 of the Constitution).

#### Article 53

#### B – Disciplinary proceedings

A separate law shall determine to what extent the present Law shall be applicable to disciplinary proceedings against members of the Government and their officials.

#### Article 53bis

(Inserted by LGBl. 1966 No. 24)

#### C – Official liability proceedings

A separate law shall determine the procedure to be followed in the case of a claim for damages lodged against an organ of the Supreme Court or the Administrative Tribunal as a result of a decision taken.

#### Final provisions

#### A – Jurisdiction

#### Article 54

#### I – General provisions

1. *Repealed by LGBl. 1966 No. 24.*

2. Where a law or decree valid at the time this Law enters into force provides for disciplinary proceedings to be held against civil servants, public employees or teachers, the final decision in appeal proceedings shall be the responsibility of the State Tribunal in any case involving an annual reduction in salary of 500 francs, demotion, relegation to temporary civil servant status or dismissal from service as a result of disciplinary proceedings, provided that the case does not concern the termination of a contract, with due notice given, of a civil servant with a contract of employment or an employee without civil servant status.

3. The subject-matter jurisdiction of the State Tribunal as an administrative court may be extended to certain matters under public law following a decision of the Diet, which shall be announced in the Law Gazette.

#### Article 55

(Amended by LGBl 1949 No. 24)

#### B – The State Tribunal as an appellate court

The State Tribunal shall have jurisdiction as an administrative court in the following cases in particular:

- a. as an appellate court dealing with appeals against decisions of the Government regarding disputes concerning local or national citizenship, boundary disputes between local authorities or disputes of a

public-law nature between local authorities, and decisions of the Government on electoral matters, provided that the Diet itself is not responsible for adjudicating on the matter;

b.as an appellate court dealing with appeals against decisions of the National Tax Commission where the tax payable as a single sum does not exceed 1000 francs, or amounts to at least 200 francs as a yearly sum (*amended by LGBl. 1961 No. 7 [Article 165, paragraph 3 in conjunction with Article 25]*);

c.*Repealed by LGBl. 1981 No. 20.*

#### Article 56

#### C –Amendments to the Code of Administrative Procedure

The Code of Administrative Procedure is hereby amended and supplemented as follows:

Article 23, paragraph 6 shall read:

6.A decision, together with a statement of the reasons for reaching it, shall be communicated to the complainant under the heading ( repealed LGBl. 1816 No. 20) “Order of Supervisory Authority” (*Aufsichtsverfügung*) or “Decision of Supervisory Authority” (*Aufsichtsentscheidung*) (Article 43 of the Constitution).

Article 28, paragraph 1, c shall read:

c.In disputes between public authorities and a private individual concerning the presence, use and number or size of items of property forming part of administrative assets or in general use by the public.

Thus the relevant rule in s. 101 of the final property law provisions is hereby repealed.

Article 30, paragraph 3 is hereby supplemented by the following:

3.Article 90, paragraph 6(a) shall apply *mutatis mutandis* to complaints against local administrative authorities.

Article 147, paragraph 1 shall be supplemented as follows:

Article 69, paragraph 4 shall be supplemented as follows:

The giving of evidence may also be refused in the case of administrative criminal offences.

In Part 4 of Chapter 2 (simple administrative procedure), after the heading “Review proceedings” (*Das Über-prüfungsverfahren*) and before the Introduction, the following shall be inserted:

Article 88a (transfer of proceedings):

The rules contained in the first and second parts of this Chapter shall also apply to review proceedings, provided that no exceptions result from this section and the following sections.

Article 90, paragraph 6a:

6a.If the appellate authority is responsible for ruling on an order or decision of a lower administrative authority and the latter has failed to deal with an application within three months of its being lodged by a party, those concerned may, after the expiry of this period, consider the application to have been rejected and lodge an appeal.

In Article 104, paragraph 1, the quotation from Article 70, paragraph 1 shall be deleted.

Article 120, paragraphs 2 and 6:

2.The provisional detention of the liable party or a refusal to hand over identity documents for the safeguarding of public property claims shall only be possible in the cases provided for by law.

6.An action for damages instituted against an administrative authority, the State, a local or other public authority in accordance with existing rules for the protection of legal rights and similar rules shall be conducted in accordance with administrative procedure; against other persons requesting the assignment of property as security it shall be conducted in the ordinary courts.

Even when an appeal has been lodged against a sentence order made by a local authority, the Government may take action by issuing a ban on the imposition of an administrative penalty.

#### Article 57

##### D – Entry into force

1.This Law is hereby declared not to be urgent and shall enter into force on the day of its promulgation.

2.The Government is entrusted with its enforcement and may also enact an implementing ordinance.

## Malta Constitutional Court

### Constitution

- extracts -

#### Section 33

##### Protection of right to life

1.No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence under the law of Malta of which he has been convicted.

2.Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -

a.for the defence of any person from violence or for the defence of property;

b.in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c.for the purpose of suppressing a riot, insurrection or mutiny; or

d.in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

#### Section 34

##### Protection from arbitrary arrest or detention

1.No person shall be deprived of his personal liberty save as may be authorised by law in the following cases, that is to say -

a.in consequence of his unfitness to plead to a criminal charge;

b.in execution of the sentence or order of a court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;

c.in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege;

d.in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by Law;

e.for the purpose of bringing him before a court in execution of the order of a court or before the House of Representatives in execution of the order of that House;

f.upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

g.in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

h.for the purpose of preventing the spread of an infectious or contagious disease;

i.in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or

j.for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.

2.Any person who is arrested or detained shall be informed, at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest or detention:

Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this subsection at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable.

3.Any person who is arrested or detained -

a.for the purpose of bringing him before a court in execution of the order of a court; or

b.upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought not later than forty-eight hours before a court; and if any person arrested or detained in such a case as is mentioned in paragraph b of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

4.Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that person.

5.Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during such a period of public emergency as is referred to in paragraph a or c of subsection 2 of section 47 of this Constitution of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

6.If any person who is lawfully detained by virtue only of such a law as is referred to in the last foregoing subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta.

7.On any review by a tribunal in pursuance of the last foregoing subsection of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it



was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

#### Section 35

##### Protection from forced labour

- 1.No person shall be required to perform forced labour.
- 2.For the purposes of this section, the expression "forced labour" does not include -
  - a.any labour required in consequence of the sentence or order of a court;
  - b.labour required of any person while he is lawfully detained by sentence or order of a court that, though not required in consequence of such sentence or order, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained or, if he is detained for the purpose of his care, treatment, education or welfare, is reasonably required for that purpose;
  - c.any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
  - d.any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community.

#### Section 36

##### Protection for inhuman treatment

- 1.No person shall be subjected to inhuman or degrading punishment or treatment.
- 2.Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Malta immediately before the appointed day.
- 3.a.No law shall provide for the imposition of collective punishments.

- b.Nothing in this subsection shall preclude the imposition of collective punishments upon the members of a disciplined force in accordance with the law regulating the discipline of that force.

#### Section 37

##### Protection from deprivation of property without compensation

- 1.No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition -
  - a.for the payment of adequate compensation;
  - b.securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and
  - c.securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta:

Provided that in special cases Parliament may, if it deems it appropriate so to act in the national interest, by law establish the criteria which are to be followed, including the factors and other circumstances to be taken into account, in the determination of the compensation payable in respect of property compulsorily taken possession of or acquired; and in any such case the compensation shall be determined and shall be payable accordingly.

- 2.Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property -
  - a.in satisfaction of any tax, rate or due;

- b. by way of penalty for, or as a consequence of, breach of the law, whether under civil process or after conviction of a criminal offence;
- c. upon the attempted removal of the property out of or into Malta in contravention of any law;
- d. by way of the taking of a sample for the purposes of any law;
- e. where the property consists of an animal upon its being found trespassing or straying;
- f. as an incident of a lease, tenancy, licence, privilege or hypothec, mortgage, charge, bill of sale, pledge or other contract;
- g. by way of the vesting or administration of property on behalf and for the benefit of the person entitled to the beneficial interest therein, trust property, enemy property or the property of persons adjudged bankrupt or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporated in the course of being wound up or liquidated;
- h. in the execution of judgments or orders of courts;
- i. by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;
- j. in consequence of any law with respect to the limitation of actions, acquisitive prescription, derelict land, treasure trove, mortmain of the rights of succession competent to the Government of Malta; or
- k. for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon -
  - i. of work of soil conservation or the conservation of other natural resources of any description or of war damage reconstruction; or
  - ii. of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed to carry out.

- 3. Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for vesting in the Government of Malta the ownership of any underground minerals, water or antiquities.
- 4. Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law and in which no monies have been invested other than monies provided by any legislature in Malta.

### Section 38

#### Protection for privacy of home or other property

- 1. Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or his property or the entry by others on his premises.
- 2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -
  - a. that is reasonably required in the interest of defence, public safety, public order, public morality or decency, public health, town and country planning, the development and utilisation of mineral resources, or the development and utilisation of any property in such a manner as to promote the public benefit;
  - b. that is reasonably required for the purpose of promoting the rights or freedoms of other persons;
  - c. that authorises a department of the Government of Malta, or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property or installation which is lawfully on those premises and which belongs to that Government, that authority, or that body corporate, as the case may be; or

d.that authorises, for the purpose of enforcing a judgment or order of a court, the search of any person or property by order of a court or entry upon any premises by such order, or that is necessary for the purpose of preventing or detecting criminal offences,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### Section 39

#### Provisions to secure protection of law

1.Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

2.Any court or other adjudicating authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and, where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

3.Except with the agreement of all the parties thereto, all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

4.Nothing in subsection 3 of this section shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives -

a.in proceedings before a court of voluntary jurisdiction and other proceedings which, in the practice of the Courts in Malta are, or are of the same nature as those which are, disposed of in chambers;

b.in proceedings under any law relating to income tax; or

c.to such extent as the court or other authority -

i.may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

ii.may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality or decency, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

5.Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

6.Every person who is charged with a criminal offence -

a.shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged;

b.shall be given adequate time and facilities for the preparation of his defence;

c.shall be permitted to defend himself in person or by a legal representative and a person who cannot afford to pay for such legal representation as is reasonably required by the circumstances of his case shall be entitled to have such representation at the public expense;

d.shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses subject to the payment of their reasonable expenses, and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

e.shall be permitted to have without payment the assistance of an interpreter if he cannot under-

stand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

7. When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

8. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

9. No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so however that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

10. No person who is tried for a criminal offence shall be compelled to give evidence at his trial.

11. In this section "legal representative" means a person entitled to practice in Malta as an advocate or, except in relation to proceedings before a court where a legal procurator has no right of audience, a legal procurator.

#### Section 40

##### Protection of freedom of conscience and worship

1. All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.

2. No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto:

Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes, and except so far as that requirement is shown not to be reasonably justifiable in a democratic society.

3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection 1, to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

## Section 41

## Protection of freedom of expression

1.Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinion without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

2.Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection 1 of this section to the extent that the law in question makes provision -

a.that is reasonably required -

i.in the interests of defence, public safety, public order, public morality or decency, or public health; or

ii.for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

b.that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

3.Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically:

Provided that provision may be made by law -

a.prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty-one years of age; and

b.requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.

4.Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a *prima facie* case of such offence, that edition shall be returned to the person from whom it was seized.

5.No person shall be deprived of his citizenship under any provisions made under section 30.1 b of this Constitution or of his juridical capacity by reason only of his political opinions.

## Section 42

## Protection of freedom of assembly and association

1.Except with his own consent or by way of parental discipline no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade or other unions or associations for the protection of his interests.

2.Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

a.that is reasonably required -

i.in the interests of defence, public safety, public order, public morality or decency, or public health; or

ii.for the purpose of protecting the rights or freedoms of other persons; or

b.that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

3. For the purposes of this section, any provision in any law prohibiting the holding of public meetings or demonstrations in any one or more particular cities, towns, suburbs or villages shall be held to be a provision which is not reasonably justifiable in a democratic society.

#### Section 43

##### Prohibition of deportation

1. Extradition is only permitted in pursuance of arrangements made by treaty and under the authority of a law.

2. No person shall be extradited for an offence of a political character.

3. No citizen of Malta shall be removed from Malta except as a result of extradition proceedings under any such law as is referred to in section 44.3 b of this Constitution.

4. The provisions made by or under the Extradition Act, 1978, as for the time being in force, for the removal of persons from Malta to another Commonwealth country to undergo trial or punishment in that country in respect of an offence committed in that country and any general arrangements for the extradition of persons between Commonwealth countries to which Malta for the time being adheres shall be deemed, for the purposes of subsection 1 of this section, to be arrangements made by treaty, and subsection 2 shall not apply in relation to the removal or extradition of a person under such provisions or arrangements.

#### Section 44

##### Protection of freedom of movement

1. No citizen of Malta shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta.

2. Any restriction on a citizen's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

a. for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or decency, or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

b. for the imposition of restrictions on the freedom of movement of any citizen of Malta who is not a citizen by virtue of section 22.1 or 25.1 of this Constitution;

c. for the imposition of restrictions upon the movement or residence, within Malta of public officers; or

d. for the imposition of restrictions on the right of any person to leave Malta that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

4. For the purposes of this section any person -

a. who has emigrated from Malta (whether before, on or after the appointed day) and, having been a citizen of Malta by virtue of section 22.1 or 25.1 of this Constitution, has ceased to be such a citizen; or

b. who emigrated from Malta before the appointed day and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of section 22.1 of this Constitution; or

c. who is the wife of a person mentioned in paragraph a or b of this subsection or of a person who is a citizen of Malta by virtue of section 22.1 or

25.1 of this Constitution and is living with that person or is the child under twenty-one years of age of such a person,

shall be deemed to be a citizen of Malta by virtue of section 22.1 or 25.1 of this Constitution.

5.If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection 3 a of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Civil Court, First Hall.

6.On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

#### Section 45

Protection from discrimination on the grounds of race, etc.

1.Subject to the provisions of subsections 4, 5 and 7 of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

2.Subject to the provisions of subsections 6, 7 and 8 of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

3.In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

4.Subsection 1 of this section shall not apply to any law so far as that law makes provision -

a.for the appropriation of public revenues or other public funds; or

b.with respect to persons who are not citizens of Malta; or

c.with respect to adoption, marriage, dissolution of marriage, burial, devolution of property on death or any matters of personal law not herein before specified; or

d.whereby persons of any such description as is mentioned in subsection 3 of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description and to any other provision of this Constitution, is reasonably justifiable in a democratic society; or

e.for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency;

Provided that paragraph c of this subsection shall not apply to any law which makes any provision that is discriminatory, either of itself or in its effect by affording different treatment to different persons attributable wholly or mainly to their respective description by sex.

5.Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection 1 of this section to the extent that it makes provision:

- a.with respect to qualifications for service or conditions of service in any disciplined force; or
  - b.with respect to qualifications (not being qualifications specifically relating to sex) for service as a public officer or for service of a local government authority or a body corporate established for public purposes by any law.
- 6.Subsection 2 of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection 4 or 5 of this section.
- 7.Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision (not being provisions specifically relating to sex), whereby persons of any such description as is mentioned in subsection 3 of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 38, 40, 41, 42 and 44 of this Constitution, being such a restriction as is authorised by section 38.2, 40.2, 41.2, 42.2 or 44.2.
- 8.Nothing in subsection 2 of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.
- 9.A requirement, however made, that the Roman Catholic Apostolic Religion shall be taught by a person professing that religion shall not be held to be inconsistent with or in contravention of this section.
- 10.Until the expiration of a period of two years commencing on the 1st July, 1991, nothing contained in any law made before the 1st July, 1991, shall be held to be inconsistent with the provisions of this section, in so far as that law provides for different treatment to different persons attributable wholly or mainly to their respective description by sex.
- 11.Nothing in the provisions of this section shall apply to any law or anything done under the authority of a law, or to any procedure or arrangement, in so far as such law, thing done, procedure or arrangement provides for the taking of special measures

aimed at accelerating *de facto* equality between men and women, and in so far only as such measures, taking into account the social fabric of Malta, are shown to be reasonably justifiable in a democratic society.

#### Section 46

##### Enforcement of protective provisions

- 1.Subject to the provisions of subsections 6 and 7 of this section, any person who alleges that any of the provisions of sections 33 to 45 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.
- 2.The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection 1 of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 33 to 45 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

- 3.If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection 4 of this section, the court in which the question arose shall dispose of the question in accordance with that decision.



4. Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have a right of appeal to the Constitutional Court.

5. No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

6. Provisions may be made by or under an Act of Parliament for conferring upon the Civil Court, First Hall, such powers in addition to those conferred by this section as are necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

7. Rules of Court making provision with respect to the practice and procedure of the Courts of Malta for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of those Courts, and shall be designed to secure that the procedure shall be by application and that the hearing shall be as expeditious as possible.

## Section 56

### Voting at Elections

1. The members of the House of Representatives shall be elected upon the principle of proportional representation by means of the single transferable vote from such number of electoral divisions, being an odd number and not less than nine and not more than fifteen, as Parliament shall from time to time determine.

2. The election of members of the House of Representatives shall be free of illegal or corrupt practices and foreign interference.

3. It shall be the duty of the Electoral Commission to suspend the election, either in all electoral divisions or in any one or more of such divisions, if it has reasonable ground to believe that illegal or corrupt practices or other offences connected with the elections have been committed or there has been foreign interference and such practices, offences or interference have so extensively prevailed or have been of such nature that they may reasonably be expected to affect the result of the election, in all or in any one or more of the electoral divisions.

4. In any case in which an election is suspended under subsection 3 of this section, the Chief Electoral Commissioner shall forthwith refer the matter to the Constitutional Court for its decision.

5. Where any of the grounds on which an election may be suspended under subsection 3 of this section exist and the election has not been suspended, or where illegal or corrupt practices or other offences or foreign interference as are referred to in that subsection may reasonably be supposed to have affected the result of an election, in all or in any one or more of the electoral divisions, any person entitled to vote at that election may, not later than three days after the publication of the official result of the election, refer the matter to the Constitutional Court for its decision.

6. Any reference to the Constitutional Court under either subsection 4 or subsection 5 of this section shall be made and shall be determined by that Court in accordance with any law for the time being in force in Malta. On any such reference the Court shall, without prejudice to any other powers, have power to annul the election, in all or in any one or more of the electoral divisions, on any of the grounds mentioned in the said subsections, and to give such directions and orders and to provide such redress and other remedies as it may deem appropriate in the circumstances and in particular to ensure that a free election, in place of any one that may have been annulled, be held at the earliest possible opportunity.

(...)

## Section 63

### Determination of questions as to membership of the House of Representatives

Any question whether -

a. any person has been validly elected as a member of the House of Representatives;

b. any member of the House has vacated his seat therein or is required, under the provisions of subsection 2 of section 55 of this Constitution, to cease to perform his functions as a member; or

c. any person has been validly elected as Speaker from among persons who are not members of the

House or, having been so elected, has vacated the office of Speaker,

shall be referred to and determined by the Constitutional Court in accordance with the provisions of any law for the time being in force in Malta.

## Chapter VIII The judiciary

### Section 95 Superior Courts

1. There shall be in and for Malta such Superior Courts having such powers and jurisdiction as may be provided by any law for the time being in force in Malta.
2. One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court and shall have jurisdiction to hear and determine:
  - a. such questions as are referred to in section 63 of the Constitution;
  - b. any reference made to it in accordance with section 56 of this Constitution and any matter referred to it in accordance with any law relating to the election of members of the House of Representatives;
  - c. appeals from decisions of the Civil Court, First Hall, under section 46 of this Constitution;
  - d. appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of this Constitution other than those which may fall under section 46 of this Constitution;
  - e. appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under section 46 of this Constitution; and
  - f. any question decided by a court of original jurisdiction in Malta together with any of the questions referred to in the foregoing paragraphs of this subsection on which an appeal has been made to the Constitutional Court:

Provided that nothing in this paragraph shall preclude an appeal being brought separately before the Court of Appeal in accordance with any law for the time being in force in Malta.

3. Notwithstanding the provisions of subsection 2 of this section, if any such question as is referred to in paragraph d or e of that subsection arises for the first time in proceedings in a court of appellate jurisdiction, that court shall refer the question to the court which gave the original decision, unless in its opinion the raising of the question is merely frivolous or vexatious, and that court shall give its decision on any such question and, subject to any appeal in accordance with the provisions of subsection 2 of this section, the court in which the question arose shall dispose of the question in accordance with that decision.
4. The provisions of subsections 6 and 7 of section 46 of this Constitution shall apply to the Constitutional Court and for that purpose references to that section in the said subsections shall be construed as references to this section.
5. If at any time during an election of members of the House of Representatives and the period of thirty days following any such election, the Constitutional Court is not constituted as provided in this section, the said Court shall, thereupon and until otherwise constituted according to law, be constituted by virtue of this subsection and shall be composed of the three more senior of the judges then in office, including, if any is in office, the Chief Justice or other judge performing the functions of Chief Justice; and if at any other time the said Court is not constituted as provided in this section for a period exceeding fifteen days, such Court shall, upon the expiration of the said period of fifteen days and until otherwise constituted according to law, be constituted by virtue of this subsection and shall be composed of the three more senior judges as aforesaid.
6. The judges of the Superior Courts shall be a Chief Justice and such number of other judges as may be prescribed by any law for the time being in force in Malta:

Provided that the office of a judge of the Superior Courts shall not, without his consent, be abolished during his continuance in office.

## Section 96 Appointment of judges

1. The judges of the Superior Courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.
2. A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served.

## Section 97 Tenure of judges

1. Subject to the provisions of this section, a judge of the Superior Courts shall vacate his office when he attains the age of sixty-five years.
2. A judge of the Superior Courts shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.
3. Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour of a judge of the Superior Courts under the provisions of the last preceding subsection.

## Section 98 Acting Chief Justice and acting judges

1. If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall (except to such extent, if any, as other provision is made by law) be performed by such one of the other judges of the Superior Courts as may be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister.
2. If the office of any judge of the Superior Courts (other than the Chief Justice) is vacant or if any such judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, may appoint a person qualified for appointment as a judge of the Superior Courts to act as a judge of those Courts:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-five years.

3. Any person appointed under subsection 2 of this section to act as a judge of the Superior Courts shall continue so to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President acting in accordance with the advice of the Prime Minister.

## Code of Organisation and Civil Procedure Chapter 12 of the Laws of Malta - extracts -

### Article 3 Superior Courts

The superiors courts are:

- a. the Civil Court;
- b. the Court of Appeal; and
- c. the Constitutional Court.

## Article 9

## Judges may not act as arbitrators

Moreover, it shall not be lawful for any of the judges to act as an arbitrator, or to accept any tutorship or other administration except such as may be assigned to him by law.

## Article 11

## Distribution of duties of judges

1. The President of Malta shall assign to each of the judges the court or the chamber of the court in which he is to sit, and may transfer a judge from one court or chamber of a court to another;

Provided that a judge may be assigned to sit in more than one court or more than one chamber of one or more courts.

(...)

## Article 16

## Judges may not hold other offices of profit

It shall not be lawful for any judge or magistrate to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any judicial office on any international court or any international adjudicating body, the office of examiner at the University of Malta and in the case of magistrates the office of visitors of notarial acts.

## Article 218

## Decision of majority to form judgment of court consisting of more than one member

In a court consisting of more than one member, the decision of the majority shall form the judgment which shall be delivered as the judgment of the whole court.

## Article 223

## Costs

(...)

4. In the case of any frivolous and vexatious appeal, the Court of Appeal or the Constitutional Court may award double costs against the appellant or the respondent.

## Article 242

## Notice as to validity of laws

When a court, by a judgment which has become *res judicata*, declares any provision of any law to run counter to any provision of the Constitution of Malta or to any human right or fundamental freedom set out in the First Schedule to the European Convention act, or to be *ultra vires*, the registrar shall send a copy of the said judgment to the Speaker of the House of Representatives, who shall during the first sitting of the House following the receipt of such judgment inform the House of such receipt and lay a copy of the judgment on the table of the House.

## European Convention Act

Law XIV of 1987

Chapter 319 of the Laws of Malta

- extracts -

## Article 2

## Interpretation

"Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on the 4th day of November, 1950 and the First, Second, Third and Fifth Protocols thereto signed in Paris on the 20th March, 1952, and in Strasbourg on the 6th May, 1963 and 20th January, 1966 respectively.

"Human Rights and Fundamental Freedoms" means those rights and freedoms as set out in Articles 2 to 18 (inclusive) of the Convention and Articles 1 to 3 (inclusive) of the First Protocol to the Convention, which Articles are reproduced in the First Schedule of this Act.

## Article 4

## Procedure for enforcement of Human Rights and Fundamental Freedoms

1. Any person who alleges that any of the Human Rights and Fundamental Freedoms, has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

2.The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection 1 of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, of the Human Rights and Fundamental Freedoms to the enjoyment of which the person concerned is entitled:

Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other ordinary law.

3.If any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the Human Rights and Fundamental Freedoms, that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection 4 of this section, the court in which the question arose shall dispose of the question in accordance with that decision.

4.Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have a right of appeal to the Constitutional Court.

5.No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

....

#### Article 6

#### Enforcement of the decisions of the European Court of Human Rights

1.Any judgment of the European Court of Human Rights to which a declaration made by the Government of Malta in accordance with Article 46 of the Convention applies, may be enforced by the Constitutional Court in Malta, in the same manner as judgments delivered by that court and enforceable by it, upon an application filed in the Constitutional Court and served on the Attorney General containing a demand that the enforcement of such judgment be ordered.

2.Before adjudging upon any such demand the Constitutional Court shall examine if the judgment of the European Court of Human Rights sought to be enforced, is one to which a declaration as is referred to in subsection 1 of this section applies.

3.The Constitutional Court shall order the enforcement of a judgment referred to in this section if it finds that such judgment is one to which a declaration referred to in subsection 2 of this section applies.

#### Legal Notice 35 of 1993 entitled Regulations Regarding Practices and Procedures of the Courts

- extracts -

#### Article 4

The application to appeal (in the Constitutional Court) shall be made within eight working days from the date of the decision appealed from, and the respondent may file a written reply within six working days from the date of service.

The Court which gave a decision subject to appeal to the Constitutional Court, may in urgent cases upon demand, even by any of the parties immediately upon delivery of such decision, abridge the time for making the appeal or for the filing of a reply.

If no such demand is made by any of the parties immediately upon the delivery of the judgment, any one of the parties may make such a demand by application, upon which, the court which gave the decision shall, after summarily hearing the parties if it thinks necessary, give the requisite order.

# The Netherlands

## Supreme Court

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### Constitution

- extracts -

#### Article 73

1. The Council of State or a section of the Council shall be consulted on Bills and draft general administrative orders as well as proposals for the approval of treaties by the States General. Such consultation may be dispensed with in cases to be laid down by Act of Parliament.
2. The Council or a section of the Council shall be responsible for investigating administrative disputes where the decision has to be given by Royal Decree, and for advising on the ruling to be given in the said dispute.
3. The Council or a section of the Council may be required by Act of Parliament to give decisions in administrative disputes.

#### Article 74

1. The King shall be President of the Council of State. The heir presumptive shall be legally entitled to have a seat on the Council on attaining the age of eighteen. Other members of the Royal House may be granted a seat on the Council by or in accordance with an Act of Parliament.
2. The members of the Council shall be appointed for life by Royal Decree.
3. They shall cease to be members of the Council on resignation or on attaining an age to be determined by Act of Parliament.
4. They may be suspended or dismissed from membership by the Council in instances specified by Act of Parliament.
5. Their legal status shall in other respects be regulated by Act of Parliament.

#### Article 75

1. The organization, composition and powers of the Council of State shall be regulated by Act of Parliament.
2. Additional duties may be assigned to the Council or a section of the Council by Act of Parliament.

#### Article 112

1. The judgement of disputes involving rights under civil law and debts shall be the responsibility of the judiciary.
2. Responsibility for the judgement of disputes which do not arise from matters of civil law may be granted by Act of Parliament either to the judiciary or to courts that do not form part of the judiciary. The method of dealing with such cases and the consequences of decisions shall be regulated by Act of Parliament.

#### Article 113

1. The judgement of offences shall also be the responsibility of the judiciary.
2. Disciplinary proceedings established by government bodies shall be regulated by Act of Parliament.
3. A sentence entailing deprivation of liberty may be imposed only by the judiciary.
4. Different rules may be established by Act of Parliament for the trial of cases outside the Netherlands and for martial law.

#### Article 115

Appeal to a higher administrative authority shall be admissible in the case of the disputes referred to in Article 112, paragraph 2.

#### Article 116

1. The courts which form part of the judiciary shall be specified by Act of Parliament.
  2. The organization, composition and powers of the judiciary shall be regulated by Act of Parliament.
-

3. In cases provided for by Act of Parliament, persons who are not members of the judiciary may take part with members of the judiciary in the administration of justice.

4. The supervision of members of the judiciary responsible for the administration of justice of the manner in which such members and the persons referred to in the previous paragraph fulfil their duties shall be regulated by Act of Parliament.

#### Article 117

1. Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree.

2. Such persons shall cease to hold office on resignation or on attaining an age to be determined by Act of Parliament.

3. In cases laid down by Act of Parliament such persons may be suspended or dismissed by a court that is part of the judiciary and designated by Act of Parliament.

4. Their legal status shall in other respects be regulated by Act of Parliament.

#### Article 118

1. The members of the Supreme Court of the Netherlands shall be appointed from a list of three persons drawn up by the Second Chamber of the States General.

2. In the cases and within the limits laid down by Act of Parliament, the Supreme Court shall be responsible for annulling court judgements which infringe the law (cassation).

3. Additional duties may be assigned to the Supreme Court by Act of Parliament.

## Judiciary (Organisation) Act of the Netherlands

- extracts -

### Part Five The Supreme Court

#### Article 83

The composition of the Supreme Court and the salaries of the justices and officials of the Court shall be governed by a specific Act of Parliament.

#### Article 83a

1. In the event of the registrar's absence on account of illness or any other cause, his duties shall be performed by an acting registrar if he has no deputy.

2. Acting registrars shall be appointed by Our Minister of Justice on the recommendation of the Supreme Court. Before commencing their duties they shall take an oath or promise before the Court, which oath or promise shall be laid down by Royal Decree.

#### Article 84

1. The president, vice-president and justices of the Supreme Court, and the procurator general, shall be appointed for life by Royal Decree. They shall be discharged by Royal Decree the month following the date on which they attain the age of seventy.

2. The deputy procurator general and the advocates general shall be appointed by Royal Decree; they shall be discharged by Royal Decree the month following the date on which they attain the age of seventy.

3. The registrar and his deputies shall also be appointed by Royal Decree.

## Article 84a

1. On reaching the age of 61, the president, vice-president and justices of the Supreme Court may request that their appointment be amended by Royal Decree to that of justice extraordinary of the Supreme Court.
2. On reaching the age of 61, the procurator general, the deputy procurator general and the advocates general at the Supreme Court may request that their appointment be amended by Royal Decree to that of advocate general extraordinary at the Supreme Court.
3. An amendment as referred to in paragraphs 1 and 2 shall be equated with discharge for the purposes of the Voluntary Early Retirement (Benefits) Act and the Public Servants' Superannuation Act.
4. Justices extraordinary of the Supreme Court and advocates general extraordinary shall be discharged by Royal Decree the month following the date on which they attain the age of seventy.
5. Justices extraordinary of the Supreme Court shall take part in activities related to the administration of justice by the Court on an equal footing with justices whenever they are called upon to do so by or on behalf of the president.
6. Articles 8a, 12a, 15 and 16 shall not apply to justices extraordinary and Articles 15 and 16 shall not apply to advocates general extraordinary.

## Article 85

1. Whenever a position as justice of the Supreme Court falls vacant, the Supreme Court shall inform the Lower House of the States General thereof, enclosing a list of 6 nominations arrived at by secret ballot and majority voting by the Supreme Court, including the procurator general. In arriving at its decision, the Lower House shall take such account of the said list as it deems appropriate.
2. The justices of the courts of appeal, the members of the district courts and the officers of the Public Prosecutions Department attached to the said courts who have carried out their duties with zeal and merit shall receive special consideration when the said list of nominations is drawn up.

## Article 86

The president, vice president, justices, procurator general, deputy procurator general, advocates general, registrar and deputy registrars of the Supreme Court must have been awarded a degree of Bachelor of Laws or a doctorate in law from a university, or the Open University, governed by the Higher Education and Research Act. The examination subjects must have included Dutch civil, commercial and criminal law and one of the following: Dutch constitutional law, administrative law or tax law.

## Article 87

*Lapsed (Act of 22 June 1893, Bulletin of Acts and Decrees 93).*

## Article 88

1. The Supreme Court shall adjudicate at first instance in all disputes concerning jurisdiction between:
  1. all judicial authorities which do not fall under the same court of appeal;
  2. the courts of appeal;
  3. a court of appeal giving judgement at first instance and any court falling within its jurisdiction;
  4. the Supreme Court, a court of appeal, a district court or a sub-district court on the one hand, and one of the courts referred to in Article 1 on the other;
  5. administrative courts, unless another administrative court is competent to do so.
2. Should the dispute concerning jurisdiction have arisen between the Supreme Court itself and one of the courts referred to in paragraph 1, the sitting of the Supreme Court hearing the case shall consist as far as possible of justices who have not taken cognizance of the matter at hand.



## Article 89

The Supreme Court shall likewise take cognizance at first instance of all disputes in matters concerning prizes and capture taken by warships of the State or by ships equipped by private individuals bearing letters of marque, and of all disputes arising between the captors concerning prizes and captures.

## Article 90

Judgements given at first instance by the Supreme Court in civil matters shall be subject to review in accordance with the provisions of the Code of Civil Procedure.

## Article 91

The Supreme Court shall hear appeal proceedings in civil matters against judgements which are open to appeal given by the courts of appeal at first instance.

## Article 92

1. The Supreme Court shall take cognizance at first and last instance of public office offences committed by members of the States General, ministers and State secretaries.
2. Public office offences may be defined as criminal offences committed subject to one of the aggravating circumstances defined in Article 44 of the Criminal Code.
3. In proceedings as referred to in paragraphs 1 and 2 the Supreme Court shall also be competent to take cognizance of claims for compensation relating to costs, damage and interests in accordance with the provisions of the final paragraph of Article 56.

## Article 93

1. The Supreme Court shall be responsible for swearing in officials in cases where this is laid down by or pursuant to Act of Parliament.
2. The duty referred to in paragraph 1 shall be carried out by the president of the Supreme Court on the application of the procurator general.

## Article 94

There shall be no appeal in cassation against the judgements of the Supreme Court.

## Article 95

1. The Supreme Court shall take cognizance of appeals in cassation against the procedures of the courts of appeal and the district and sub-district courts and against their judgements, whether lodged by the parties concerned or by the procurator general at the Supreme Court "in the interests of the law".
2. Paragraph one shall not apply to the procedures and decisions of the district courts in cases which are brought under administrative law.

## Article 96

1. Notwithstanding the provisions of Article 398, paragraph 2 of the Code of Civil Procedure, appeal in cassation may not be lodged in cases where an ordinary legal remedy is or was available to the party concerned.
2. Appeal in cassation "in the interests of the law" may not be lodged if an ordinary legal remedy is available to the parties.

## Article 97

The rules, time limits and proper form for appeals in cassation shall be determined by the Code of Civil Procedure, the Code of Criminal Procedure and the Administration of Justice (Military Criminal Law) Act.

## Article 98

Cassation "in the interests of the law" shall not adversely affect the rights acquired by the parties before inferior courts.

## Article 99

1. The Supreme Court shall quash procedures and judgements:
  1. in cases of failure to observe the proper form insofar as such failure is expressly liable to nullification or insofar as nullity would follow from the nature of the form which has not been observed;

- 
2. where they violate the law, with the exception of the law of other States.
  2. Facts from which the validity or otherwise of a rule of customary law is assumed may be deemed to be established only on the basis of the contested judgement, insofar as they need be proved.

#### Article 100

1. Appeal in cassation against the judgements of sub-district courts in civil matters, with the exception of cassation "in the interests of the law", shall be allowed only if:
  1. the grounds on which it rests are not stated in the judgement;
  2. the judgement was not pronounced in public;
  3. the court did not have competence;
  4. the court exceeded its jurisdiction.
2. Appeal in cassation against orders in civil cases, with the exception of cassation "in the interests of the law", shall be allowed only on the grounds cited under 1, 3 and 4.

#### Article 101

Except where appeal in cassation is lodged "in the interests of the law", judgements handed down by the sub-district courts in criminal cases may be quashed solely on the following formal grounds:

1. they were not pronounced in public;
  2. they do not contain the charges laid and, in the event of a finding of guilt, both the finding and the grounds on which it rests;
  3. no decision has been taken on the basis for the charges;
  4. the decision prescribed by Article 358, paragraph 3 of the Code of Criminal Procedure has not been given or the reasons for the decision have not been provided.
-

## Article 101a

If the Supreme Court decides that a petition may not lead to cassation of the original judgement or that it does not require that questions of law be answered in the interests of the uniformity or development of the law, it may confine itself to stating this opinion in that part of the judgement containing the grounds on which it is based.

## Article 102

1. The Supreme Court shall consist of five justices when giving judgement, apart from the exceptions laid down by law.
2. The president of a division may determine that cases which he finds appropriate shall be heard and decided upon by three justices of that division. If in the opinion of one of these justices the case in question is unsuitable for hearing by three justices, the hearing shall continue with five justices.
3. The Supreme Court shall form divisions presided over by a single judge drawn from its ranks where the law so requires.

## Article 103

1. When giving judgement in cases as referred to in Article 92, the Supreme Court shall consist of ten justices.
2. Where the votes are equally divided, judgement shall be pronounced in favour of the accused.

## Articles 104-106

*Lapsed (Act of 20 June 1963, Bulletin of Acts and Decrees 272).*

## Article 107

The Supreme Court may request the courts of appeal and district and sub-district courts of the Kingdom to provide any information which it deems necessary, possibly together with the documents in the action on which the Supreme Court is to decide.

## Switzerland

### Federal Court

## Federal Constitution

29 May 1874

State on 1 March 1997

- extracts -

## IV – Federal Court

## Article 106

1. A Federal Court shall be established for the administration of justice to the extent that this is a federal concern.
2. In criminal cases (article 112) a jury shall be instituted to pronounce a verdict.

## Article 107

*(Accepted by popular voting of 20 February 1938)*

1. The members of the Federal Court and their substitutes shall be elected by the Federal Assembly which shall ensure that the three official languages of the Confederation are represented.
2. The organisation of the Federal Court and of its divisions, the number of its members and substitutes, the duration of their term of office and their salary shall be determined by law.

## Article 108

1. Any Swiss citizen who is eligible for the National Council may be appointed to the Federal Court.
2. The members of the Federal Assembly and of the Federal Council and the officials appointed by these authorities may not at the same time be members of the Federal Court.
3. Members of the Federal Court may not hold another office, be it in the service of the Confederation or in the Cantons, or carry on any other occupation or trade.

## Article 109

The Federal Court shall organise its chancery and appoint its staff.

## Article 110

1. The Federal Court shall adjudicate civil law disputes:

1. between the Confederation and the Cantons;

2. between the Confederation and corporations or private persons if the subject of the dispute is of a degree of importance to be determined by federal legislation and if those corporations or private persons are plaintiffs;

3. between the Cantons;

4. between Cantons and corporations or private persons if the subject of the dispute is of a degree of importance to be determined by the federal legislation and if one of the parties so requests.

2. The Federal Court shall also adjudicate disputes concerning statelessness and disputes between communes of different Cantons concerning questions of citizenship.

## Article 111

The Federal Court is also bound to adjudicate other cases if both parties agree to refer them to it and if the subject of the dispute is of a degree of importance to be determined by federal legislation.

## Article 112

The Federal Court shall pass judgment, with the assistance of a jury to give a verdict on the facts, in criminal cases concerning:

1. high treason against the Confederation, revolt and violence against the federal authorities;

2. crimes and offences against the law of nations;

3. political crimes and offences which are the cause or the consequence of disorders which give rise to an armed federal intervention;

4. charges against officials appointed by a federal authority, if the latter refers them to the Federal Court.

## Article 113

1. The Federal Court shall further adjudicate:

1. conflicts of competence between federal authorities on the one hand and authorities of the Cantons, on the other;

2. disputes between Cantons in the field of public law;

3. complaints concerning the violation of the constitutional rights of citizens as well as individual complaints concerning the violation of concordats and international treaties.

2. The administrative disputes which shall be specified by federal legislation are excepted.

3. In all aforementioned instances, the Federal Court shall apply the laws and generally binding decrees adopted by the Federal Assembly, as well as the international treaties approved by this Assembly.

## Article 114

Federal legislation may also confer jurisdiction upon the Federal Court on matters other than those specified in articles 110, 112 and 113; it may, in particular, with regard to the enactment of the federal laws provided for in article 64 have, determine the competencies necessary to ensure their uniform application.

IVbis –Federal administrative and disciplinary jurisdiction

## Article 114bis

*(Accepted by popular voting of 25 October 1914)*

1. The Federal Administrative Court shall adjudicate administrative disputes falling within the scope of the Confederation and referred to it by federal legislation.

2. The Administrative Court shall also adjudicate disciplinary cases of the federal administration deferred to it by federal legislation insofar as such cases shall not be referred to a special jurisdiction.

3. The Court shall apply the federal legislation and the treaties approved by the Federal Assembly.

4. The Cantons are entitled, subject to the approval of the Federal Assembly, to refer to the Federal Administrative Court for the adjudication administrative disputes falling within the scope of their competence.

5. The organisation of federal administrative and disciplinary jurisdiction and its procedure shall be determined by law.

## Federal Judicature Act

(Judicature [JJ])

of 16 December 1943

State on 1 March 1997

Non official translation provided for by the Venice Commission

- extracts -

### Part I

#### General Provisions

#### Chapter 1

#### Organisation of the Federal Court

##### Article 1

Judges, substitutes; elections

1. The Federal Court shall consist of 30 judges and 15 substitutes.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. Judges and substitutes shall be elected by the Federal Assembly, which shall ensure that the three official languages are represented.

3. Outgoing Federal Court judges who are elected as substitutes shall not be included in the number of substitutes.

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

##### Article 2

Eligibility

1. Any Swiss citizen who is eligible for the National Council may be elected as judge or substitute.

2. Members of the Federal Assembly and of the Federal Council and officials appointed by those authorities may not be judges or substitutes.

*(New wording under Chapter I of the Amendment of 23 June 1978, in force since 1 August 1978)*

##### Article 3

Incompatibility

1. Judges may not hold any other public appointment or office, in the service of the Confederation or a canton, or follow any other career or profession.

2. Nor may they hold the post of director, manager or member of the managing authority, board of directors or supervisory board of a profit-making company or corporation.

##### Article 3a

Arbitration and expert mandates

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. The Court may permit its judges to accept expert mandates and to act as arbitrators and engage in other ancillary activities, provided that this does not interfere with performance of their judge's duties or affect the independence and prestige of the Court.

2. The Court shall determine by regulation who has authority to grant this permission and what the conditions are.

#### Article 4 Relatives

1. Relatives and relatives by marriage in the direct line or up to the fourth degree in the collateral line, spouses and spouses of brothers or sisters may not serve simultaneously as Federal Court judges or substitutes, federal investigating judges or Principal State Prosecutor of the Confederation, or hold other offices in the Public Prosecutor's Department.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2....

*(Repealed by Chapter I of the Amendment of 4 October 1991)*

3. A judge, public prosecutor or civil servant who creates an incompatibility by marrying resigns his office by the very act of doing so.

#### Article 5 Term of office

1. The term of the office of judges and substitutes shall be six years.
2. Vacancies shall be filled by the Federal Assembly at its next session for the remainder of the term of office.

#### Article 6 Presidency

1. The Federal Assembly shall choose the President and Vice-President from among the judges; they shall be elected for two years.
2. The President of the Court shall be responsible for general administration of cases and for supervision of court officials and staff.
3. If the President is unable to perform his duties, he shall be replaced by the Vice-President and, if the latter is unable to do so, by the longest-serving or, in the event of equal seniority, oldest judge.

#### Article 7 Registrars, Secretaries and personal assistants

1. The Federal Assembly shall determine, when deciding on the budget, the number of registrars, secretaries and other specialised staff, including the judges' personal assistants.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. Registrars and secretaries shall be appointed by the court for a six-year term after each full renewal or, in the interim, for the remainder of the term.

#### Article 8 Duties of Staff

The Federal Court shall determine the duties of its officials and staff by regulation.

#### Article 9 Oath

1. Before taking office, federal judges and court officials shall swear an oath promising to carry out their duties faithfully.
2. Judges and substitutes shall swear before the Federal Court, unless they have already been sworn in by the Federal Assembly.
3. Registrars and secretaries shall swear before the Court.
4. The Court may have investigating judges sworn in by a cantonal authority.
5. Investigating judges shall swear in their registrars.
6. The Principal State Prosecutor of the Confederation and other members of the Public Prosecutor's Department shall swear before the Federal Council.
7. The oath may be replaced by a solemn promise.

#### Article 10 Voting

1. The Court and its divisions shall give judgment, take decisions and make appointments by absolute majority vote, unless the law provides otherwise.

2. In the event of a tie, the President shall have the casting vote; appointments shall be decided by lot.

#### Article 11

##### Plenary session

1. The following matters shall be decided by the Court in plenary session:

- a. Appointments;
- b. Matters relating to the organisation or administration of the Court;
- c. Matters assigned to it by law or regulation, and the legal questions specified in Article 16;
- d. The adoption of orders, regulations and circulars addressed to the cantonal authorities.

2. At least two-thirds of the judges must be present for the Court to sit in plenary session.

#### Article 12

##### Divisions

1. The Court shall establish the following divisions for a period of two calendar years:

- a. Two or three public law courts, dealing with matters of public and administrative law which are not assigned to other courts by regulation or to the Federal Insurance Court by Articles 122 et seq.;

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

- b. Two civil courts dealing with civil matters and other matters assigned to them by the rules of court;

- c. The Debt Recovery and Bankruptcy Chamber, consisting of 3 judges, and dealing with cases in which the Court has jurisdiction as the supreme supervisory authority for debt recovery and bankruptcy;

- d. The Indictments Chamber, comprising 3 judges, who do not belong to the Federal Criminal Court;

- e. The Criminal Chamber, comprising 3 judges, in which the three official languages must be represented;

- f. The Federal Criminal Court, comprising 3 judges from the Criminal Chamber and 2 other judges;

- g. The Court of Criminal Cassation, dealing with appeals on points of law against decisions given by the cantonal police or prosecuting authorities.

2. An Extraordinary Court of Cassation shall hear appeals on points of law and applications for retrial in connection with judgments given by the Federal Assizes, the Criminal Chamber and the Federal Criminal Court, and decide conflicts of jurisdiction between the Federal Assizes and the Federal Criminal Court. It shall comprise a president, a vice-president and the five longest-serving members of the Court who are members of neither the Indictments Chamber nor the Federal Criminal Court.

3. Any judge may be required to sit in a division other than the one to which he belongs.

#### Article 13

##### Presidents of the divisions

1. The Court shall appoint for the same period the presidents of the divisions and the substitute of the president of the Indictments Chamber.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. Article 6, paragraph 3, shall apply by analogy.

3. The investigating judge and the reporting judge shall be appointed by the president of the division.

4. The Federal Criminal Court and the Criminal Chamber shall appoint their president for each case.

5. The president of a division may have persons who disobey his orders removed from the courtroom. He may fine them up to 300 francs and remand them in custody for 24 hours. Investigating judges have the same powers in hearings they conduct.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

## Article 14

## Distribution of cases

1. The distribution of cases shall be governed by court regulation.
2. When a case is assigned to a division, any reference in law to the court or its president shall be deemed to refer to this division or its president.

## Article 15

## Quorum

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. Divisions shall in general have three judges.
2. When a case raises a question of principle, or when the president of the division so orders, five judges shall sit in the public law courts, the civil courts and the court of criminal cassation.
3. The public law courts shall have seven judges when hearing public law appeals against cantonal legislative decisions which are subject to referendum or decisions on the admissibility of an initiative or application for a referendum, unless the appeal deals with a dispute at commune level.

## Article 16

## Assembled divisions

1. A division of the Court which intends to depart from the case-law followed by another division, by several divisions together or by the Court in plenary session, may do so only with the consent of the other division or by decision of the divisions concerned or the Court. This decision shall be taken without a hearing and in camera, and shall be binding on the division deciding the case.
2. When several divisions are assembled, all their judges shall sit together under the direction of the longest-serving president.
3. Article 11, paragraph 2, shall apply by analogy.

## Article 17

## Public hearings

*(New wording under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

1. Hearings, deliberations and votes shall be conducted in public session, with the exception of deliberations and votes in the criminal divisions, the Debt Recovery and Bankruptcy Chamber and, when they are dealing with disciplinary matters, the public law courts.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. In tax matters, only the parties and their representatives may attend hearings, deliberations and votes.
3. The Court may order that some or all of the proceedings be held in camera, when state security, public order or morality, or the interests of one of the parties or persons concerned makes this necessary.

## Article 18

## Co-operation of the cantons

1. The authorities and officials responsible for administering justice at federal level may exercise their powers throughout the territory of the Confederation without the consent of the cantonal authorities.
2. The cantonal authorities must assist them.
3. At the request of the Registry of the Federal Court, they are required to collect its costs together with their own.

## Article 19

## Seat

1. The Federal Court shall sit in Lausanne.
2. Members of the Federal Court may choose their place of residence freely; they must, however, be able to reach the court rapidly.

*(New wording under Chapter II of the Amendment of 9 October 1986 to the Federal Act on political and policing guarantees in favour of the Confederation, in force since 1 January 1987)*

## Article 20

## Holidays and leave

1. The Court may take a maximum of six weeks' holiday every year, during which the president shall attend to urgent cases.



2. He may also grant judges, officials and staff leave on request giving reasons.

#### Article 21

##### Relations with the Federal Assembly

1. The Court is placed under the supreme authority of the Federal Assembly.
2. The Court shall report to the Federal Assembly annually.
3. Subject to Article 85, number 13 of the Federal Constitution, the Court shall rule *ex officio* on its own jurisdiction in all cases referred to it; in exercising its judicial powers, it shall be independent and subject only to the law. Its judgments may be set aside or amended only by itself, as prescribed by law.

#### Chapter 2

##### Withdrawal from proceedings

#### Article 22

##### Compulsory withdrawal

1. Judges or substitutes, federal prosecutors, investigating judges, registrars and jury members must withdraw:
  - a. From cases in which they have a direct interest, or in which their spouse, fiancé(e), relatives or relatives by marriage up to the degree stipulated in Article 4, the husband of their spouse's sister or the wife of their spouse's brother, and persons for whom they act as guardians or curators or to whom they are related by adoption, have a direct interest;
  - b. From cases in which they have previously acted in another capacity, as members of an administrative or judicial authority, court officials, counsels, legal representatives or lawyers of a party, or as experts or witnesses;

c....

*(Repealed by Chapter I of the Amendment of 20 December 1968)*

2. Judges, substitutes and jury members must also withdraw if they are related or related by marriage

in the direct line or up to the second degree in the collateral line to a party's representative or lawyer.

#### Article 23

##### Optional withdrawal

Judges or substitutes, federal prosecutors, investigating judges and their registrars, and jury members may be challenged by the parties or may themselves ask to withdraw:

- a. From cases involving legal persons of which they form part;
- b. If they have links of close friendship or personal intimacy, obligation or special dependency with one of the parties;
- c. If there are circumstances which might make them seem biased in the proceedings.

#### Article 24

##### Compulsory notice

Judges or court officials who find themselves in one of the situations specified in Articles 22 or 23 must inform the president of the division concerned in good time. If Article 23 applies, they must also indicate whether they are withdrawing themselves or leaving the parties to request their withdrawal. If the latter, the parties shall be given a short period to decide.

#### Article 25

##### Request for withdrawal

1. Parties intending to make use of the right to challenge (Articles 22 and 23) are required to make a written declaration to that effect to the Court as soon as the circumstances leading to the challenge arise or as soon as they learn of them.
2. The request for withdrawal must state the facts on which it is based and produce evidence. If no evidence is available, the judge or court official shall explain the reasons for withdrawal. No other evidence shall be admissible.
3. A person who requests withdrawal out of time may be ordered to pay the costs arising from this.

## Article 26

## Decision

- 1.If withdrawal (Articles 22 and 23) is disputed, the decision shall be taken, in the absence of the judges in question, by the court division concerned, by the Indictments Chamber in the case of investigating judges or their registrars, or by the Criminal Chamber in the case of jury members.
- 2.The decision may be taken without hearing the opposing party.
- 3.If there are not enough judges or substitutes left after the withdrawals, the president of the Court shall choose by lot the number of extraordinary substitute judges needed to decide on the withdrawals, and the case itself if necessary, from among the presidents of the supreme courts of cantons with no interest in the case.

## Article 27

## Withdrawal of the Principal State Prosecutor of the Confederation

- 1.The Federal Council shall decide on withdrawal of the Principal State Prosecutor of the Confederation.
- 2.Articles 24, 25, and 26, paragraph 2, shall apply by analogy.

## Article 28

## Unlawful participation

- 1.Decisions or measures involving a judge or court official who should have withdrawn may be challenged by either party in the case of judgments under Article 136 and, in other cases, within thirty days of discovery of the grounds for withdrawal.
- 2.When withdrawal is optional, only operations post-dating the request for withdrawal are annulled.

## Chapter 3

## Common Procedural Provisions

## Article 29

## Representatives, address for service

- 1.Legal representatives must prove their authority to act by enclosing power of attorney with the case-file; this power of attorney may be required at any time.
- 2.Only licensed lawyers and law professors at Swiss universities may act as representatives in civil and criminal cases. This does not apply to cases from cantons where access to the bar is unrestricted.
- 3.Subject to reciprocity, foreign lawyers may be allowed to act as representatives in exceptional cases.
- 4.Parties residing abroad must establish a Swiss address where documents can be served. If they fail to do so, the court may dispense with service or have documents served by public notice.
- 5.When a party is clearly unable to act for himself, the Court may ask him to appoint a representative. If he fails to do this within the stated time, the Court shall appoint a representative and charge the costs to him.

## Article 30

## Memorials

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

- 1.All memorials to the court must be drafted in one of the national languages, be signed and be accompanied by the prescribed appendices, and a sufficient number of copies must be filed for the court and each party; a minimum of two copies is required.
- 2.If the signature of a party or authorised representative, power of attorney, or the prescribed appendices are lacking, or if the signatory has no authority to act, then the person concerned shall be given a reasonable time to remedy this defect, and warned that the document will not be considered if he fails to do so.

3. Illegible, improper or verbose documents shall be returned to the party concerned, who shall be asked to rewrite them.

#### Article 31 Discipline

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. Any person who behaves improperly during written or oral proceedings, or disturbs the progress of the case, shall be liable to a reprimand or a disciplinary fine of up to 300 francs.
2. Any party or legal representative who acts in bad faith or recklessly may be liable to a disciplinary fine of up to 600 francs, or up to 1500 francs in case of recidivism.

#### Article 32 Time-limits a. computation, observation

1. In the computation of time-limits, the day on which the time-limit starts to run shall not be counted.
2. When the last day falls on a Sunday or a holiday under cantonal law, the time-limit shall expire on the next working day.

*(For the legal time-limits under federal law and for time-limits fixed by authorities under federal law, Saturday is treated as an officially recognised holiday [Article 1 of the Federal Act of 21 June 1963 on the computation of time-limits involving a Saturday])*

3. All procedural steps must be taken within the stated times. Memorials must be delivered not later than the last day allowed to the authority empowered to receive them, or forwarded to it via a Swiss post office or a Swiss diplomatic or consular mission.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

4. Unless otherwise provided by law, a time-limit shall count as observed:
  - a. If a memorial which was to be delivered to the Court is delivered within the stated time to another federal authority or the cantonal authority which has taken the decision;

- b. If a memorial which was to be delivered to a cantonal authority is delivered within the stated time to the Court or another federal authority.

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

5. These documents shall be transmitted without delay to the competent authority.

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

#### Article 33 b. Extension

1. Time-limits prescribed by law may not be extended.
2. Time-limits set by a judge may be extended if it is shown that there are good reasons for doing so and if application is made before they expire.

#### Article 34 c. Interruption of time-limits

1. Time-limits prescribed by law or set by a judge shall be interrupted:
  - a. From the 7th day before Easter to the 7th day after Easter inclusive;
  - b. From 15 July to 15 August inclusive;
  - c. From 18 December to 1 January inclusive.

*(New wording under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

2. This rule shall not apply to criminal proceedings or to debt recovery or bankruptcy.

#### Article 35 d. Leave to proceed out of time

1. Leave to proceed out of time may be granted only if the applicant or his representative was unable, through no fault of his own, to act within the set time-limit. The application for leave to proceed out of time must indicate the reasons which made it impossible to act and be filed within 10 days of their having ceased to exist. The omitted step must be taken within that time-limit.

2. The decision shall be taken on the basis of a written procedure, without public deliberation; Article 95 shall apply.

#### Article 36

##### Value of the subject-matter

1. The value of the subject-matter shall be stated in the statement of claim.
2. If the claim is not for a specified sum of money, the court shall have discretion to determine the value of the subject-matter ex officio as a preliminary question in summary proceedings, having first consulted an expert if necessary.
3. The following shall not be taken into account in calculating the value of the subject-matter: interest, income, court fees and costs claimed as ancillary rights, or reserved rights and publication of the judgment.
4. Regular income and benefits shall have the value of the capital they represent.
5. If the duration of income or benefits is undetermined or unlimited, their capital value shall be calculated by multiplying their annual amount by twenty; the value of a life annuity shall be the current value of the capital corresponding to that annuity.

#### Article 36a

##### Special procedures

##### a. Simplified procedure

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. The divisions, sitting with three judges, shall unanimously decide without public deliberation:
  - a. Not to consider the substance of appeals or actions which are manifestly inadmissible;
  - b. To reject appeals which are manifestly ill-founded;
  - c. To allow appeals which are manifestly well-founded.
2. Vexatious or otherwise abusive appeals and actions shall not be admissible.
3. Divisions shall give summary reasons for their decisions. They may refer to the reasons given for

the contested decision or to memorials submitted by a party or an authority.

#### Article 36b

##### b. File circulation procedure

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

The court shall decide by circulation of the file if there is unanimity and if no judge requests a hearing.

#### Article 37

##### Notification of judgments

1. If the parties were not present at the hearing, the court registry shall communicate the operative part of the judgment to them without delay.
2. A complete execution copy of the judgment, giving the names of the judges taking part in the hearing, shall be sent to the parties and to the authority whose decision was appealed.
- 2<sup>bis</sup>. If the parties and the authority whose decision was appealed agree, the Court may dispense with setting out its reasons.

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

3. The judgment shall be drafted in an official language, generally the language of the contested decision. If the parties speak another official language, the execution copy may be drafted in this language. In direct proceedings, the language of the parties shall be taken into consideration.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

#### Article 38

##### Final judgment

The decisions of the Federal Court shall become final when they are delivered.

#### Article 39

##### Execution

1. The cantons shall execute federal authorities judgments in the same way as the final judgments of their own courts.

2.If a judgment is not correctly executed, appeal shall lie to the Federal Council, which shall take the necessary action.

#### Article 40

##### Relation with federal civil procedure

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

Procedural questions which are not covered by the present act shall be governed by the federal law of civil procedure Law.

#### Part IV

##### Jurisdiction of the Federal Court in public law matters

#### Article 83

##### Public law applications

The Federal Court shall rule on:

- a.Conflicts of jurisdiction between federal authorities and cantonal authorities;
- b.Public law disputes between cantons, when one of the cantonal governments refers the matter to it;

*(New wording under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

- c.Complaints by the Federal Council concerning the naturalisation of stateless persons under the Federal Act on Statelessness of 3 December 1850 and disputes between local authorities in different cantons concerning the right to stay;
- d.Disputes between the authorities of different cantons concerning implementation of the Federal Act of 25 June 1891 on the civil law relationships of citizens permanently or temporarily resident;
- e.Disputes between supervising authorities in different cantons concerning the rights and obligations of the supervising authority of the place of origin, and change of residence of persons under guardianship.

#### Article 84

##### Public law appeals

##### a. In general

1.Cantonal decisions or orders may be appealed to the Federal Court for violation of:

- a.Citizens' constitutional rights;
- b.Concordats;
- c.International treaties, except in cases where their civil or criminal law provisions have been violated by a cantonal decision;
- d.Federal law provisions regulating the material or territorial scope of authorities' powers.

2.In all these cases, however, the appeal shall be admissible only if the alleged violation cannot be referred by way of action or any other legal means to the Federal Court or another federal authority.

#### Article 85

##### b. Other cases

The Federal Court shall also rule on:

- a.Appeals concerning the voting rights of citizens and appeals concerning cantonal elections and voting, regardless of how these questions are regulated in the cantonal constitution and federal law on the subject;
- b.Appeals against decisions refusing legal aid, based on violation of Article 22, number 2, of the Federal Act of 28 March 1905 on the civil liability of railway and steamboat companies and the post office;
- c.Appeals against decisions taken by arbitration courts under Articles 190 and seq. of the Federal Act of 18 December 1987 on private international law.

*(Introduced by Chapter II 1 of the Appendix to the Federal Act of 18 December 1987 on international private law, in effect since 1 January 1989)*

#### Article 86

##### Exhaustion of cantonal remedies

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. Public law appeals shall be admissible only against decisions taken at last cantonal instance.

2. When appeals are concerned with the inter-cantonal double taxation or with the attachment of assets belonging to a foreign State, cantonal remedies need not be exhausted.

#### Article 87

Appeals alleging violation of Article 4 of the Constitution

Public law appeals alleging violation of Article 4 of the Federal Constitution shall be admissible only against final decisions taken at last instance; they shall not be admissible against interlocutory decisions taken at last instance unless these cause the party concerned irreparable damage.

#### Article 88

Capacity to appeal

Appeals may be brought by individuals or bodies injured by orders or decisions which concern them personally or apply generally.

#### Article 89

Time-limit for appeal

1. Notice of appeal shall be filed with the Federal Court not more than thirty days after the order or decision appealed has been notified in accordance with cantonal law.

2. If the reasons for the contested decision are notified ex officio at a later stage, an appeal may still be lodged within thirty days of this notification.

3. If the appeal concerns a conflict of jurisdiction between cantons, the time allowed for appeal shall start to run only when both cantons have taken decisions which may be open to public law appeal.

#### Article 90

Notice of appeal

1. In addition to indicating the order or decision appealed, the notice of appeal must contain:

- a. A statement of the appellant's arguments;
- b. A summary of the main facts and a brief statement of the constitutional rights or legal principles

violated, indicating how they have been violated.

2. If the appellant can obtain an execution copy of the contested decision, he must attach it to the notice; if he fails to do so, he shall be given a short time to remedy the omission, after which the appeal shall be inadmissible.

#### Article 91

Preparation procedure

1. In general, the court shall rule on public law disputes after written proceedings directed by the president or the judge responsible for preparing the case.

2. At the request of one of the parties, it may order an oral hearing, if there are important reasons for doing so.

#### Article 92

*(Repealed by Chapter I of the Federal Act of 4 October 1991)*

#### Article 93

Exchange of documents

1. If the court orders an exchange of documents, it shall communicate the appeal to the authority which made the contested order or decision, and also to the opposing party and any other interested parties, giving them time to reply and produce the file.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. When the reasons for the contested order or decision are given for the first time in the authority's reply, the appellant may be given time to submit a supplementary memorial.

3. A subsequent exchange of documents shall take place only in exceptional cases.

#### Article 94

Interim measures

At the request of one of the parties, the president of the court may, on receiving notice of appeal, order any interim measures needed to preserve the status quo or protect the interests affected.

## Article 95 Evidence

1. The judge responsible for preparing the case shall order the taking of any evidence needed to establish the facts. He may carry out enquiries himself or instruct the competent federal or cantonal authorities to do so.
2. The court shall assess this evidence freely.

## Article 96 Relations with other federal authorities

1. When an appeal is submitted in due time to the Federal Court, the Federal Council or a federal authority with special jurisdiction in administrative matters, the time-limit shall be deemed to have been observed, even if the appeal comes within the jurisdiction of another of these authorities; the appeal shall be sent automatically to the competent authority.
2. When an appeal is simultaneously referred to two of these authorities, or one has doubts as to its jurisdiction, they shall exchange their points of view on the question of jurisdiction before taking a decision.
3. The federal authority which has jurisdiction on the merits of the case shall also have jurisdiction on all preliminary and interlocutory questions.

## Part V Administrative Jurisdiction of the Federal Court

*(New wording of this Part (Articles 97 to 121) under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

## Chapter I Administrative law appeals

### Article 97 I. Principle

1. The Federal Court shall be the court of last instance for administrative law appeals against decisions within the meaning of Article 5 of the Federal Act of 20 December 1968 on administrative procedure.

2. When an authority refuses to take, or delays taking, a decision without being entitled to do so, its silence shall count as a decision.

### Article 98 II. Authorities whose decisions may be appealed against

Subject to Article 47, paragraphs 2 to 4, of the Federal Act of 20 December 1968 on administrative procedure, administrative law appeals shall be admissible against decisions:

- a. Of the Federal Council on federal staffing issues, when such decisions are taken at first instance by the Federal Council under federal law;
- b. Of its departments and the Federal Chancery;
- c. Of services, institutions, or concerns subordinate to these departments or the Federal Chancery, when they are ruling on appeals or complaints, unless a federal appeals board has prior jurisdiction; if they decide at first instance, direct appeal shall be possible, when federal law so provides;
- d. Of the supreme bodies of the autonomous federal institutions or concerns of the Confederation, unless federal law provides for a previous appeal or action before one of the authorities listed under b, c or g;
- e. Of federal appeals or arbitration boards, including the arbitration tribunals established by public law contracts;

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 1 January 1994)*

- f. Of other federal boards, if federal law provides for direct appeal against their decisions;
- g. Of cantonal authorities deciding at last instance, unless federal law provides for a previous appeal to one of the bodies mentioned under b to f;
- h. Of other authorities or organisations which are not part of the federal administration, giving decisions in the exercise of public law functions entrusted to them by the Confederation, if federal law provides for direct appeal against those decisions.

## Article 98a

## II.a. Cantonal authorities of last instance

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. The cantons shall establish judicial authorities of last instance at cantonal level, provided that their decisions may be made the subject of direct administrative law appeals to the Federal Court.
2. They shall decide on the powers, organisation and procedure of these authorities, within the limits set by federal law.
3. Capacity to appeal and grounds of appeal must be defined at least as widely as in the case of administrative law appeals to the Federal Court.

## Article 99

## III. Inadmissibility of administrative law appeals

## 1. As to the subject-matter of decisions

1. Administrative law appeals shall not be admissible against:

a. Decisions enacting legislation;

a<sup>bis</sup>. Decisions declaring the general binding force of standard form contracts on leases

*(Introduced by Article 17 of the Federal Act of 23 June 1995 on standard form contracts on leases and their general binding force declaration, in force since 1 March 1996)*

b. Decisions on fees, with the exception of private insurance and copyright fees;

c. Decisions on plans, other than those on appeals against compulsory purchase or consolidation schemes;

d. Decisions granting or refusing licences to which no entitlement exists in federal law; decisions which simultaneously grant or refuse licensees the right to expropriate and grant or refuse the licences in question;

*(New wording under Chapter 4 of the Appendix to the Federal Act of 3 February 1995 on the army and the military administration, in force since 1 January 1996)*

e. Decisions granting or refusing permission to build or operate technical installations or vehicles, except installations for aerial navigation;

*(New wording under Chapter II 3 of the Amendment of 18 June 1993 to the Act on aerial navigation, in force since 1 January 1995)*

f. Decisions on the results of professional or vocational examinations and other tests of ability;

g. Decisions suspending or waiving contributions due;

h. Decisions granting or refusing subsidies, loans, guarantees, indemnities and other public law pecuniary benefits to which no entitlement exists in federal law;

i. Decisions of the Appeals Board on foreign indemnities.

*(Introduced by Article 12, paragraph 1 of the Federal Act of 21 March 1980 on applications for foreign compensation, in force since 1 January 1981)*

## 2. Paragraph 1 shall not apply to:

a. Licences for the use of hydraulic forces;

b. Authorisations for military buildings and work;

c. Licences for aerodromes.

*(Introduced by Article 1 of the Amendment of 21 December 1995, in force since 1 January 1996)*

*(Introduced by Chapter 4 of the Appendix to the Federal Act of 3 February 1995 on the army and the military administration, in force since 1 January 1996)*

## Article 100

## 2. As to areas of law

1. Furthermore, administrative law appeals shall not be admissible against:

*(New wording under Chapter 2 of the Act of 24 March 1995 on equality, in force since 1 July 1996)*

a. Decisions on the internal or external security of the country, neutrality, diplomatic protection, development assistance, humanitarian aid and other questions relating to external relations;



*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

b. In connection with immigration control:

1. Decisions refusing, restricting or prohibiting entry;
2. Decisions granting or refusing asylum;

*(New wording under Article 52, Chapter 2 of the Act of 5 October 1979 on asylum, in force since 1 January 1981)*

3. Decisions granting or refusing authorisations to which no entitlement exists in federal law;
4. Expulsion under Article 70 of the Federal Constitution and return to the country of origin;
5. Decisions on the provisional admission of foreigners;

*(Introduced by Chapter II of the Amendment of 20 June 1986 to the Federal Act on the stay and settling of foreigners, in force since 1 January 1988)*

c. In connection with Swiss nationality:

Decisions granting or refusing ordinary naturalisation;

d. In connection with national defence, military or civil, as well as the non-military service:

*(New wording under Chapter 2 of the Appendix to the Federal Act of 6 October 1995 on the non-military service, in force since 1 October 1996)*

1. Decisions of a non-pecuniary nature on questions of conscription and civil defence;
2. Decisions taken by the assessment bodies specified in Article 46, letter c, of the Federal Act of 20 December 1968 on administrative procedure;
3. Decisions concerning the protection of military facilities and measures taken in supervising dams;
4. Decisions on the non-military service;

*(Introduced by Chapter 2 of the Appendix to the Federal Act of 6 October 1995 on the non-military service, in force since 1 October 1996)*

e. In connection with the employment situation of federal government staff:

1. Decisions on appointments and promotions;
2. Service regulations;

*(New wording under Chapter 3 of the Appendix to the Amendment of 19 December 1986 to the Federal Act on the status of civil servants, in force since 1 July 1987)*

3. Non-disciplinary transfers or assignment to other duties, when acceptance of this is compulsory under the conditions of employment;
4. The following disciplinary measures: reprimands, fines, withdrawal of transport facilities and suspension for up to five days;

*(New wording under Chapter 3 of the Appendix to the Amendment of 19 December 1986 to the Federal Act on the status of civil servants, in force since 1 July 1987)*

5. Decisions on salary increases based on payments of money, distinctions, bonuses, allowances and awards and the non-bestowal of salary increases according to Article 61 of the status of civil servants;

*(New wording under Chapter II 1 of the Amendment of 24 March 1995, in force since 1 January 1996)*

- f. Decisions concerning criminal prosecutions, apart from those refusing authorisations to prosecute officials of the Confederation and, unless federal law provides otherwise, those concerning judicial co-operation in criminal matters;

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

- g. Decisions on supervision of the supervising authorities;

h. In connection with customs duties;

Decisions on the collection of customs duties, as far as they depend on tariff classification or weight;

i. In connection with patents:

Decisions taken at the preliminary examination stage;

## k. In connection with schooling:

1. Decisions recognising or refusing to recognise Swiss secondary school certificates;
2. Decisions recognising, refusing to recognise or withdrawing recognition from Swiss schools abroad;

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

## l. In connection with road traffic:

1. Measures regulating traffic in accordance with local conditions;
2. Decisions on the classification of vehicles;
3. Decisions not to approve the construction or equipment of motor vehicles;

## m. In connection with agriculture:

1. Decisions on reducing the duration of tenancies, plot leasing, supplementary leasing or the amount of rents;
2. Decisions concerning the registered origin, classification and taxation of cheeses;

*(Introduced by Article 18 of the Federal Act of 27 June 1969 on the regulation of the cheese market. New wording under Article 59, Chapter 1 of the Federal Act of 4 October 1985 on agricultural tenancy, in force since 20 October 1986)*

## n. In connection with the protection of new plant species:

## Decisions on the admissibility of plant varieties;

*(Introduced by Article 52, Chapter 2 of the Federal Act of 20 March 1975 on the protection of the creation of new plant species, in force since 1 June 1977)*

## o. In connection with shipping:

## Decisions on the names, seaworthiness, safety and equipment of Swiss ships and yachts;

*(Introduced by Chapter III of the Amendment of 17 December 1976 to the Act on maritime navigation, in force since 1 August 1977)*

## p. In connection with political rights:

## Decisions on voting and elections;

*(Introduced by Article 88, Chapter 3 of the Federal Act of 17 December 1976 on the political rights, in force since 1 July 1978)*

## q. In connection with the promotion of cultural activities:

## Decisions on applications for subsidies made to the Pro Helvetia Foundation;

*(Introduced by Chapter II of the Amendment of 10 October 1980 to the Federal Act on the Pro Helvetia Foundation, in force since 1 July 1981)*

## r. In connection with public transport:

1. Decisions on rail timetables and services;
2. Decisions on fare reductions;
3. Decisions taken for the purpose of providing direct services;
4. Decisions on compensation for costs not covered by the offer of transport;

*(Introduced by Chapter II 2 of the Amendment of 24 March 1995 to the Federal Act on railways, in force since 1 January 1996)*

*(Introduced by Article 54, Chapter 1 of the Federal Act of 4 October 1985 on public transport, in force since 1 January 1987)*

## s. Decisions taken for the purpose of promoting research when federal law provides that these are to be taken by the Federal Council;

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

## t. In connection with protection of the environment:

1. Decisions concerning the obligation on certain cantons of providing other cantons with adequate facilities for recycling, treating and eliminating waste, and decisions taken in this context on sharing of the costs;

2. Decisions on the siting of dumps and other facilities for the treatment of dangerous waste;

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

u. In connection with nuclear energy:

Decisions on authorisations for nuclear facilities or preparatory measures;

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

v. In connection with vocational training:

Decisions on admission to examinations and courses and decisions on the results of examinations;

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

w. In connection with trademark protection:

Against decisions taken under the options procedure;

*(Introduced by Article 75, Chapter 1 of the Act of 28 August 1992 on the protection of trademarks, in force since 1 April 1993)*

x. Decisions in connection with public sector procurement and tendering.

*(Introduced by Article 36 of the Federal Act of 16 December 1994 on public sector procurement and tendering, in force since 1 January 1996)*

2. Paragraph 1 shall not apply to:

a. Decisions in connection with data protection;

b. Decisions on sex equality in connection with professional relations among federal staff;

c. Authorisations for military buildings and work.

*(Introduced by Chapter 4 of the Appendix to the Federal Act of 3 February 1995 on the army and the military administration. New wording under Chapter 2 of the Appendix to the Act of 24 March 1995 on equality, in force since 1 July 1996)*

Article 101

3. As to the procedural nature of decisions

Appeals shall not be admissible against:

a. Interlocutory decisions and decisions on appeals for denial of justice or unjustified delay if the final decision is not open to appeal;

b. Decisions on procedural costs and expenses, if the decision on the merits is not open to appeal;

c. Measures concerning the execution of decisions;

d. Decisions on the total or partial setting aside of decisions which are not open to an administrative law appeal, except those on the setting aside of decisions which confer advantages within the meaning of Article 99, letters c to f and h, and Article 100, letter b, number 3, letters c and e, number 1, letter k, number 1, letters l and v.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

Article 102

4. Subsidiarity of the appeal

Otherwise, administrative law appeals shall not be admissible when one of the following remedies is available:

a. An administrative law action under Article 116 or any other action or appeal before the Federal Court, with the exception of public law appeals;

b. An administrative law appeal or action before the Federal Insurance Court under Articles 128 seq.;

c. An appeal to the Federal Council under Article 73, paragraph 1, letter a or b, of the Federal Act of 20 December 1968 on administrative procedure;

d. Any other prior appeal or application to set aside.

Article 103

IV. Procedure

1. Capacity to appeal

Appeals may be brought by the following:

a. Any person injured by the contested decision who has an interest worthy of protection in its being set aside or modified;

b. The competent department or, when federal law so provides, the competent division of the federal administration, if the decision was taken by a federal appeals or arbitration board, a last instance cantonal authority, or a body within the meaning of Article 98, letter h; decisions of this kind, which are open to appeal in administrative law, must be communicated without delay and without charge to the federal authorities entitled to appeal against them;

c. Any other person, organisation or authority entitled to appeal under federal law.

#### Article 104

##### 2. Grounds of appeal

Appeals may be brought:

a. For violation of federal law, including the exceeding or abuse of discretionary powers;

b. For incorrect or incomplete finding of the relevant facts, subject to Article 105, paragraph 2;

c. For inexpediency:

1. Of first instance decisions determining public contributions or public law indemnities;

2. Of disciplinary measures decided at first instance by the Federal Council against officials of the Confederation;

3. Of other decisions, when federal law recognises inexpediency as ground for complaint.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

#### Article 105

##### 3. Finding of the facts

1. The Federal Court may review the finding of the facts *ex officio*.

2. When the appeal concerns a decision by a judicial authority, the Federal Court is bound by the facts as found in that decision unless they are manifestly

incorrect or incomplete, or were established in violation of essential rules of procedure.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

#### Article 106

##### 4. Time-limit for appeal

###### a. Principle

1. Appeals must be lodged with the Federal Court within thirty days of notification of the decision, or ten days in the case of interlocutory decisions; in the case of decisions taken by a cantonal government on the right to vote on federal matters, the time-limit for appeal shall be five days.

*(New wording under Article 88, Chapter 3 of the Federal Act of 17 December 1976 on political rights, in force since 1 July 1978)*

2. A party may appeal at any time when an authority refuses to give a decision or delays giving a decision without justification.

#### Article 107

##### b. Special cases

1. The time-limit shall also be deemed to have been respected when the appeal is lodged in due time with an authority which does not have jurisdiction.

2. The authority which does not have jurisdiction shall transmit the appeal to the Federal Court without delay.

3. Improper notification, particularly notification which fails to indicate the legal remedies, or indicates them incompletely or incorrectly, may not prejudice the parties.

#### Article 108

##### 5. Statement of grounds of appeal

1. At least two copies of the statement of grounds of appeal shall be filed with the Federal Court; at least three copies must be filed if the appeal is directed against a decision taken by a federal appeals or arbitration board, a last instance cantonal body or one of the bodies specified in Article 98, letter h.

2. The statement of grounds shall indicate the arguments, grounds and proofs, and be signed by the appellant or his representative; the latter shall

attach an execution copy of the contested decision and the documents used as evidence, if these are in his possession.

3. When the appendices are lacking, or the arguments or grounds of appeal are insufficiently clear, without the appeal's being manifestly inadmissible, the appellant shall be given a short additional period of time to remedy the defect; failure to do so shall render the appeal inadmissible.

#### Article 109

6. ...

*(Repealed by Chapter I of the Amendment of 4 October 1991)*

#### Article 110

##### 7. Exchange of documents

1. If the Court orders an exchange of documents, it shall give the authority which took the contested decision and if necessary any other parties or interested persons notice of the appeal; if the contested decision was taken by a federal appeals or arbitration board, a last instance cantonal authority or one of the bodies specified in Article 98, letter h, the Federal Court shall also notify the appeal to the federal authority which would have been entitled to appeal under Article 103, letter b.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. It shall set a time-limit for reply and invite the authority which took the decision to submit the file within this time-limit.
3. It shall also invite the last instance cantonal authority to reply, if its decision was first referred to a lower federal authority, and the appeal is directed against the latter's decision.
4. A further exchange of documents shall take place only in exceptional cases.

#### Article 111

##### 8. Suspensive effect

1. Appeals against decisions ordering the payment of money shall have suspensive effect.
2. Appeals against other decisions shall have suspensive effect only if the president of the court

so decides, ex officio or on application by a party, and without prejudice to contrary provisions in federal law.

*(New wording under Chapter I of the Amendment of 6 October 1978, in force since 1 February 1979)*

#### Article 112

##### 9. Hearing

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

The president may order a hearing.

#### Article 113

##### 10. Other procedural rules to be followed before judgment

Articles 94, 95 and 96, paragraphs 2 and 3, shall apply by analogy to the procedure to be followed before judgment.

#### Article 114

##### 11. Judgment

1. The Federal Court may not go beyond the pleadings of the parties, to their advantage or disadvantage, except in cases where public levies are alleged to violate federal law, or the finding of the acts is incorrect or incomplete; it shall not be bound by the grounds cited by the parties.
2. When the court sets aside the contested decision, it may either decide on the merits itself or send the case back to the lower authority for a new decision; if the latter itself took the contested decision, the court may refer the case back to the authority which decided at first instance.
3. If the Court finds the disciplinary dismissal of an employee of the Confederation unjustified, it may, without regard to the pleadings of the parties, order the Confederation to pay the appellant fair compensation, instead of setting aside or modifying the contested decision.
4. The Court shall notify its judgment to the parties and the other interested persons invited to reply to the appeal.

## Article 115

## 12. Special procedural provisions for expropriations

1. The administrative law appeal procedure against the decisions of the Federal Valuation Boards shall be governed by Articles 104 to 109 of the present Act.

*(Currently "shall be governed by Articles 104 to 109 of the present Act, in so far as the Federal Act of 20 June 1930 on expropriation does not provide otherwise")*

2. In other cases, Articles 77 to 87 and 116 of the Federal Act of 20 June 1930 on expropriation shall apply.

*(Currently "Articles 77 to 82, 86 and 116")*

3. Article 116 of the Act on expropriation shall also apply to administrative appeals against decisions on expropriation given by other authorities.

## Chapter 2

## Sole jurisdiction of the Federal Court

## Article 116

## I. Admissibility of an administrative law action

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 1 January 1994)*

Subject to Article 117, the Federal Court shall have sole jurisdiction in disputes based on federal administrative law:

- a. Between the Confederation and cantons, except those relating to the approval of legislation;
- b. Between cantons;
- c. Relating to claims for damages resulting from official acts by persons listed in Article 1, paragraph 1, letters a to c, of the Liability Act.

## Article 117

## II. Inadmissibility of an administrative law action

An administrative law action shall not be admissible when:

- a. A civil or public law action can be brought under Articles 41, 42 or 83;

- a<sup>bis</sup>. An appeal can be brought under Article 45, letter c;

*(Introduced by Article 36, Chapter 1 of the Act of 18 March 1983 on civil liability in nuclear matters, in effect since 1 January 1984)*

- b. An administrative law action can be brought before the Federal Insurance Court;

- c. Under other federal laws, the dispute comes under the jurisdiction of one of the authorities listed in Article 98, letters b to h; the decisions of these authorities shall be open to administrative law appeal at last instance.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 1 January 1994)*

## Article 118

## III. ...

*(Repealed by Chapter I of the Amendment of 4 October 1991)*

## Article 119

## IV. Procedure

## 1. Representation of the Confederation

1. The competent department or, if federal law so provides, the competent division of the administration shall represent the Confederation in administrative law actions brought by or against it; the General Directorates of the Federal Railway Service and of the Post, Telephone and Telegraph Service shall determine representation in their respective fields.

2. In financial disputes, the authorities mentioned in paragraph 1 may instruct the Federal Finance Administration to represent them.

3. Article 156, paragraph 6, shall apply to actions brought against the Confederation, in which the competent federal authority within the meaning of paragraph 1 has not previously been asked for a ruling, if this authority subsequently recognises that the complaint is justified.

## Article 120

## 2. Additional procedural provisions

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

In other cases, Article 105, paragraph 1, of this Act and Articles 3 to 85 of the Federal Civil Procedure Act shall apply by analogy.

### Chapter 3

#### Administrative disputes on cantonal matters

#### Article 121

Administrative disputes on cantonal matters referred to the Federal Court under Article 114bis, paragraph 4, of the Federal Constitution, shall be judged in accordance with the procedure followed by the Federal Court when sitting as an appeal court or court having sole jurisdiction in administrative matters, unless the Federal Assembly provides otherwise.

### Part 6

#### Federal Insurance Court

*(New wording of this Part (Articles 122 to 135) under Chapter I of the Federal Act of 20 December 1968, in force since 1 October 1969)*

#### Article 122

##### I. Organisation

##### 1. Principle

The Federal Insurance Court shall act as the Federal Court's autonomous Court of Social Insurance.

#### Article 123

##### 2. Composition and Appointment

1. The Federal Insurance Court shall consist of nine judges and nine substitutes.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. Articles 1 to 5 shall apply by analogy to the appointment of judges and substitutes; Article 6 shall apply to the appointment of the President and Vice-President.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

3. The Federal Insurance Court shall appoint registrars and its secretaries; Article 7 shall apply by analogy.

#### Article 124

##### 3. Seat

The Federal Insurance Court shall sit in Lucerne.

#### Article 125

##### 4. Additional provisions

##### a. Application of this act

Otherwise, the Federal Insurance Court shall be organised by applying Articles 8, 9, paragraphs 1 to 3 and 7, Articles 10, 11, 13, paragraphs 1 to 3 and 5, Articles 14, 15, paragraphs 1 and 2, Articles 16 to 18, 19, paragraph 2, and Articles 20 to 26 and 28 by analogy. Article 17, paragraph 2, shall also apply to hearings, deliberations and voting in the Federal Insurance Court when it is deciding on insurance benefits or contributions.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

#### Article 126

##### b. Application of other laws

The provisions of other laws governing the status of Federal Court judges and substitutes, its registrars, secretaries and other staff shall apply by analogy to persons serving in the Federal Insurance Court, with the exception of the special provisions relating to its president.

#### Article 127

##### c. Relations with the Federal Court

1....

*(Repealed by Chapter I of the Amendment of 4 October 1991)*

2. Article 16 shall also apply to relations between the Federal Insurance Court and the Federal Court.

3. The Federal Insurance Court and the Federal Court's public law courts shall exchange views regularly on other questions of common interest.

*(New wording under Chapter I of the Amendment of 6 October 1978, in force since 1 February 1979)*

4. The two courts shall also notify each other without delay of their decisions relating to legal points of common interest, which they shall determine by common agreement.

5. The Federal Insurance Court shall publish its fundamental decisions in the Official Record of Federal Court Decisions.

#### Article 128

##### II. Competence

##### 1. As appeal court

##### a. Principle

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

The Federal Insurance Court shall be the court of last instance for administrative law appeals against decisions within the meaning of Articles 97, 98, letters b to h, and 98a, in social insurance matters.

#### Article 129

##### b. Inadmissibility of administrative law appeals

##### 1. Administrative law appeals shall not be admissible against decisions concerning:

- a. The approval of legislation;
- b. Pricing;
- c. The grant or refusal of financial benefits to which there is no entitlement in federal law, with the exception of decisions granting suspension or remission of insurance contributions;
- d. Instructions to social insurance funds or other bodies;
- e. Health insurance coverage for medical treatment;
- f. The basic unemployment insurance contribution.

*(New wording under Chapter 13 of the Appendix to the Federal Act of 20 March 1981 concerning insurance-accidents, in force since 1 January 1984)*

##### 2. Administrative law appeals shall not be admissible against decisions within the meaning of Article 101, letters a to c.

##### 3. Administrative law appeals shall also be inadmissible in the case of Article 102, letters a, c and d.

#### Article 130

##### 2. As court having sole jurisdiction

##### a. Principle

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 1 January 1994)*

The Federal Insurance Court shall have sole jurisdiction in administrative law actions within the meaning of Article 116 relating to social insurance.

#### Article 131

##### b. Inadmissibility of administrative law actions

Administrative law actions shall not be admissible in the case of Article 117, letters a and c; in the case of letter c, administrative law appeals shall be admissible.

#### Article 132

##### III. Procedure

##### 1. Administrative law appeals

Articles 103 to 114 shall apply to the administrative law appeal procedure; however, when the contested decision concerns the grant or refusal of insurance benefits, Articles 104, 105 and 114 shall apply with the following modifications:

- a. The appellant may also argue that the contested decision is inexpedient;
- b. The facts found are not binding on the Federal Insurance Court;
- c. The Federal Insurance Court may disregard the parties' arguments, to their advantage or disadvantage.

#### Article 133

##### 2. Administrative law actions

Articles 119 and 120 shall apply to the procedure in administrative law actions.

#### Article 134

##### 3. Costs

Generally, the Federal Insurance Court may not order the parties in appeal proceedings concerning the grant or refusal of insurance benefits to pay costs.



## Article 135

## 4. Additional provisions

Otherwise, Articles 29 to 40 and 136 to 162 shall apply to the procedure in the Federal Insurance Court.

## Part 7 –Review and interpretation of decisions of the Federal Court

*(New wording under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

## Article 136

## Grounds for review

## a. Procedural defects

Applications for review of a Federal Court decision shall be admissible:

- a. When the provisions of this Act concerning the composition of the Court or Article 57 relating to postponement of decisions have not been observed, and in the cases covered by Article 28;
- b. When the Court awards a party more than he has asked for or something other than the thing he has asked for, without there being any special provision to cover this in law, or awards him less than the opposing party has admitted owing;
- c. When the Court has failed to decide on some of the issues referred to it;
- d. When the Court has inadvertently failed to consider important facts contained in the file.

## Article 137

## b. New facts

Applications for review of a Federal Court decision shall also be admissible:

- a. When criminal proceedings show that the decision was influenced to the appellant's detriment by a crime or an offence, even when no conviction follows. If criminal proceedings are not possible, evidence may be brought in other ways;

- b. When the appellant subsequently ascertains important new facts or finds conclusive evidence which he was unable to produce in the earlier proceedings.

## Article 138

## Grounds of cantonal law

Review of a decision upholding a cantonal decision may no longer be requested for reasons which were known before the Federal Court gave judgment, and which could have been raised in the cantonal appeal proceedings.

## Article 139

## Reservation in favour of the Federal Criminal Procedure Act

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

The Federal Criminal Procedure Act shall apply to review of decisions given by federal criminal courts in criminal proceedings.

## Article 139a

## Violation of the European Convention on Human Rights

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. Applications for review of decisions by the Federal Court or lower authorities shall be admissible when the European Court of Human Rights or the Committee of Ministers of the Council of Europe has upheld an individual application alleging violation of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or one of its protocols, and reparation can be obtained only through review.
2. If the Federal Court finds that review is required, but that this is a matter for a lower authority, it shall refer the case back to that authority for review.
3. The cantonal authority must act on the application for review even if cantonal law does not provide for this ground for review.

Article 140  
Application for review

The application for review must indicate the ground for review, giving the evidence relied on, and also state whether it was introduced in due time; it must also indicate the changes in the judgment and the reparation sought.

Article 141  
Procedure  
a. Time-limit

1.If applications for review are not to be barred for failing to observe the time-limit, they must be made to the Federal Court:

a.In cases covered by Article 136, within thirty days of receiving written notice of the decision;

b.In cases covered by Article 137, within ninety days of the coming to light of the ground for review, and, at the earliest, on receipt of written notice of the Federal Court's decision or of termination of the criminal proceedings;

c.In cases covered by Article 139a, at the latest 90 days after the Federal Justice Bureau has notified the parties of the European authorities' decision.

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2.After ten years, review may be applied for only in the case of crimes or offences.

Article 142  
b. Suspensive effect

During the proceedings, the court or president may suspend execution of the contested decision or order other provisional measures, requiring securities if necessary.

Article 143  
c. Other rules

1.If the court unanimously finds the application for review inadmissible or ill-founded, it may give judgment without public deliberation.

2.Otherwise, the application shall be sent to the opposing party, who shall be invited to reply within a reasonable time-limit and to produce his file.

3.A subsequent exchange of written or oral arguments shall take place only in exceptional cases.

4.If the admissibility of the application for review depends on the finding of disputed facts, Article 95 shall apply by analogy.

Article 144  
d. Decision on the application for review

1.When the Court accepts the ground for review, it shall set the first decision aside and take a new one. It shall decide on restitution in respect of the merits and the costs at the same time.

2.If the decision referring the case to the cantonal court is set aside, then the final decision given by that court shall also be set aside.

Article 145  
Interpretation

1.When the operative provisions of a judgment are unclear, incomplete or equivocal, or its elements are at variance with one another or the reasons, or when it contains errors of drafting or calculation, the Federal Court may, on written application by one party, interpret or rectify it.

2.An application for interpretation of a Federal Court decision referring a case back to the cantonal court may be made only if the latter has not yet given judgment.

3.Articles 142 and 143 shall apply by analogy.

Part 8  
Procedural allowances and costs

Chapter 1  
Allowances

Article 146  
Travelling expenses and daily allowances

A Federal Council order shall determine the travelling expenses of federal judges. It shall also determine the allowances of substitutes, investigating judges and their registrars, and members of the jury.

Article 147  
Allowances of witnesses and experts

1. Witnesses shall be entitled to reimbursement of their unavoidable expenses and fair compensation for loss of their time. The Court may make general rules on this subject.
2. The Court shall have full discretion in fixing the allowances of experts.

Article 148  
Officers of the Court

The Court shall in each case fix the remuneration of its officers (guards and others), if need be in agreement with the cantonal authorities and in accordance with local practices.

Chapter 2  
Court fees and expenses

Article 149  
General rule

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

Court fees and expenses shall be determined by the following provisions. In criminal cases, however, any other provisions specified in the Federal Criminal Procedure Act shall apply.

Article 150  
Security for court fees and expenses

1. Anyone bringing an application in the Federal Court shall be required by order of the president to post security for the presumed court fees (Articles 153 and 153a). When there are special reasons for making an exception, the court may waive the security requirement, either fully or partly.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

2. If a party does not have a fixed residence in Switzerland or is shown to be insolvent, the president or the judge preparing the case may ask him, on application by the opposing party, to post security for costs which may be awarded to the opposing party (Articles 159 and 160).
3. Security must be deposited in cash with the Court's cashier.
4. If security (under paragraphs 1 and 2) is not posted within the set time-limit, the pleadings of the party concerned shall be inadmissible.

Article 151  
Advance of disbursements

1. Moreover, each party must advance disbursements arising from their applications during the proceedings, and proportionally disbursements arising from common applications or actions taken *ex officio* by the court.
2. If the advance is not made within the set time-limit, the acts it was intended to cover shall not be carried out.

Article 152  
Legal aid

1. On application, the Court shall dispense parties who are needy and whose applications do not seem certain to fail from the requirement of paying court fees and posting security for disbursements. An exception shall be made in cases where the court's ordinary jurisdiction is extended.
2. If need be, the Court may assign a lawyer to this party; if the party does not win the case or the expenses cannot be recovered, the lawyer's fees

shall be fixed by the Court in accordance with the fee schedule in Article 160 and paid from the Court's funds.

3. A party subsequently able to reimburse the Court shall be bound to do so.

#### Article 153

##### Court fees

##### a. General

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. The court fees covered by the parties shall include the actual court fees, the cost of translation into or from a language other than a national language, experts' fees, indemnities for witnesses and the cost of detention on remand.

2. When a case is abandoned or ends in a settlement, the court may decide not to collect all or part of the fees.

#### Article 153a

##### b. Court Fees

*(Introduced by Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

1. The court fees shall be determined in accordance with the value of the subject-matter, the length and difficulty of the proceedings, the conduct of the parties and their financial situation.

2. They shall lie:

- a. Between 1,000 and 100,000 francs in disputes over which the Court has sole jurisdiction;
- b. Between 200 and 5,000 francs for public law and administrative law appeals in non-pecuniary matters;
- c. Between 200 and 50,000 francs in other cases.

3. In special circumstances, the Court may increase these amounts by up to 100 per cent.

#### Article 154

##### b. Exceptions in public law cases

1. In disputes under Article 49, paragraphs 1 to 5, and Article 50, paragraphs 1 and 2, of the Federal Constitution, no court fees shall be charged or expenses awarded.

2. When the case is not a civil one and no pecuniary interest is involved, court fees and expenses may also be waived in other public law disputes, for special reasons and in exceptional cases.

*(New wording under Chapter I of the Amendment of 4 October 1991, in force since 15 February 1992)*

#### Article 155

##### c. Railways and shipping

*(New wording under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

In proceedings for compulsory liquidation, arrangement with creditors or receivership in connection with railway or shipping companies, court fees shall lie between 200 and 10,000 francs.

#### Article 156

##### Apportionment of fees in Federal Court proceedings

##### a. Federal Court

1. As a general rule, court fees shall be paid by the losing party.

2. The Confederation, cantons and local authorities may not normally be ordered to pay court fees, unless their financial interests are at issue, when they apply to the Court in their official capacity or when their decisions are under appeal.

3. When none of the parties entirely wins the case or the losing party could have believed in good faith that he had a case, the fees may be divided between them proportionally.

4. ...

*(Repealed by Chapter I of the Amendment of 4 October 1991)*

5. In disciplinary matters, when the appeal is withdrawn or the contested decision is upheld, the appellant

shall be required to pay all or part of the court fees.  
The remainder shall be paid from Court funds.

6. Unnecessary costs shall be paid by the party who caused them.

7. Unless otherwise provided, when court fees are awarded against several persons equally, they shall be jointly and severally liable.

#### Article 157

##### b. Cantonal fees

When the Court modifies the judgment of a lower court, it may also apportion the previous costs differently.

#### Article 158

*(Repealed by Article 80, letter b, of the Federal Act of 20 December 1968 on Administrative Procedure)*

#### Article 159

##### Costs

1. The Court shall decide, when adjudicating on the dispute itself, whether and to what extent the losing party is to pay the winning party's costs.

2. As a general rule, the losing party shall be required to reimburse all the necessary costs arising from the proceedings; in appeal proceedings and administrative law actions, no costs shall generally be awarded to winning parties which are public authorities or bodies with public law responsibilities.

*(New wording under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

3. When the judgment favours neither party exclusively, or the losing party could have believed in good faith that he had a case, the costs may be distributed proportionally between the parties.

4. When a disciplinary decision is declared unfounded on appeal, the appellant shall be awarded an indemnity for his costs.

5. Article 156, paragraphs 6 and 7, shall apply by analogy.

*(New wording under Chapter I of the Amendment of 20 December 1968, in force since 1 October 1969)*

6. Depending on the outcome of the proceedings, the Court shall confirm, set aside or modify the cantonal court's decision ordering one party to pay costs. It may itself determine costs with reference to the cantonal schedule or delegate assessment of costs to the relevant cantonal authority.

#### Article 160

##### Amount of costs

A schedule established by the Court shall fix the amount of the costs awarded to the opposing party for the proceedings before the Court, taking account of his lawyer's fees.

#### Chapter 3

##### Attorney's Fees

#### Article 161

If a dispute arises concerning the fees which a party owes his attorney for proceedings before the Court, the Court shall determine the fees without a hearing, having first invited the attorney or the party to submit his written observations.