

## Constituțiile Statelor membre UE – Autoritatea Judecătorească

### Austria

### Chapter VI

#### Constitutional and Administrative Guarantees

**Art. 129.** The authorities competent to secure the legality of all acts of administration are the independent administrative tribunals and the Administrative Court at Vienna.

#### A. Independent Administrative Tribunals in the Laender

**Art. 129a.** (1) The independent administrative tribunals pronounce judgment after exhaustion of the administrative appeal stages, in so far as such come into consideration,

1. in proceedings on the ground of administrative contraventions, Federal fiscal penal cases excepted,
2. on complaints by persons who allege infringement of their rights through the exercise of direct administrative power and compulsion, Federal fiscal penal cases excepted,
3. in other matters which by the Federal or Land laws regulating individual areas of the administration are assigned to them,
4. on complaints on the ground of contravention of the onus for decision in matters relating to subpara. 1 above in so far as civil action business or penal tax law regulated by Land legislation is concerned, and sub-para. 3 above.

(2) Legislative provision can be made for appeals against decisions of first instance being able to be taken directly to an independent administrative tribunal. Such Federal laws may be published in matters relating to indirect Federal administration as well as to Arts. 11 and 12 only with agreement of the Laender concerned.

(3) Art. 89 applies analogously to the independent administrative tribunals.

**Art. 129b.** (1) The independent administrative tribunals consist of a Chairman, a Deputy Chairman, and the requisite number of other members. The Land Government appoints members for at least six years. No fewer than a quarter of the members have to be drawn from professional appointments in the Federation.

(2) The members of the independent administrative tribunals are not bound by any instructions in the performance of the tasks referred to them in accordance with Arts. 129a and 129b. Business shall be allocated in advance among members of the independent administrative tribunals for the period regulated by Land legislation; a matter devolving upon a member of an independent administrative tribunal in accordance with this allocation may only in case of his being prevented from the discharge of his responsibilities be removed from him at the ruling of the Chairman.

(3) Members of the independent administrative tribunals may before expiry of the period of appointment be removed from office only in the legally specified instances and only at the resolution of the independent administrative tribunal.

(4) The members of the independent administrative tribunals must be jurists. For their period of office they may not practise any activity liable to evoke doubts as to the independent conduct of their office.

(5) In accordance with the Federal law regulating procedure before independent administrative tribunals the decisions of these authorities are delivered by one or more members.

(6) The organization of the independent administrative tribunals and the service code of their members is regulated by Land law, the procedure by Federal law.

#### B. Independent Federal Asylum Tribunal

**Art. 129c.** (1) A further independent administrative body can be set up by Federal act as the supreme appellate authority in asylum cases (Independent Federal Asylum Tribunal).

(2) The Independent Federal Asylum Tribunal consists of a Chairman, a Deputy Chairman, and the requisite number of other members. The Federal President appoints the members upon recommendation of the Federal Government. Appointments are made for an indefinite time.

(3) The members of the Tribunal are not bound by any instructions in the performance of the tasks referred to them.

Business shall be allocated by the Independent Federal Asylum Tribunal, as a collegial body, among the members each year in advance; a matter devolving upon a member in accordance with this allocation may only in case of his being prevented from the discharge of his responsibilities be removed from him at the ruling of the Chairman.

(4) A law will prescribe an age limit upon whose attainment members of the Independent Federal Asylum Tribunal will be put on the permanently retired list. Otherwise they may be removed from office only in the cases prescribed by law and only by reason of a decision of the Independent Federal Asylum Tribunal.

(5) The members of the Tribunal must be jurists. For their period of office, they may not practise any activity liable to evoke doubt as to the independent conduct of their office.

(6) Art. 89 applies analogously to the Independent Federal Asylum Tribunal.

(7) Detailed provisions will be prescribed by Federal law. In particular, they will regulate what matters will be decided by several members of the Tribunal and what matters will be decided by a single member.

### **C. The Administrative Court**

**Art. 130.** (1) The Administrative Court pronounces on complaints which allege

a) illegality of rulings by administrative authorities including the independent administrative tribunals, or

b) breach of the onus on administrative authorities including the independent administrative tribunals to take a decision.

The Administrative Court furthermore pronounces on complaints against instructions received pursuant to Art. 81a para. 4.

(2) No illegality exists where legislation forbears from the establishment of a binding rule on an administrative authority's conduct, leaving the determination of such conduct to the authority itself, and the authority has made use of this discretion in the spirit of the law.

**Art. 131.** (1) Complaint on the score of illegality can be brought against the ruling of an administrative authority by

1. anyone who, after exhaustion of all appellate stages, alleges that the ruling infringes their rights;

2. the competent Federal Minister in matters pertaining to Arts. 11, 12, 14 paras. 2 and 3 and 14a paras. 3 and 4 as well as in those matters where the ruling of a Land or district school board is based on a committee decision and the parties are no longer able to contest the ruling by way of appeal;

3. the competent Land government against rulings by the Federal Minister competent in matters pertaining to the first sentence in Art. 15 para. 5;

(2) The Federal or Land laws relating to the individual fields of administration regulate under what conditions complaints on the score of illegality are admissible against administrative authorities' rulings in cases other than those stated in para. 1 above.

(3) The Administrative Court can dismiss the hearing of a complaint against a ruling by an independent administrative panel or the Federal Procurement Authority if the decision does not depend on a legal issue of basic importance, especially inasmuch as the independent administrative panel's or the Federal Procurement Authority's adjudication deviates from that of the Administrative Court, such adjudication is lacking or the legal issue in question has in the Administrative Court's adjudication not as yet been uniformly settled, in an administrative penal suit, moreover, only if a small monetary penalty was imposed.independent

**Art. 131a.** (Repealed)

**Art. 132.** Complaint for breach of the onus to take a decision by administrative authorities including the independent administrative tribunals can be brought by the party who in administrative proceedings was entitled to claim fulfilment of that onus of decision. A complaint for breach of the onus to take a decision in administrative penal cases is inadmissible; this does not apply to private suits and to fiscal penal cases .

**Art. 133.** The following matters are excluded from the jurisdiction of the Administrative Court:

1. matters pertaining to the jurisdiction of the Constitutional Court:

2. Repealed;

3. patent matters;

4. matter where the final decision rests with a tribunal if, in accordance with the Federal or Land law which prescribes the organization of this authority, its membership includes at least one judge, the remaining members too are in the exercise of this office not bound by any instructions, the rulings of this authority are not subject to administrative rescission or alteration, and complaint to the Administrative Court, notwithstanding the fulfillment of these conditions, is not expressly declared admissible.

**Art. 134.** (1) The Administrative Court consists of a President, a Vice-President, and the requisite number of other members (chamber presidents and Court councillors).

(2) The President, the Vice-President, and the other members of the Administrative Court are appointed by the Federal President on the proposal of the Federal Government. The Federal Government submits its recommendations, in so far as appointment of the President or Vice-President is not concerned, on the basis of recommendations listing three candidates for each vacancy submitted by the Administrative Court in plenary session.

(3) All members of the Administrative Court must have completed their studies in jurisprudence or in legal and political science and for at least ten years have held a professional appointment which prescribes the graduation in these studies. At least one third of the members must be qualified to hold judicial office while at least one quarter should be drawn from professional appointments in the Laender, whenever possible from the Laender's administrative service.

(4) Members of the Federal Government, a Land Government, or a popular representative body cannot be members of the Administrative Court; for members of a popular representative body elected for a fixed term of legislation or office such incompatibility continues until the expiry of that term of legislation or office even though they prematurely renounce their seat.

(5) Anyone who during the preceding four years has exercised one of the functions specified in para. 4 above cannot be appointed President or Vice-President of the Administrative Court.

(6) All members of the Administrative Court are professionally employed judges. The provisions of Art. 87 paras. 1 and 2 and Art. 88 para. 2 apply to them. Members of the Administrative Court are by operation of law put on the permanently retired list on 31 December of the year in which they attain their sixty fifth birthday.

**Art. 135.** (1) The Administrative Court pronounces judgment through chambers which shall be constituted by the plenary assembly from members of the Administrative Court.

(2) Business shall for the period provided by Federal law be allocated by the plenary assembly in advance among the chambers.

(3) A matter devolving upon a member in accordance with this allocation may be removed from his jurisdiction only in case of his being prevented from the discharge of his responsibilities.

(4) Art. 89 applies analogously to the Administrative Court.

**Art. 136.** Detailed provisions about organization, scope and procedure of the Administrative Court will be prescribed in a special Federal law and Standing Orders to be passed on the basis of this by the plenary assembly.

#### **D. The Constitutional Court**

**Art. 137.** The Constitutional Court pronounces on pecuniary claims on the Federation, the Laender, the Bezirke, the municipalities and municipal associations which cannot be settled by ordinary legal process nor be liquidated by the ruling of an administrative authority.

**Art. 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 Laender amongst themselves as well as between a Land and the Federation.

(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 Federation or the Laender.

**Art. 138a.** (1) The Constitutional Court establishes on application by the Federal Government or a Land Government concerned whether an agreement within the meaning of Art. 15a para. 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 is stipulated in an agreement within the meaning of Art. 15a para. 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.

**Art. 139.** (1) The Constitutional Court pronounces on application by a court, an independent administrative panel or the Federal Procurement Authority, 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 municipality concerned whether ordinances issued by a municipal affairs supervisory authority in accordance with Art. 119a para. 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; Art. 89 para. 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 para. 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, by an independent administrative panel, by the Federal Procurement Authority 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. Para. 3 above applies analogously.

(5) The judgment by the Constitutional Court which rescinds an ordinance as contrary to law imposes on the highest competent Federal or Land authority in the the obligation to publish the rescission without delay. This applies analogously in the case of a pronouncement pursuant to para. 4 above. The rescission enters into force upon expiry of the day of publication if the Court does not set a deadline, which may not exceed six months or if legal dispositions are necessary 18 months, for the rescission.

(6) If an ordinance has been rescinded on the score of illegality or if the Constitutional Court has pursuant to para. 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 para. 5 above, the ordinance shall apply to all the circumstances effected, the case in point excepted, till the expiry of this deadline.

**Art. 139a.** The Constitutional Court pronounces on application by a court, by an independent administrative panel or by the Federal Procurement Authority the unlawfulness of promulgations regarding the re-notification of an act (a treaty); *ex officio*, in so far as the Constitutional Court would have to apply such promulgation concerning a pending legal matter. It pronounces unlawfulness of such promulgations of any of the Laender also upon request of the Federal Government and unlawfulness of such promulgations of the Federation also upon request of a government of any of the Laender. It pronounces furthermore unlawfulness of such promulgations also when an application alleges direct infringement of personal rights by such unlawfulness in so far as the promulgation has become operative against the applicant without the delivery of a judicial decision or the issue of a ruling. Art. 59 paras. 2, 3 and 5 as well as Art. 139 paras. 2 to 6 shall apply analogously.

**Art. 140.** (1) The Constitutional Court pronounces on application by the Administrative Court, the Supreme Court, a competent appellate court, an independent administrative panel or by the Federal Procurement Authority 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 National Council's members, or by one third of the Federal Council'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 Diet'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; Art. 89 para. 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 para. 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, by an independent administrative panel, by the Federal Procurement Authority or by an applicant alleging direct infringement of personal rights through the law's unconstitutionality, the Court must pronounce whether the law was unconstitutional. Para. 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 Governor the obligation to publish the rescission without delay. This applies analogously in the case of a pronouncement pursuant to para. 4 above. The rescission enters into force upon expiry of 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 para. 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 para. 5 above, the law shall apply to all the circumstances effected, the case in point excepted till the expiry of this deadline.

**Art. 140a.** (1) The Constitutional Court pronounces whether treaties are contrary to law. Art. 140 shall apply to treaties concluded with the sanction of the National Council pursuant to Art. 50 and to law-modifying or law-amending treaties pursuant to Art. 16 para. 1, Art. 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 Art. 50 and of law-modifying or law-amending treaties pursuant to Art. 16 para. 1 exceed two years, in the case of all others one year.

(2) If the Constitutional Court establishes that a treaty is contrary to law or unconstitutional, a regulation of the Federal President concerning such treaty shall become ineffective under Art. 65 para 1 and a resolution of the National Council shall become ineffective under Art. 50 para 2 upon expiry of the day of the promulgation of the decision.

**Art. 141.** (1) The Constitutional Court pronounces upon

a) challenges to the election of the Federal President and elections to the popular representative bodies or the constituent authorities (representative bodies) of statutory professional associations;

b) challenges to elections to a Land Government and to municipal 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 member 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 to rulings whereby the loss of a seat in a popular representative body, in a municipal authority entrusted with executive power or in a constituent authority (representative body) of a statutory professional association has been enunciated, in so far as laws of the Federation or Laender governing elections provide for declaration of a loss of seat by the ruling of an administrative authority, and after all stages of legal remedy have been exhausted. 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 municipal 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 para. 1 sub-para. 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, consultations of the people, 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.

**Art. 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 Federal Assembly;
- 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 National Council;
- c) against an Austrian representative in the Council for contravention of law in matters where legislation would pertain to the Federation: by a vote of the National Council for contravention of law in matters where legislation would pertain to the Laender: by identically worded votes of all the Diets;
- d) against members of a Land Government and the authorities placed by the present Law or the Land constitution regard to responsibility on an equal footing with them, for contravention of the law: by a vote of the competent Diet;
- e) against a Governor, his deputy (Art. 105 para. 1) or a member of the Land Government (Art. 103 paras. 2 and 3) for contravention of the law as well as for non-compliance with ordinances or other directives (instructions) of the Federation 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 Governor 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 Governor for non-compliance with an instruction pursuant to Art. 14 para. 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 Federation: 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 Federation in matters relating to Art. 11 para. 1 sub-para. 7 as well as for obstruction of the powers pursuant to Art. 11 para. 9: by a vote of the National Council or the Federal Government.

(3) If pursuant to para. 2 sub-para. e above the Federal Government brings a suit only against a Governor or his deputy and it is shown that another member of the Land Government in accordance with Art. 103 para. 2 concerned with matters pertaining to the indirect Federal administration is guilty of an offence within the meaning of para. 2 sub-para. 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 para. 2 sub-paras. 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 ensues forfeiture of the office with which pursuant to Art. 81a para. 3 sub-para. b it is linked.

(5) The Federal President can avail himself of the right vested in him in accordance with Art. 65 para. 2 subpara. 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.

**Art. 143.** A suit can be brought against the persons mentioned in Art. 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 Art. 142 para. 4, apply the provisions of the criminal law.

**Art. 144.** (1) The Constitutional Court pronounces on rulings by administrative authorities including the independent administrative tribunals in so far as the appellant alleges an infringement by the ruling of a constitutionally guaranteed

right or the infringement of personal rights on the score of an illegal ordinance, an unlawful promulgation regarding the re-notification of an act (a treaty), 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 Art. 133 is barred from the competence of the Administrative Court.

(3) If the Constitutional Court finds that a right within the meaning of para. 1 above has not been infringed by the challenged ruling and if the case at hand is not in accordance with Art. 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 para. 2 above.

**Art. 145.** The Constitutional Court pronounces judgment on contraventions of international law in accordance with the provisions of a special Federal law.

**Art. 146.** (1) The enforcement of judgments pronounced by the Constitutional Court under Art. 126a, Art 127c and Art. 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 Federal or Laender 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 Federation or against Federal authorities, no countersignature in accordance with Art. 67.

**Art. 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 and substitute 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 National Council for three members and two substitute members and by the Federal Council for three members and one substitute member.

Three members and two substitute members must have their domicile outside the Federal capital, Vienna. Administrative officials on active service who are appointed members or substitute members shall be exempted, with their pay terminating, from all official duties. This shall not apply to administrative officials appointed substitute members who for the term of such exemption have been freed from all activities in the pursuit of which they are bound by instructions.

(3) The President, the Vice-President, and the other members and substitute members must be graduates of the studies in legal sciences or of law and political science and for at least ten years have held a professional appointment which prescribes the graduation in these studies.

(4) The following cannot belong to the Constitutional Court: members of the Federal Government or a Land Government, furthermore members of the National Council, the Federal Council, 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 para. 4 above cannot be appointed President or Vice-President of the Constitutional Court.

(6) Art. 87 paras. 1 and 2 and Art. 88 para. 2 apply to members and substitute members of the Constitutional Court; detailed provisions will be prescribed in the Federal law to be promulgated pursuant to Art. 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.

**Art. 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.

Belgia

## CHAPTER VI ON JUDICIAL POWER

### **Article 144**

Disputes about civil rights belong exclusively to the competence of the courts.

### **Article 145**

Disputes about political rights belong to the competence of the courts, except for the exceptions established by the law.

### **Article 146**

A court and a body capable of rendering judgment can only be established by virtue of a law. No extraordinary courts or commissions may be created, no matter under which designation.

### **Article 147**

There is a Supreme Court for all Belgium. This Court has no competence over the substance of the case.

### **Article 148**

Court hearings are public, unless such public access endangers morals or the peace; if such is the case, the Court so declares in a judgment. In cases of political or press offences, proceedings can only be conducted in camera on the basis of a unanimous vote.

### **Article 149**

Each judgment is supported by reasons. It is pronounced publicly.

### **Article 150**

A jury is sworn in for all criminal matters, as well as for political and press offences, with the exception of press offences motivated by racism or xenophobia.

### **Article 151**

§ 1. Judges are independent in the exercise of their jurisdictional competences. The public prosecutor is independent in conducting individual investigations and prosecutions, without prejudice to the right of the competent minister to order prosecutions and to prescribe binding directives on criminal policy, including policy on investigations and prosecutions.

§ 2. There is one High Council of Justice for all Belgium. In the exercise of its competences, the High Council of Justice respects the independence referred to in § 1.

The High Council of Justice is composed of a Dutch-speaking college and of a French-speaking college. Each college comprises an equal number of members and is constituted with equal representation, on the one hand, of judges and officers of the public prosecutor's office elected directly by their peers under the conditions and in the manner determined by the law and, on the other hand, of other members appointed

by the Senate by a two-thirds majority of the votes cast, under conditions established by the law.

Within each college, there is a nomination and appointment committee, as well as an advisory and investigatory committee, which are constituted with equal representation in accordance with the provision laid down in the preceding paragraph. The law specifies the composition of the High Council of Justice, of its colleges and of their

committees, as well as the conditions under which and the manner in which they exercise their competences.

§ 3. The High Council of Justice exercises its competences in the following areas:

- 1° the nomination of candidates for appointment as judge, as referred to in § 4, first paragraph or for appointment as officer of the public prosecutor's office;
- 2° the nomination of candidates for an appointment to the positions referred to in §5, first paragraph and to the position of head of the public prosecutor's office;
- 3° access to the position of judge or of officer of the public prosecutor's office;
- 4° training of judges and of officers of the public prosecutor's office;
- 5° drafting of general profiles for the positions referred to in 2°;
- 6° voicing of advice and of proposals concerning the general operation and organisation of the judiciary;
- 7° general surveillance on and the promoting of the use of means of internal control;
- 8° to the exclusion of all disciplinary and criminal competences:
  - the receiving and the following-up of complaints relating to the operation of the judiciary;
  - the conducting of an enquiry on the operation of the judiciary.

Under the conditions and in the manner determined by the law, the competences referred to in 1° to 4° are assigned to the relevant nomination and appointment committee, and the competences referred to in 5° to 8° are assigned to the relevant advisory and investigatory committee. The law determines the cases in which and the manner in which the nomination and appointment committees and the advisory and investigatory committees exercise their competences jointly.

A law to be adopted by a majority as described in Article 4, last paragraph determines the other competences of this Council.

§ 4. The justices of the peace and the judges of the courts and of the Supreme Court are appointed by the King under the conditions and in the manner specified by the law. Such appointment is made on reasoned nomination by the relevant nomination and appointment committee, by a majority of two thirds in accordance with the terms specified by the law and after evaluation of qualifications and aptitude. The nomination can be rejected only in the manner specified by the law and with justification.

In the case of appointment of an appeal judge or of a judge of the Supreme Court, the general assembly of the court concerned issues a reasoned opinion in the manner specified by the law, prior to the nomination referred to in the preceding paragraph.

§ 5. The first president of the Supreme Court, the first presidents of the appeal courts and the presidents of the lower courts are appointed to those positions by the King under the conditions and in the manner specified by the law. Such appointment is made on reasoned nomination by the relevant nomination and appointment committee, by a majority of two thirds in accordance with the terms specified by the law and after evaluation of qualifications and aptitude. The nomination may be rejected only in the manner specified by the law and with justification.

In the case of appointment to the position of first president of the Supreme Court or of first president of an appeal court, the general assembly of the court concerned issues a reasoned opinion in the manner specified by the law, prior to the nomination referred to in the preceding paragraph.

The president of the Supreme Court, the presidents of the sections of this court, the presidents of the divisions of the appeal courts and the vice-presidents of the lower courts are appointed to their positions by the courts from their midst under the conditions and in the manner specified by the law.

Notwithstanding the provisions of Article 152, the law specifies the duration of the appointment to these positions.

§ 6. In the manner specified by the law, the judges, the incumbents of the positions referred to in § 5, fourth paragraph and the officers of the public prosecutor's office are subject to an evaluation.

Transitional provision

The provisions of §§ 3 to 6 enter into force after the setting up of the High Council of Justice, referred to in § 2.

On that date, it is assumed that the first president and the president of the Supreme Court, the presidents of the sections of this court, the first presidents of the appeal courts, the presidents of the divisions of these courts and the presidents and vice-presidents of the lower courts are appointed to these positions for the duration and under the conditions specified by the law and that they are appointed at the same time to the Supreme Court, to the appeal court or to the labour court and to the corresponding lower court, respectively.

In the meantime, the following provisions remain applicable:

The justices of the peace and the judges of the lower courts are appointed directly by the King.

The judges of the appeal courts and the presidents and vice-presidents of the courts of first instance under their jurisdiction are appointed by the King from two lists each with two candidates, one submitted by these courts, the other by the provincial councils and the Parliament of the Brussels-Capital Region, depending upon the case.

The judges of the Supreme Court are appointed by the King from two lists each with two candidates, one submitted by the Supreme Court, the other alternately by the House of Representatives and by the Senate.

In these two cases, the candidates placed on one list may also appear on the other. All the nominations are made public at least fifteen days before the appointment. The courts choose from among themselves their presidents and vice-presidents.

#### **Article 152**

Judges are appointed for life. They retire at an age determined by the law and receive the pension provided for by the law. No judge can be deprived of his post or suspended except by a court decision.

The transfer of a judge can only take place by his appointment to a new position and with his consent.

#### **Article 153**

The King appoints and dismisses officials of the public prosecutor's offices attached to the courts.

#### **Article 154**

Salaries of members of the judiciary are determined by the law.

#### **Article 155**

A judge cannot accept a salaried position from a Government, unless this position is exercised free of charge, and even then, such a position must not entail an incompatibility as determined by the law.

#### **Article 156**

There are five appeal courts in Belgium:

1° that of Brussels, with jurisdiction over the provinces of Flemish Brabant, of Walloon Brabant and the bilingual region of Brussels-Capital;

2° that of Ghent, with jurisdiction over the provinces of West Flanders and East Flanders;

3° that of Antwerp, with jurisdiction over the provinces of Antwerp and Limburg;

4° that of Liege, with jurisdiction over the provinces of Liege, Namur and Luxembourg;

5° that of Mons, with jurisdiction over the province of Hainaut.

#### **Article 157**

There are military courts when a state of war referred to in Article 167, § 1, second paragraph has been stated to exist. The organisation of the military courts, their powers, their members' rights and obligations as well as their members' terms of office are determined by the law.

There are commercial courts in the places determined by the law. The law lays down rules for their organisation, their powers, the way their members are appointed as well as their members' terms of office.

The law also lays down rules for the organisation of the labour courts, their powers, the way their members are appointed as well as their members' terms of office. There are courts for the enforcement of penalties in the places determined by the law. The law lays down rules for their organisation, their powers, the way their members are appointed as well as their members' terms of office.

Transitional provision

The first paragraph becomes effective on the date of repeal of the Law of 15 June 1899 containing Titles I and II of the Military Penal Procedure Code. Until then, the following provision remains effective:

Specific laws regulate the organisation of the military courts, their powers, their members' rights and obligations as well as their members' terms of office.

**Article 158**

The Supreme Court makes decisions in conflicts of powers in the manner provided for by the law.

**Article 159**

Courts only apply general, provincial or local decisions and regulations provided that they are in accordance with the law.

Bulgaria

**Chapter six**

**THE JUDICIARY**

**Art. 117.**

- (1) The judiciary shall safeguard the rights and legitimate interests of all citizens, juridical persons and the state.
- (2) The judiciary shall be independent. In the performance of their functions, all judges, court assessors, prosecutors and investigating magistrates shall be subservient only to the law.
- (3) The judiciary shall have an independent budget.

**Art. 118.**

All judicial power shall be exercised in the name of the people.

**Art. 119.**

- (1) Justice shall be administered by the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, regional courts, courts-martial and district courts.
- (2) Specialized courts may be set up by virtue of law.
- (3) There shall be no extraordinary courts.

**Art. 120.**

- (1) The courts shall supervise the legality of the acts and actions of the administrative bodies.
- (2) Citizens and legal persons shall be free to contest any administrative act which affects them, except those listed expressly by the laws.

**Art. 121.**

- (1) The courts shall ensure equality and equal conditions for competition of the parties in the judicial trial.
- (2) Judicial proceedings shall ensure the establishment of truth.
- (3) All courts shall conduct their hearings in public, unless provided otherwise by law.
- (4) All court rulings shall be motivated.

**Art. 122.**

- (1) Citizens and juridical persons shall have the right to legal counsel at all stages of a trial.
- (2) The procedure by which the right to legal counsel shall be practiced shall be established by law.

**Art. 123.**

Court assessors shall participate in the trial process in certain cases established by law.

**Art. 124.**

The Supreme Court of Cassation shall exercise supreme judicial oversight as to the precise and equal application of the law by all courts.

**Art. 125.**

- (1) The Supreme Administrative Court shall exercise supreme judicial oversight as to the precise and equal application of the law in administrative justice.
- (2) The Supreme Administrative Court shall rule on all challenges to the legality of acts of the Council of Ministers and the individual ministers, and of other acts established by law.

**Art. 126.**

- (1) The structure of the prosecution office shall correspond to that of the courts.
- (2) The Prosecutor General shall oversee the legality and provide methodological guidance to all other prosecutors.

**Art. 127.**

The prosecution office shall ensure that legality is observed:

1. (new, SG 27/06) by leading the investigation and supervising the legality thereof;
2. (new, SG 27/06) may conduct investigation;
3. (prev. item 1 SG 27/06) by bringing charges against criminal suspects and supporting the charges in indictable cases;
4. (prev. item 2 SG 27/06) by overseeing the enforcement of penalties and other measures of compulsion;
5. (prev. item 3 SG 27/06) by acting for the rescission of all illegitimate acts;
6. (prev. item 4 SG 27/06) by taking part in civil and administrative suits whenever required to do so by law.

**Art. 128.**

(amend., SG 27/06) The investigating magistracy shall be within the system of the judiciary. They shall conduct investigation of criminal cases where it is prescribed by the law.

**Art. 129.**

- (1) Judges, prosecutors and investigating magistrates shall be appointed, promoted, demoted, transferred and removed from office by the Supreme Judicial Council.
- (2) The Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court and the Prosecutor General shall be appointed and removed by the President of the Republic upon a proposal from the Supreme Judicial Council for a period of seven years, and shall not be eligible for a second term in office. The President shall not deny an appointment or removal upon a repeated proposal.
- (3) (amend., SG 85/03) Having completed a five year term of office as a judge, prosecutor or investigating magistrate, and upon attestation, followed by a decision of the Supreme Judicial Council, the judges, prosecutors and investigating magistrates shall become irremovable. They, including the persons referred to in para 2, shall be removed from office only upon:
  1. completion of 65 years of age;
  2. resignation;
  3. entry into force of a final sentence imposing imprisonment for an intentional criminal offence;
  4. permanent de facto inability to perform their duties for more than a year;
  5. serious infringement or systematic neglect of their official duties, as well as actions undermining the prestige of the Judiciary.
- (4) (new, SG 85/03, declared unconstitutional by Constitutional Court Judgment No. 7/2006 - SG 78/ 2006)

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In the cases under para 3, item 5, the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court and the Prosecutor General shall be removed from office by the President of the Republic, also upon proposal of one-fourth of the Members of the National Assembly, adopted by a two-thirds majority of the Members of the National Assembly. The President shall not deny the removal upon a repeated proposal.

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(5) (new, SG 85/03, prev. para 4 SG 27/06) In cases of removal from office under para 3, items 2 and 4, the acquired irremovably shall be restored upon subsequent appointment to the office of a judge, prosecutor or investigating magistrate.

(6) (new, SG 85/03, in force from January 1, 2004, prev. para 5 SG 27/06)) The heads of the judicial bodies, except for those referred to in para 2, shall be appointed for a period of 5 years and are eligible for a second mandate.

**Art. 130.**

- (1) The Supreme Judicial Council shall consist of 25 members. Sitting on it ex officio shall be the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court and the Prosecutor General.

- (2) Eligible for election to the Supreme Judicial Council besides its ex officio members shall be practising lawyers of high professional and moral integrity with at least 15 years of professional experience.
- (3) Eleven of the members of the Supreme Judicial Council shall be elected by the National Assembly, and eleven shall be elected by the bodies of the judiciary.
- (4) The elected members of the Supreme Judicial Council shall serve terms of five years. They shall not be eligible for immediate re-election.
- (5) The meetings of the Supreme Judicial Council shall be chaired by the Minister of Justice, who shall not be entitled to a vote.
- (6) (new-SG 12/07)The Supreme Judicial Council shall:
1. appoint, promote, transfer and remove from office judges, prosecutors and investigating magistrates;
  2. impose the disciplinary sanctions "demotion" and "removal from office" to judges, prosecutors and investigating magistrates;
  3. organise the qualification of judges, prosecutors and investigating magistrates;
  4. adopt the draft budget of the judiciary;
  5. determine the scope and the structure of the annual reports referred to in Article 84, point 16.
- (7) (New-SG 12/07)The Supreme Judicial Council shall give a hearing and pass the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General on the application of the law and on the activity of the courts, the prosecution office and the investigating bodies and shall submit them to the National Assembly.
- (8) (New-SG 12/07)The mandate of an elected member of the Supreme Judicial Council shall expire upon any of the following occurrences:
1. resignation;
  2. final judicial act for a committed crime;
  3. permanent de facto inability to perform his/her duties for more than one year;
  4. disciplinary removal from office or deprivation from the right to pursue legal profession or activity.
- (9) (New-SG 12/07)In case of termination of the mandate of an elected member of the Supreme Judicial Council, a new member from the same quota shall be elected, who shall hold the office until the expiry of the mandate.

**Art. 130a.**

(new, SG 27/06) **The Minister of Justice:**

1. shall propose a draft budget of the judiciary and submit it to the Supreme Judicial Council for consideration;
2. shall manage the property of the judiciary;
3. may make proposals for appointment, promotion, demotion, transfer and removal from office of judges, prosecutors and investigators;
4. shall participate in the organization of the qualification of judges, prosecutors and investigators;
5. (revoked-SG 12/07).

**Art. 131.**

(Amend.-SG 85/03, amend.-SG 12/07) Any resolution of the Supreme Judicial Council to appoint, promote, demote, transfer or remove a judge, prosecutor or investigating magistrate, as well as the proposals under Art. 129, para 2, shall be passed by a secret ballot.

**Art. 132.**

(amend., SG 85/03) (1) When exercising the judicial function, the judges, prosecutors and investigating magistrates shall bear no civil or criminal liability for their official actions or for the acts rendered by them, except where the act performed constitutes an indictable intentional offence.

(2) (Revoked - SG 12/07).

(3) (Revoked - SG 12/07).

(4) (Revoked - SG 12/07).

**Art. 132a.** (New-SG 12/07)

- (1) An Inspectorate shall be established to the Supreme Judicial Council, which shall be composed of a chief

inspector and ten inspectors.

(2) The chief inspector shall be elected by the National Assembly by a majority of two-thirds of the Members for a term of five years.

(3) The inspectors shall be elected by the National Assembly for a term of four years pursuant to the procedure laid down in paragraph 2.

(4) The chief inspector and the inspectors may be re-elected, however not for two consecutive mandates.

(5) The budget of the Inspectorate shall be adopted by the National Assembly within the frames of the budget of the judiciary.

(6) The Inspectorate shall inspect the activity of the judiciary bodies without affecting the independence of judges, court assessors, prosecutors and investigating magistrates while performing their duties. The chief inspector and the inspectors shall be independent and shall obey only the law while performing their duties.

(7) The Inspectorate shall act ex officio, on an initiative by the citizens, legal persons or state bodies, including judges, prosecutors and investigating magistrates.

(8) The Inspectorate shall submit an annual report on its activity to the Supreme Judicial Council.

(9) The Inspectorate shall send signals, proposals and reports to other state bodies, including the competent judiciary bodies. The Inspectorate shall provide public information about its activity.

(10) The conditions and procedure applicable to election and removal from office of the chief inspector and the inspectors, as well as the organisation and the activity of the Inspectorate shall be established by law.

**Art. 133.**

The organization and the activity of the Supreme Judicial Council, of the courts, the prosecution office and the investigating magistracy, the status of the judges, prosecutors and investigating magistrates, the conditions and the procedure for the appointment and removal from office of judges, court assessors, prosecutors and investigating magistrates and the materialization of their liability shall be established by law.

**Art. 134.**

(1) The bar shall be free, independent and autonomous. It shall assist citizens and juridical persons in the defence of their rights and legitimate interests.

(2) The organization and manner of activity of the bar shall be established by law

**Cipru**

**Article 3**

4. Judicial proceedings shall be conducted or made and judgements shall be drawn up in the Greek language if the parties are Greek, in the Turkish language if the parties are Turkish, and in both the Greek and the Turkish languages if the parties are Greek and Turkish. The official language or languages to be used for such purposes in all other cases shall be specified by the Rules of Court made by the High Court under Article 163.

**Article 11 [Liberty and Security of the Person]**

3. Save when and as provided by law in case of a flagrant offence punishable with death or imprisonment, no person shall be arrested save under the authority of a reasoned judicial warrant issued according to the formalities prescribed by the law.

**Article 16 [Home]**

2. There shall be no entry in any dwelling house or any search therein except when and as provided by law and on a judicial warrant duly reasoned or when the entry is made with the express consent of its occupant or for the purpose of rescuing the victims of any offence of violence or of any disaster.

**Article 30 [Access to the Courts]**

1. No person shall be denied access to the court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional courts under any name whatsoever is prohibited.

2. In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by

law. Judgement shall be reasoned and pronounced in public session, but the press and the public may be excluded from all or any part of the trial upon a decision of the court where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety or the public morals or where the interests of juveniles or the protection of the private life of the parties so require or, in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice.

3. Every person has the right -

- (a) to be informed of the reasons why he is required to appear before the court;
- (b) to present his case before the court and to have sufficient time necessary for its preparation;
- (c) to adduce or cause to be adduced his evidence and to examine witnesses according to law;
- (d) to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law;
- (e) to have free assistance of an interpreter if he cannot understand or speak the language used in court.

### **Article 35 [Binding on all Powers]**

The legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of this Part.

## **Part 10 The High Court and the Subordinate Courts**

### **Article 152**

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

### **Article 153**

1. (1) There shall be a High Court of Justice composed of two Greek judges, one Turkish judge and a neutral judge. The neutral judge shall be the President of the Court and shall have two votes.  
(2) The President and the other judges of the High Court shall be appointed jointly by the President and the Vice-President of the Republic:  
Provided that in the case of a vacancy solely in the post of either a Greek judge or the Turkish judge the proposal of the President or the Vice-President of the Republic to whose Community the judge to be appointed shall belong shall prevail if the President and the Vice-President of the Republic do not agree on the appointment within a week of such proposal.
2. The seat of the High Court shall be in the capital of the Republic.
3. The neutral judge shall not be a subject or a citizen of the Republic or of the Kingdom of Greece or of the Republic of Turkey or of the United Kingdom and the Colonies.
4. The Greek judges and the Turkish judge of the High Court shall be citizens of the Republic.
5. The President and the other judges of the High Court shall be appointed from amongst lawyers of high professional and moral standard.
6. (1) The President of the High Court shall be appointed for a period of six years.  
(2) The remuneration and other conditions of service of the President of the High Court shall be laid down in the instrument of his appointment.  
(3) The conditions of service of the President of the High Court to be laid down in the instrument of his appointment as provided in sub-paragraph (2) of this paragraph shall include -  
(a) provision for his retirement on the same grounds as those on which a Greek or the Turkish judge may be retired under subparagraph (3) of paragraph 7 of this Article; and

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

7. (1) The Greek judges and the Turkish judge of the High Court shall be permanent members of the judicial service of the Republic and shall hold office until they attain the age of sixtyeight.

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

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

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

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

(2) This Council shall have exclusive competence to determine all matters relating to -

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

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

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

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

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

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

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

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

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

#### **Article 154 []**

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

#### **Article 155 []**

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

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

Provided that where original jurisdiction is so conferred, such jurisdiction shall, subject to Article 159, be exercised by

such judge or judges of the High Court as the High Court shall determine:

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

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

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

#### **Article 156 []**

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

(a) treason and other offences against the security of the Republic;

(b) offences against the Constitution and the constitutional order:

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

#### **Article 157 []**

1. Save as otherwise provided in this Constitution with regard to the Supreme Constitutional Court, the High Court shall be the Supreme Council of Judicature, and its President shall have two votes.

2. The appointment, promotion, transfer, termination of appointment, dismissal and disciplinary matters of judicial officers are exclusively within the competence of the Supreme Council of Judicature.

3. No judicial officer shall be retired or dismissed except on the like grounds and in the same manner as a judge of the High Court.

#### **Article 158 []**

1. A law shall, subject to the provisions of this Constitution, provide for the establishment, jurisdiction and powers of courts of civil and criminal jurisdiction other than courts to be provided by a communal law under Article 160.

2. Any such law shall provide for the establishment of adequate courts in sufficient number for the proper and undelayed administration of justice and for securing within the limits of their respective competence the efficient application of the provisions of this Constitution guaranteeing the fundamental rights and liberties.

3. A law shall provide for the remuneration and other conditions of service of the judges of the courts to be established under paragraph 1 of this Article. The remuneration and other conditions of service of any such judge shall not be altered to his disadvantage after his appointment.

#### **Article 159 []**

1. A court exercising civil jurisdiction in a case where the plaintiff and the defendant belong to the same Community shall be composed solely of a judge or judges belonging to that Community.

2. A court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community, or where there is no person injured, shall be composed of a judge or judges belonging to that Community.

3. Where in a civil case the plaintiff and the defendant belong to different Communities the court shall be composed of such judges belonging to both Communities as the High Court shall determine.

4. Where in a criminal case the accused and the person injured belong to different Communities the court shall be composed of such judges belonging to both Communities as the High Court shall determine.

5. A coroner's inquest where the deceased belonged to the Greek Community shall be conducted by a Greek coroner and where the deceased belonged to the Turkish Community shall be conducted by a Turkish coroner. In case there are more than one deceased belonging to different Communities the inquest shall be conducted by such coroner as

the High Court may direct.

6. The execution of any judgement or order of a court exercising civil or criminal jurisdiction, if the court is composed of a Greek judge or Greek judges shall be carried out through Greek officers of the court, if the court is composed of a Turkish judge or Turkish judges shall be carried out through Turkish officers of the court, and in any other case such execution shall be carried out by such officers as the court of trial shall direct.

#### **Article 160 []**

1. A communal law made by the Communal Chamber concerned shall, subject to the provisions of this Constitution, provide for the establishment, composition and jurisdiction of courts to deal with civil disputes relating to personal status and to religious matters which are reserved for the competence of the Communal Chambers by the provisions of this Constitution.

2. By such law provision shall be made for appeals against the decisions of such courts and for the composition of the courts by which such appeals are to be heard and determined and for the jurisdiction and powers of such appellate courts. A communal law made under this paragraph may provide that such appellate court may be composed of a judge or judges of the High Court either sitting alone or with such other judge or judges in the judicial service of the Republic as such law may determine.

3. Any such court as aforesaid in the exercise of its jurisdiction, shall apply the laws made by the Communal Chamber concerned:

Provided that nothing in this paragraph contained shall preclude a court of the Republic from applying in a case, where an issue relating to personal status or to religious matters is raised incidentally, the relevant communal law.

#### **Article 161 []**

Subject to paragraph 3 of Article 160 the courts of the Republic shall have power to apply also the relevant communal laws other than those relating to personal status and to religious matters.

#### **Article 162 []**

The High Court shall have jurisdiction to punish for any contempt of itself, and any other court of the Republic, including a court established by a communal law under Article 160, shall have power to commit any person disobeying a judgement or order of such court to prison until such person complies with such judgement or order and in any event for a period not exceeding twelve months.

A law or a communal law, notwithstanding anything in Article 90 contained, as the case may be, may provide for punishment for contempt of court.

#### **Article 163 []**

1. The High Court shall make Rules of Court for regulating the practice and procedure of the High Court and of any other court established by or under this Part of this Constitution, other than a court established under Article 160.

2. Without prejudice to the generality of paragraph 1 of this Article the High Court may make Rules of Court for the following purposes: -

(a) for regulating the sittings of the courts and the selection of judges for any purpose;

(b) for providing for the summary determination of any appeal or other proceedings which appear to the High Court or such other court before which such proceedings are pending to be frivolous or vexatious or to have been instituted for the purpose of delaying the course of justice;

(c) for prescribing forms and fees in respect of proceedings in the courts and regulating the costs of, and incidental to, any such proceedings;

(d) for prescribing and regulating the composition of the registries of the courts and the powers and duties of officers of the courts;

(e) for prescribing the time within which any requirement of the Rules of Court is to be complied with;

(f) for prescribing the practice and procedure to be followed by the Supreme Council of Judicature in the exercise of its competence with regard to disciplinary matters relating to judicial officers.

3. Rules of Court made under this Article may fix the number of judges of the High Court who are to hear any

specified matter:

Provided that in the exercise of the jurisdiction conferred on the High Court by or under this Constitution no matter shall be determined unless the provisions of Article 159 are complied with and for the hearing of any appeal, including an appeal under Article 156, the High Court shall, subject to paragraph 2 of Article 160, be composed of all its members.

#### **Article 164 []**

1. Any appellate court created under paragraph 2 of Article 160 shall make Rules of Court for regulating the practice and procedure of such court and the practice and procedure of any court from which any appeal shall lie

2. Without prejudice to the generality of paragraph 1 of this Article such appellate court may make Rules of Court for itself and for the Courts from which an appeal shall lie to it for the following purposes :

(a) for regulating the sittings of such courts;

(b) for prescribing forms and fees in respect of proceedings in such courts and for regulating the costs of, and incidental to, any such proceedings;

(c) for prescribing and regulating the composition of registries of such courts and the powers and duties of officers of such courts;

(d) for prescribing the time within which any requirement of such Rules of Court is to be complied with.

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### **PART VI**

#### **§59**

(1) The High Court of the Realm shall consist of up to fifteen of the senior ordinary members of the highest court of justice in the Realm (according to length of office) and an equal number of members elected for six years by the Folketing according to proportional representation. One or more substitutes shall be elected for each elected member. No member of the Folketing shall be elected a member of the High Court of the Realm, nor shall a member of the Folketing act as a member of the High Court of the Realm. Where, in a particular instance, some of the members of the highest court of justice in the Realm are prevented from taking part in the trial of a case, an equal number of the members of the High Court of the Realm last elected by the Folketing shall retire from their seats.

(2) The High Court of the Realm shall elect a pre-sident from among its members.

(3) Where a case has been brought before the High Court of the Realm, the members elected by the Folketing shall retain their seats in the High Court of the Realm for the duration of such case, even if the period for which they were elected has expired.

(4) Rules for the High Court of the Realm shall be provided by statute.

#### **§60**

(1). The High Court of the Realm shall try such actions as may be brought by the King or the Folketing against Ministers.

(2) With the consent of the Folketing, the King may also cause other persons to be tried before the High Court of the Realm for crimes which he may deem to be particularly dangerous to the State.

#### **§61**

The exercise of judicial authority shall be governed only by statute. Extraordinary courts of justice with judicial authority shall not be established.

#### **§62**

The administration of justice shall always remain independent of executive authority. Rules to this effect shall be laid down by statute.

#### **§63**

(1) The courts of justice shall be empowered to decide any question relating to the scope of the executive's authority; though any person wishing to question such authority shall not, by taking the case to the courts of justice, avoid temporary compliance with orders given by the executive authority.

(2) Questions relating to the scope of the executive's authority may by statute be referred for decision to one or more administrative courts, except that an appeal against the decision of the administrative courts shall be referred to the highest court of the Realm. Rules governing this procedure shall be laid down by statute.

**§ 64**

In the performance of their duties the judges shall be governed solely by the law. Judges shall not be dismissed except by judgement, nor shall they be transferred against their will, except in such cases where a rearrangement of the courts of justice is made. A judge who has completed his sixty-fifth year may, however, be retired, but without loss of income up to the time when he is due for retirement on account of age.

**§65**

(1) In the administration of justice all proceedings shall to the widest possible extent be public and oral.

(2) Laymen shall participate in criminal proceedings. The cases and the form in which such participation shall take place, including which cases shall be tried by jury, shall be provided for by statute.

**Estonia**

**Chapter XII  
The Chancellor of Justice**

**§ 139.**

The Chancellor of Justice shall be, in his or her activities, an independent official who shall review the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and the laws.

The Chancellor of Justice shall analyse proposals made to him or her concerning the amendment of laws, the passage of new laws, and the activities of state agencies, and, if necessary, shall present a report to the Riigikogu.

The Chancellor of Justice shall, in the cases prescribed by §§ 76, 85, 101, 138, 153 of the Constitution, make a proposal to the Riigikogu that criminal charges be brought against a member of the Riigikogu, the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chief Justice of the Supreme Court, or a justice of the Supreme Court.

**§ 140.**

The Chancellor of Justice shall be appointed to office by the Riigikogu, on the proposal of the President of the Republic, for a term of seven years.

The Chancellor of Justice may be removed from office only by a court judgment.

**§ 141.**

The Chancellor of Justice, in directing his or her office, has the same rights which are granted by law to a minister in directing a ministry.

The Chancellor of Justice may participate in sessions of the Riigikogu and of the Government of the Republic with the right to speak.

**§ 142.**

If the Chancellor of Justice finds that legislation passed by the legislative or executive powers or by a local government is in conflict with the Constitution or a law, he or she shall propose to the body which passed the legislation to bring the legislation into conformity with the Constitution or the law within twenty days.

If the legislation is not brought into conformity with the Constitution or the law within twenty days, the Chancellor of Justice shall propose to the Supreme Court to declare the legislation invalid.

**§ 143.**

The Chancellor of Justice shall present an annual report to the Riigikogu on the conformity of the legislation passed by the legislative and executive powers and by local governments with the Constitution and the laws.

**§ 144.**

The legal status of the Chancellor of Justice and the organisation of his or her office shall be provided by law.

**§ 145.**

Criminal charges may be brought against the Chancellor of Justice only on the proposal of the President of the

Republic, and with the consent of the majority of the membership of the Riigikogu.

### **Chapter XIII The Courts**

#### **§ 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.

#### **§ 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.

#### **§ 148.**

The court system shall 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 is prohibited.

#### **§ 149.**

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

Circuit courts are courts of appeal 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.

#### **§ 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.

#### **§ 151.**

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

#### **§ 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.

#### **§ 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 Chancellor of Justice, and with the consent of the majority of the membership of the Riigikogu.

**Finlanda**

### **Chapter 9 - Administration of justice**

#### **Section 98 - Courts of law**

The Supreme Court, the Courts of Appeal and the District Courts are the general courts of law.  
The Supreme Administrative Court and the regional Administrative Courts are the general courts of administrative law.

Provisions on special courts of law, administering justice in specifically defined fields, are laid down by an Act.  
Provisional courts shall not be established.

### **Section 99 - Duties of the Supreme Court and the Supreme Administrative Court**

Justice in civil, commercial and criminal matters is in the final instance administered by the Supreme Court.  
Justice in administrative matters is in the final instance administered by the Supreme Administrative Court.  
The highest courts supervise the administration of justice in their own fields of competence. They may submit proposals to the Government for the initiation of legislative action.

### **Section 100 - Composition of the Supreme Court and the Supreme Administrative Court**

The Supreme Court and the Supreme Administrative Court are composed of the President of the Court and the requisite number of Justices.

The Supreme Court and the Supreme Administrative Court have a competent quorum when five members are present, unless a different quorum has been laid down by an Act.

### **Section 101 - High Court of Impeachment**

The High Court of Impeachment deals with charges brought against a member of the Government, the Chancellor of Justice, the Parliamentary Ombudsman or a member of the Supreme Court or the Supreme Administrative Court for unlawful conduct in office. The Court of Impeachment deals also with the charge referred to in section 113 below.

The High Court of Impeachment consists of the President of the Supreme Court, presiding, and the President of the Supreme Administrative Court, the three most senior-ranking Presidents of the Courts of Appeal and five members elected by the Parliament for a term of four years.

More detailed provisions on the composition, quorum and procedure of the Court of Impeachment are laid down by an Act.

### **Section 102 - Appointment of judges**

Tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an Act.  
Provisions on the appointment of other judges are laid down by an Act.

### **Section 103 - The right of judges to remain in office**

A judge shall not be suspended from office, except by a judgement of a court of law. In addition, a judge shall not be transferred to another office without his or her consent, except where the transfer is a result of a reorganisation of the judiciary.

Provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are laid down by an Act.

More detailed provisions on the other terms of service of a judge are laid down by an Act.

### **Section 104 - The prosecutors**

The prosecution service is headed by the highest prosecutor, the Prosecutor-General, who is appointed by the President of the Republic. More detailed provisions on the prosecution service are laid down by an Act.

### **Section 105 - Presidential pardon**

In individual cases, the President of the Republic may, after obtaining a statement from the Supreme Court, grant full or partial pardon from a penalty or other criminal sanction imposed by a court of law.

A general amnesty may be provided only by an Act.

**Article 64**

The President of the Republic shall be the guarantor of the independence of the Judicial Authority.

He shall be assisted by the High Council of the Judiciary.

An Institutional Act shall determine the status of members of the Judiciary.

Judges shall be irremovable from office.

**Article 65**

The High Council of the Judiciary shall be presided over by the President of the Republic. The Minister of Justice shall be its ex officio Vice-president. He may deputize for the President of the Republic.

The High Council of the Judiciary shall consist of two sections, one with jurisdiction over judges, the other over public prosecutors.

The section with jurisdiction over judges shall comprise, in addition to the President of the Republic and the Minister of Justice, five judges and one public prosecutor, one *Conseiller d'Etat* appointed by the *Conseil d'Etat*, and three prominent citizens who are not members either of Parliament or of the Judiciary, appointed respectively by the President of the Republic, the President of the National Assembly and the President of the Senate.

The section with jurisdiction over public prosecutors shall comprise, in addition to the President of the Republic and the Minister of Justice, five public prosecutors and one judge, and the *Conseiller d'Etat* together with the three prominent citizens referred to in the preceding paragraph.

The section of the High Council of the Judiciary with jurisdiction over judges shall make recommendations for the appointment of judges to the *Cour de cassation*, the Chief Presidents of Courts of Appeal and the Presidents of the *Tribunaux de grande instance*. Other judges shall be appointed after consultation with this section.

This section shall act as disciplinary tribunal for judges. When acting in such capacity, it shall be presided over by the Chief President of the *Cour de cassation*.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on the appointment of public prosecutors, with the exception of posts to be filled at meetings of the Council of Ministers.

It shall give its opinion on disciplinary measures regarding public prosecutors. When acting in such capacity, it shall be presided over by the Chief Public Prosecutor at the *Cour de cassation*.

An Institutional Act shall determine the manner in which this article is to be implemented.

**Article 65 [1]**

*The High Council of the Judiciary shall consist of a section with jurisdiction over judges and a section with jurisdiction over public prosecutors.*

*The section with jurisdiction over judges shall be presided over by the Chief President of the Cour de cassation. It shall comprise, in addition, five judges and one public prosecutor, one Conseiller d'Etat appointed by the Conseil d'Etat and one barrister, as well as six qualified, prominent citizens who are not members of Parliament, of the Judiciary or of administration. The President of the Republic, the President of the National Assembly and the President of the Senate shall each appoint two qualified, prominent citizens. The procedure provided for in the last paragraph of article 13 shall be applied to the appointments of the qualified, prominent citizens. The appointments made by the President of each House of Parliament shall be submitted for consultation only to the relevant standing committee in that House.*

*The section with jurisdiction over public prosecutors shall be presided over by the Chief Public Prosecutor at the Cour de Cassation. It shall comprise, in addition, five public prosecutors and one judge, as well as the Conseiller d'Etat and the barrister, together with the six qualified, prominent citizens referred to in the second paragraph.*

*The section of the High Council of the Judiciary with jurisdiction over judges shall make recommendations for the appointment of judges to the Cour de cassation, the Chief Presidents of Courts of Appeal and the Presidents of the Tribunaux de grande instance. Other judges shall be appointed after consultation with this section.*

*The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on the appointment of public prosecutors.*

*The section of the High Council of the Judiciary with jurisdiction over judges shall act as disciplinary tribunal for judges. When acting in such capacity, in addition to the members mentioned in the second paragraph, it shall comprise the judge belonging to the section with jurisdiction over public prosecutors.*

*The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on disciplinary measures regarding public prosecutors. When acting in such capacity, it shall comprise, in addition to the members mentioned in paragraph three, the public prosecutor belonging to the section with jurisdiction over judges.*

*The High Council of the Judiciary shall meet in plenary session to reply to the requests for opinions made by the President of the Republic in application of article 64. It shall also express its opinion in plenary session, on questions concerning the deontology of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice. The plenary session comprises three of the five judges mentioned in the second paragraph, three of the five prosecutors mentioned in the third paragraph as well as the Conseiller d'Etat, the barrister and the six qualified, prominent citizens referred to in the second paragraph. It is presided over by the Chief President of the Cour de cassation who may be substituted by the Chief Public Prosecutor of this court.*

*The Minister of Justice may participate in all the sittings of the sections of the High Council of the Judiciary except those concerning disciplinary matters.*

*According to the conditions determined by an Institutional Act, a referral may be made to the High Council of the Judiciary by a person subject to trial.*

*The Institutional Act shall determine the manner in which this article is to be implemented.*

#### **Article 66**

No one shall be arbitrarily detained.

The Judicial Authority, guardian of the freedom of the individual, shall ensure compliance with this principle in the conditions laid down by statute.

#### **Article 66-1**

No one shall be sentenced to death.

### **TITLE IX - The High Court**

#### **Article 67**

The President of the Republic shall incur no liability by reason of acts carried out in his official capacity, subject to the provisions of Articles 53-2 and 68 hereof.

Throughout his term of office the President shall not be required to testify before any French Court of law or Administrative authority and shall not be the object of any civil proceedings, nor of any preferring of charges, prosecution or investigatory measures. All limitation periods shall be suspended for the duration of said term of office.

All actions and proceedings thus stayed may be reactivated or brought against the President one month after the end of his term of office.

#### **Article 68**

The President of the Republic shall not be removed from office during the term thereof on any grounds other than a breach of his duties patently incompatible with his continuing in office. Such removal from office shall be proclaimed by Parliament sitting as the High Court.

The proposal to convene the High Court adopted by one or other of the Houses of Parliament shall be immediately transmitted to the other House which shall make its decision known within fifteen days of receipt thereof.

The High Court shall be presided over by the President of the National Assembly. It shall give its ruling as to the removal from office of the President, by secret ballot, within one month. Its decision shall have immediate effect.

Rulings given hereunder shall require a majority of two thirds of the members of the House involved or of the High Court. No proxy voting shall be allowed. Only votes in favour of the removal from office or the convening of the High Court shall be counted.

An Institutional Act shall determine the conditions for the application hereof.

## Germania

### IX. THE JUDICIARY

#### **Article 92 [Court organisation]**

The judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law, and by the courts of the Länder.

#### **Article 93 [Jurisdiction of the Federal Constitutional Court]**

(1) The Federal Constitutional Court shall rule:

1. on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of a supreme federal body or of other parties vested with rights of their own by this Basic Law or by the rules of procedure of a supreme federal body;
2. in the event of disagreements or doubts concerning the formal or substantive compatibility of federal law or Land law with this Basic Law, or the compatibility of Land law with other federal law, on application of the Federal Government, of a Land government, or of one third of the Members of the Bundestag;
  - 2a. in the event of disagreements whether a law meets the requirements of paragraph (2) of Article 72, on application of the Bundesrat or of the government or legislature of a Land;
3. in the event of disagreements concerning the rights and duties of the Federation and the Länder, especially in the execution of federal law by the Länder and in the exercise of federal oversight;
4. on other disputes involving public law between the Federation and the Länder, between different Länder, or within a Land, unless there is recourse to another court;
  - 4a. on constitutional complaints, which may be filed by any person alleging that one of his basic rights or one of his rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been infringed by public authority;
  - 4b. on constitutional complaints filed by municipalities or associations of municipalities on the ground that their right to self-government under Article 28 has been infringed by a law; in the case of infringement by a Land law, however, only if the law cannot be challenged in the constitutional court of the Land;
5. in the other instances provided for in this Basic Law.

(2) At the request of the Bundesrat, a Land government or the parliamentary assembly of a Land, the Federal Constitutional Court shall also rule whether in cases falling under paragraph (4) of Article 72 the need for a regulation by federal law does not exist any longer or whether in the cases referred to in clause 1 of paragraph (2) of Article 125a federal law could not be enacted any longer. The Court's determination that the need has ceased to exist or that federal law could no longer be enacted substitutes a federal law according to paragraph (4) of Article 72 or clause 2 of paragraph (2) of Article 125a. A request under sentence 1 is admissible only if a bill falling under paragraph (4) of Article 72 or sentence 2 of paragraph (2) of Article 125a has been rejected by the German Bundestag or if it has not been considered and determined upon within one year, or if a similar bill has been rejected by the Bundesrat.

(3) The Federal Constitutional Court shall also rule on such other matters as shall be assigned to it by a federal law.

#### **Article 94 [Composition of the Federal Constitutional Court]**

(1) The Federal Constitutional Court shall consist of federal judges and other members. Half the members of the Federal Constitutional Court shall be elected by the Bundestag and half by the Bundesrat. They may not be members of the Bundestag, of the Bundesrat, of the Federal Government, or of any of the corresponding bodies of a Land.

(2) The organisation and procedure of the Federal Constitutional Court shall be regulated by a federal law, which shall specify in which instances its decisions shall have the force of law. The law may require that all other legal remedies be exhausted before a constitutional complaint may be filed, and may provide for a separate proceeding to determine whether the complaint will be accepted for decision.

#### **Article 95 [Supreme federal courts]**

(1) The Federation shall establish the Federal Court of Justice, the Federal Administrative Court, the Federal Finance

Court, the Federal Labour Court and the Federal Social Court as supreme courts of ordinary, administrative, financial, labour and social jurisdiction.

(2) The judges of each of these courts shall be chosen jointly by the competent Federal Minister and a committee for the selection of judges consisting of the competent Land ministers and an equal number of members elected by the Bundestag.

(3) A Joint Chamber of the courts specified in paragraph (1) of this Article shall be established to preserve the uniformity of decisions. Details shall be regulated by a federal law.

#### **Article 96 [Other federal courts]**

(1) The Federation may establish a federal court for matters concerning industrial property rights.

(2) The Federation may establish federal military criminal courts for the Armed Forces. These courts may exercise criminal jurisdiction only during a state of defence or over members of the Armed Forces serving abroad or on board warships. Details shall be regulated by a federal law. These courts shall be under the aegis of the Federal Minister of Justice. Their full-time judges shall be persons qualified to hold judicial office.

(3) The supreme court of review from the courts designated in paragraphs (1) and (2) of this Article shall be the Federal Court of Justice.

(4) The Federation may establish federal courts for disciplinary proceedings against, and for proceedings on complaints by, persons in the federal public service.

(5) With the consent of the Bundesrat, a federal law may provide that courts of the Länder shall exercise federal jurisdiction over criminal proceedings in the following matters:

1. genocide;
2. crimes against humanity under international criminal law;
3. war crimes;
4. other acts tending to and undertaken with the intent to disturb the peaceful relations between nations (paragraph (1) of Article 26);
5. state security.

#### **Article 97 [Judicial independence]**

(1) Judges shall be independent and subject only to the law.

(2) Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the laws. The legislature may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary.

#### **Article 98 [Legal status of judges – Impeachment]**

(1) The legal status of federal judges shall be regulated by a special federal law.

(2) If a federal judge infringes the principles of this Basic Law or the constitutional order of a Land in his official capacity or unofficially, the Federal Constitutional Court, upon application of the Bundestag, may by a two-thirds majority order that the judge be transferred or retired. In the case of an intentional infringement it may order him dismissed.

(3) The legal status of the judges in the Länder shall be regulated by special Land laws if clause 27 of paragraph (1) of Article 74 does not otherwise provide.

(4) The Länder may provide that Land judges shall be chosen jointly by the Land Minister of Justice and a committee for the selection of judges.

(5) The Länder may enact provisions regarding Land judges that correspond with those of paragraph (2) of this Article. Existing Land constitutional law shall not be affected. The decision in cases of judicial impeachment shall rest with the Federal Constitutional Court.

**Article 99 [Constitutional disputes within a Land]**

A Land law may assign the decision of constitutional disputes within a Land to the Federal Constitutional Court, and the final decision in matters involving the application of Land law to the supreme courts specified in paragraph (1) of Article 95.

**Article 100 [Concrete judicial review]**

(1) If a court concludes that a law on whose validity its decision depends is unconstitutional, the proceedings shall be stayed, and a decision shall be obtained from the Land court with jurisdiction over constitutional disputes where the constitution of a Land is held to be violated, or from the Federal Constitutional Court where this Basic Law is held to be violated. This provision shall also apply where the Basic Law is held to be violated by Land law and where a Land law is held to be incompatible with a federal law.

(2) If, in the course of litigation, doubt exists whether a rule of international law is an integral part of federal law and whether it directly creates rights and duties for the individual (Article 25), the court shall obtain a decision from the Federal Constitutional Court.

(3) If the constitutional court of a Land, in interpreting this Basic Law, proposes to deviate from a decision of the Federal Constitutional Court or of the constitutional court of another Land, it shall obtain a decision from the Federal Constitutional Court.

**Article 101 [Ban on extraordinary courts]**

(1) Extraordinary courts shall not be allowed. No one may be removed from the jurisdiction of his lawful judge.

(2) Courts for particular fields of law may be established only by a law.

**Article 102 [Abolition of capital punishment]**

Capital punishment is abolished.

**Article 103 [Fair trial]**

(1) In the courts every person shall be entitled to a hearing in accordance with law.

(2) An act may be punished only if it was defined by a law as a criminal offence before the act was committed.

(3) No person may be punished for the same act more than once under the general criminal laws.

**Article 104 [Deprivation of liberty]**

(1) Liberty of the person may be restricted only pursuant to a formal law and only in compliance with the procedures prescribed therein. Persons in custody may not be subjected to mental or physical mistreatment.

(2) Only a judge may rule upon the permissibility or continuation of any deprivation of liberty. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The police may hold no one in custody on their own authority beyond the end of the day following the arrest. Details shall be regulated by a law.

(3) Any person provisionally detained on suspicion of having committed a criminal offence shall be brought before a judge no later than the day following his arrest; the judge shall inform him of the reasons for the arrest, examine him, and give him an opportunity to raise objections. The judge shall, without delay, either issue a written arrest warrant setting forth the reasons therefor or order his release.

(4) A relative or a person enjoying the confidence of the person in custody shall be notified without delay of any judicial decision imposing or continuing a deprivation of liberty.

Grecia

**SECTION V THE JUDICIAL POWER**

**M. CHAPTER ONE Judicial Functionaries and Staff**

**Article 87**

1. Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence.

2. In the discharge of their duties, judges shall be subject only to the Constitution and the laws; in no case whatsoever shall they be obliged to comply with provisions enacted in violation of the Constitution.

3. Regular judges shall be inspected by judges of a superior rank, as well as by the Public Prosecutor and the Deputy Prosecutor of the Supreme Civil and Criminal Court; Public Prosecutors shall be inspected by the Supreme Civil and Criminal Court judges and Public Prosecutors of a superior rank, as specified by law.

#### **Article 88**

1. Judicial functionaries shall be appointed by presidential decree in compliance with a law specifying the qualifications and the procedure for their selection and are appointed for life.

\*\* 2. The remuneration of judicial functionaries shall be commensurate with their office.

Matters concerning their rank, remuneration and their general status shall be regulated by special statutes. Notwithstanding articles 94, 95 and 98, disputes concerning all kinds of remunerations and pensions of judicial functionaries and provided that the resolution of the relevant legal issues may affect the salary, pension or fiscal status of a wider circle of persons, shall be tried by the special court of article 99. In such cases, the composition of the court includes the participation of one additional full professor and one additional barrister, as specified by law. Matters relating to the continuation of pending processes before the courts shall be specified by law.

3. A training and trial period for judicial functionaries of up to three years prior to their appointment as regular judges may be provided for by law. During this period they may also act as regular judges, as specified by law.

4. Judicial functionaries may be dismissed only pursuant a court judgment resulting from a criminal conviction or a grave disciplinary breach or illness or disability or professional incompetence, confirmed as specified by law and in compliance with the provisions of article 93 paragraphs 2 and 3.

5. Retirement from the service of the judiciary shall be compulsory upon attainment of the age of sixty five years for all functionaries up to and including the rank of Court of Appeal judge or Deputy Prosecutor of the Court of Appeals, or a rank corresponding thereto. In the case of judicial functionaries of a rank higher than the one stated, or of a corresponding rank, retirement shall be compulsory upon attainment of the age of sixty seven years. In the application of this provision, the 30th of June of the year of retirement shall in all cases be taken as the date of attainment of the above age limit.

\*\* 6. Transfer of judicial functionaries into another branch is prohibited. Exceptionally, the transfer of associate judges to courts of first instance or of associate prosecutors to public prosecutors offices, is permitted, upon request of the persons concerned, as specified by law. Judges of ordinary administrative courts shall be promoted to the rank of Councillor of the Supreme Administrative Court and to one fifth of the posts, as specified by law.

7. Courts or councils especially provided by the Constitution and composed of members of the Supreme Administrative Court and the Supreme Civil and Criminal Court shall be presided over by the senior in rank member.

\*\* Interpretative clause:

In the true sense of article 88, the unification of the jurisdiction of first instance of civil courts and the regulation of the service status of judicial functionaries of this instance is permitted, provided that a procedure for judgement and evaluation is foreseen, as specified by law.

#### **Article 89**

1. Judicial functionaries shall be prohibited from performing any other salaried service or practicing any other profession.

\*\* 2. Exceptionally, judicial functionaries are allowed to be elected members of the Athens Academy or of the teaching staff of university level institutions, as well as to sit in special councils or committees exercising competences of a disciplinary, auditing or judicial nature and in legislative work committees, provided that their participation is specifically stipulated by the law. Substitution of judicial functionaries by other persons in councils or committees established or in duties assigned by a declaration of intention by a private individual, inter vivos or mortis causa, with the exception of the cases of the preceding section, shall be provided by law.

\*\* 3. Assignment of administrative duties to judicial functionaries is prohibited. Duties relating to the training of judicial

functionaries are considered to be of a judicial nature. Assignment to judicial functionaries of the duties of representing the Country in international organisations is permitted.

The conduct of arbitrations by judicial functionaries is allowed only in the context of their official duties, as specified by law.

4. Participation of judicial functionaries in the Government is prohibited.

5. The establishment of an association of judicial functionaries shall be permitted, as specified by law.

### **Article 90**

\*\* 1. Promotions, assignments to posts, transfers, detachments, and transfers to another branch of judicial functionaries shall be effected by presidential decree, issued after prior decision by the supreme judicial council. This council shall be composed of the president of the respective highest court and of members of the same court chosen by lot from among

those having served in it for at least two years, as specified by law. In the supreme judicial council on civil and criminal justice shall participate the Prosecutor of the Supreme Court as well as two Deputy Prosecutors of the Supreme Court who are appointed by lot from among those having served for at least to years in the Public Prosecutor's Office of the Supreme Court, as specified by law. In the supreme judicial council of the Supreme Administrative Court and of administrative justice shall also participate the General Commissioner of State who serves in them, on issues relating to judicial functionaries of ordinary administrative courts and of the General Commission. In the supreme judicial council of the Court of Auditors shall also participate the General Commissioner of State who serves in it. In the supreme judicial council shall also participate, without right to vote, two judicial functionaries of the branch to which the changes in service status refer, who must hold the rank of Judge of Appeals or an equivalent rank, and are chosen by lot, as specified by law.

\*\* 2. In the case of judgments concerning promotions to the posts of Councillors of State, Supreme Court Judges, Deputy Prosecutors of the Supreme Court, Councillors of the Court of Auditors, President Judges of Appeals and Prosecutors of Appeals, as well as concerning the selection of the members of the General Commissions of administrative courts and of the Court of Auditors, the council prescribed in paragraph 1 shall be supplemented by additional members, as specified by law. As for the rest, the provisions of paragraph 1 shall also apply in this case.

\*\* 3. Should the Minister of Justice disagree with the judgement of a supreme judicial council, he may refer the matter to the plenum of the respective highest court, as specified by law. A judicial functionary whom the judgement concerns has also the right of recourse, under the conditions specified by the law. For the session of the plenum of the respective highest court as a supreme judicial council of second instance, the provisions of sections three to six of paragraph 1 apply. In the plenum of the Supreme Court, for the cases of the preceding section, the members of the Public Prosecutor's office of the Supreme Court also participate with right to vote.

\*\* 4. The decisions of the plenum, as a supreme judiciary council of second instance, on a matter referred to it and the decisions of the supreme judicial council with which the Minister has not disagreed, shall be binding upon him.

\*\* 5. Promotion to the office of President or Vice-President of the Supreme Administrative Court, of the Supreme Court and of the Court of Auditors shall be effected by presidential decree issued on the proposal of the Cabinet, by selection from among the members of the respective highest court, as specified by law. Promotion to the office of Supreme Court Prosecutor shall be effected by similar decree, by selection from among the members of the Supreme Court and Deputy Public Prosecutors of this Court, as specified by law. Promotion to the office of General Commissioner of the Court of Auditors shall be effected by similar decree, by selection from among the members of the Court of Auditors and of the respective General Commission, as specified by law. Promotion to the offices of General Commissioner

of administrative courts shall also be effected by similar decree, by selection from among the members of the respective General Commission and the President Judges of Appeals of the administrative courts, as specified by law.

The tenure of the President of the Supreme Administrative Court, of the Supreme Court and of the Court of Auditors,

as well as of the Public Prosecutor of the Supreme Court and of the General Commissioners of administrative courts and of the Court of Auditors may not exceed four years, even if the judicial functionary such this office has not reached the retirement age.

Any period of time remaining until completion of the retirement age is calculated as actual pensionable service, as specified by law.

6. Rulings or acts in compliance with the provisions of the present article shall not be subject to remedies before the Supreme Administrative Court.

### **Article 91**

1. Disciplinary authority over judicial functionaries from and above the rank of member of the Supreme Civil and Criminal Court or Deputy Prosecutor of the Supreme Civil and Criminal Court, or a rank corresponding thereto, shall be exercised by a Supreme Disciplinary Council, as specified by law. Disciplinary action shall be initiated by the Minister of Justice.

2. The Supreme Disciplinary Council shall be composed of the President of the Supreme Administrative Court as Chairman, and of two Vice-Presidents or Councillors of the Supreme Administrative Court, two Vice-Presidents or members of the Supreme Civil and Criminal Court, two Vice-Presidents or Councillors of the Court of Auditors and two law professors from the Law Schools of the country's universities, as members. The members of the Council shall be chosen by lot from among those having at least three years of service in the respective highest in rank court or law school. Members belonging to the court of which the conduct of one of the judges, prosecutors or commissioners the Council has been called on to judge, shall be excluded. In cases involving disciplinary action against members of the Supreme Administrative Court, the Supreme Disciplinary Council shall be presided over by the President of the Supreme Civil and Criminal Court.

3. The disciplinary authority over all other judicial functionaries shall be exercised, in the first and second instance by councils composed of regular judges chosen by lot, as specified by law. Disciplinary action may also be initiated by the Minister of Justice.

4. Disciplinary rulings in accordance with the provisions of this Article shall not be subject to remedies before the Supreme Administrative Court.

### **Article 92**

1. The civil servants of all courts' offices and prosecutors' offices shall be permanent. They may be dismissed only pursuant to a court judgement resulting from a criminal conviction or to decision of a judicial council on account of a grave disciplinary breach, illness or disability, or professional incompetence which shall be ascertained, as specified by law.

2. The qualifications of the civil servants of all courts' offices and prosecutors' offices and their general status shall be specified by law.

\*\* 3. Promotions, assignments to posts, transfers, detachments and transfers to another branch of judicial staff shall be effected with the consent of official councils, which are composed by a majority of judicial functionaries and judicial staff, as specified by law. Disciplinary authority over judicial staff shall be exercised by the hierarchically superior judges, prosecutors or commissioners or employees, as well as by an official council, as specified by law. Recourse against decisions regarding changes in the service status of judicial staff, as well as against disciplinary decisions of the official councils shall be permitted, as specified by law.

\*\* 4. The employees of land registries are judicial staff. Notaries public and unsalaried registrars of mortgages and property transfers shall be permanent as long as corresponding services and posts exist. The provisions of the preceding paragraphs shall analogously apply in their case.

5. Retirement shall be compulsory for notaries public and unsalaried registrars of mortgages and property transfers upon attainment of the age of seventy years; all others shall be obliged to retire upon attainment of the age specified by law.

## N. CHAPTER TWO Organization and Jurisdiction of the Courts

### Article 93

1. Courts are distinguished into administrative, civil and criminal courts, and they are organized by special statutes.
2. The sittings of all courts shall be public, except when the court decides that publicity would be detrimental to the good usages or that special reasons call for the protection of the private or family life of the litigants.
- \*\* 3. Every court judgment must be specifically and thoroughly reasoned and must be pronounced in a public sitting. A law shall specify the legal consequences ensuing and the sanctions imposed in case of violation of the preceding section. Publication of the dissenting opinion shall be compulsory. A law shall specify matters concerning the entry of any dissenting opinion into the minutes as well as the conditions and prerequisites for the publicity thereof.
4. The courts shall be bound not to apply a statute whose content is contrary to the Constitution.

### \*\* Article 94

1. The Supreme Administrative Court and ordinary administrative courts shall have jurisdiction on administrative disputes, as specified by law, without prejudice to the competences of the Court of Auditors.
2. Civil courts shall have jurisdiction on private disputes, as well as on cases of voluntary jurisdiction, as specified by law.
3. In special cases and in order to achieve uniform application of the same legislation, a law may assign the hearing of categories of private disputes to administrative courts or the hearing of categories of substantive administrative disputes to civil courts.
4. Any other competence of an administrative nature may be assigned to civil or administrative courts, as specified by law. These competences include the adoption of measures for compliance of the Public Administration with judicial decisions. Judicial decisions are subject to compulsory execution also against the Public Sector, local government agencies and legal entities of public law, as specified by law.

### Article 95

1. The jurisdiction of the Supreme Administrative Court pertains mainly to:
  - \*\* a) The annulment upon petition of enforceable acts of administrative authorities for excess of power or violation of the law.
  - \*\* b) The reversal upon petition of final judgements of ordinary administrative courts, as specified by law.
  - c) The trial of substantive administrative disputes submitted thereto as provided by the Constitution and the statutes.
  - d) The elaboration of all decrees of a general regulatory nature.
2. The provisions of article 93 paragraphs 2 and 3 hereinabove shall not be applicable in the exercise of the competence specified under subparagraph (d) of the preceding paragraph.
- \*\* 3. The trial of categories of cases which come under the Supreme Administrative Court's jurisdiction for annulment may by law come under ordinary administrative courts, depending on their nature or importance. The Supreme Administrative Court has the jurisdiction of second instance, as specified by law.
4. The jurisdiction of the Supreme Administrative Court shall be regulated and exercised as specifically provided by law.
- \*\* 5. The Public Administration shall be under obligation to comply with judicial decisions. The breach of this obligation shall render liable any competent agent, as specified by law. The measures necessary for ensuring the compliance of the Public Administration shall be specified by law.

### Article 96

1. The punishment of crimes and the of all measures provided by criminal laws, belongs to the jurisdiction of regular criminal courts.
2. Statutes may: (a) assign the trial of police offences punishable by fine to authorities exercising police duties, (b) assign the trial of petty offences related to agrarian property and private disputes arising therefrom, to agrarian

security authorities. In both cases judgments shall be subject to appeal before the competent ordinary court; such appeal shall suspend the execution of the judgment.

3. Special statutes shall regulate matters pertaining to juvenile courts. The provisions of articles 93 paragraph 2 and 97 need not apply in this case. The judgments of these courts may be pronounced in camera.

4. Special statutes provide for:

- a) Military, naval and air force courts which shall have no jurisdiction over civilians.
- b) Prize courts.

5. The courts specified under section (a) of the previous paragraph shall be composed in majority of members of the judicial branch of the armed forces, vested with the guaranties of functional and personal independence specified in article 87 paragraph 1 of the Constitution. The provisions of paragraphs 2 to 4 of article 93 shall apply to the sittings and judgements of these courts. Matters pertaining to the application of provisions of this paragraph, as well as the time upon which they shall enter into force, shall be specified by law.

### **Article 97**

1. Felonies and political crimes shall be tried by mixed jury courts composed of regular judges and jurors, as specified by law. The judgments of these courts shall be subject to the legal remedies specified by law.

2. Felonies and political crimes which prior to the date of entry into force of this Constitution have, by constituent acts, parliamentary resolutions and special statutes, come under the jurisdiction of courts of appeal shall continue to be tried by the said courts, as long as a statute does not transfer them to the jurisdiction of mixed jury courts. Other felonies may be transferred to the jurisdiction of the same courts of appeal by statute.

3. Crimes of any degree committed through the press shall be under the jurisdiction of ordinary criminal courts, as specified by law.

### **Article 98**

\*\* 1. The jurisdiction of the Court of Auditors pertains mainly to:

- a) The audit of the expenditures of the State as well as of local government agencies or other legal entities subject to this status by special provision of law.
- b) The audit of agreements of a high financial value in which the Public Sector or another legal entity put in the same category as the Public Sector in this respect is the contracting partner, as specified by law.
- c) The audit of the accounts of accountable officials and of the local government agencies or other legal entities subject to the audit provided by section (a).
- d) Advisory opinions concerning Bills on pensions or on the recognition of service for granting of the right to a pension, in accordance with article 73 paragraph 2, as well as concerning other matters specified by law.
- e) The drawing up and submission to Parliament of a report on the financial statement and balance sheet of the State, in accordance with article 79 paragraph 7.
- f) The trial of disputes concerning the granting of pensions as well as concerning the audit of accounts under section (c).
- g) The trial of cases related to liability of civil or military servants of the State, as well as of civil servants of local government agencies and of the other legal entities of public law, for any loss incurred, through malicious intent or negligence, upon the State, the local government agencies or other legal entities of public law.

2. The authority of the Court of Auditors shall be regulated and exercised as specified by law. The provisions of article 93 paragraphs 2 and 3 shall not be applicable in the cases specified in (a) through (d) of the preceding paragraph.

3. The judgments of the Court of Auditors in the cases specified in paragraph 1 shall not be subject to the control of the Supreme Administrative Court.

### **Article 99**

1. Suits against judicial functionaries for faulty wrongful judgment shall be tried, as specified by law, by a special court composed of the President of the Supreme Administrative Court, as President, and one Councillor of the Supreme

Administrative Court, one Supreme Civil and Criminal Court judge, one Councillor of the Court of Auditors, two law professors of the law schools of the country's universities and two barristers from among the members of the Supreme Disciplinary Council for barristers, as members, all of whom shall be chosen by lot.

2. Each time, that member of the special court shall be exempted who belongs to the judicial corps or branch, the actions or omissions of a functionary of which the court is called upon to judge. In the case of a suit against a member of the Supreme Administrative Court or a functionary of the ordinary administrative courts, the special court shall be presided over by the President of the Supreme Civil and Criminal Court.

3. No permission shall be required to institute a suit for faulty wrongful judgement.

### **Article 100**

1. A Special Highest Court shall be established, the jurisdiction of which shall comprise:

a) The trial of objections in accordance with article 58.

b) Verification of the validity and returns of a referendum held in accordance with article 44 paragraph 2.

c) Judgment in cases involving the incompatibility or the forfeiture of office by a Member of Parliament, in accordance with article 55 paragraph 2 and article 57.

d) Settlement of any conflict between the courts and the administrative authorities, or between the Supreme Administrative Court and the ordinary administrative courts on one hand and the civil and criminal courts on the other, or between the Court of Auditors and any other court.

e) Settlement of controversies on whether the content of a statute enacted by Parliament is contrary to the Constitution, or on the interpretation of provisions of such statute when conflicting judgments have been pronounced by the Supreme Administrative Court, the Supreme Civil and Criminal Court or the Court of Auditors.

f) The settlement of controversies related to the designation of rules of international law as generally acknowledged in accordance with article 28 paragraph 1.

2. The Court specified in paragraph 1 shall be composed of the President of the Supreme Administrative Court, the President of the Supreme Civil and Criminal Court and the President of the Court of Auditors, four Councillors of the Supreme Administrative Court and four members of the Supreme Civil and Criminal Court chosen by lot for a two-year term. The Court shall be presided over by the President of the Supreme Administrative Court or the President of the Supreme Civil and Criminal Court, according to seniority.

In the cases specified under sections (d) and (e) of the preceding paragraph, the composition of the Court shall be expanded to include two law professors of the law schools of the country's universities, chosen by lot.

3. The organization and functioning of the Court, the appointment, replacement of and assistance to its members, as well as the procedure to be followed shall be determined by special statute.

4. The judgments of this Court shall be irrevocable. Provisions of a statute declared unconstitutional shall be invalid as of the date of publication of the respective judgment, or as of the date specified by the ruling.

\*\* 5. When a chamber or department of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Auditors judges a provision of a statute enacted by Parliament to be contrary to the Constitution, it shall compulsorily refer the question to the respective plenum, unless this has been judged by a previous decision of the plenum or of the Special Highest Court of the present article. The plenum shall be assembled into judicial formation and shall decide definitively, as specified by law. This regulation shall apply analogously also in the elaboration of regulatory decrees by the Supreme Administrative Court.

### **\*\* Article 100A**

The matters relating to the establishment and operation of the Legal Council of the State, as well as the matters relating to the service status of the functionaries and employees serving in it, shall be specified by law. The jurisdiction of the Legal Council of the State pertains mainly to the judicial support to and representation of the State and to the acknowledgement of claims against the State or to the settlement of disputes with it. The provisions of article 88 paragraphs 2 and 5, and of article 90 paragraph 5, shall apply analogously also to the main staff of the Legal Council of the State.

## THE ATTORNEY GENERAL

### Article 30

1. There shall be an Attorney General who shall be the adviser of the Government in matters of law and legal opinion, and shall exercise and perform all such powers, functions and duties as are conferred or imposed on him by this Constitution or by law.
2. The Attorney General shall be appointed by the President on the nomination of the Taoiseach.
3. All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose.
4. The Attorney General shall not be a member of the Government.
5. 1° The Attorney General may at any time resign from office by placing his resignation in the hands of the Taoiseach for submission to the President.  
2° The Taoiseach may, for reasons which to him seem sufficient, request the resignation of the Attorney General.  
3° In the event of failure to comply with the request, the appointment of the Attorney General shall be terminated by the President if the Taoiseach so advises.  
4° The Attorney General shall retire from office upon the resignation of the Taoiseach, but may continue to carry on his duties until the successor to the Taoiseach shall have been appointed.
6. Subject to the foregoing provisions of this Article, the office of Attorney General, including the remuneration to be paid to the holder of the office, shall be regulated by law.

## THE COURTS

### Article 34

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

2° The president of the Supreme Court shall be called the Chief Justice.

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

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

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

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

5. 1° Every person appointed a judge under this Constitution shall make and subscribe the following declaration:

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

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

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

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

### **Article 35**

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

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

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

4. 1° A judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.

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

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

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

### **Article 36**

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

- i. the number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges,
- ii. the number of the judges of all other Courts, and their terms of appointment, and
- iii. the constitution and organization of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure.

### **Article 37**

1. Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.
2. No adoption of a person taking effect or expressed to take effect at any time after the coming into operation of this Constitution under laws enacted by the Oireachtas and being an adoption pursuant to an order made or an authorisation given by any person or body of persons designated by those laws to exercise such functions and powers was or shall be invalid by reason only of the fact that such person or body of persons was not a judge or a court appointed or established as such under this Constitution.

## **TRIAL OF OFFENCES**

### **Article 38**

1. No person shall be tried on any criminal charge save in due course of law.
2. Minor offences may be tried by courts of summary jurisdiction.
3. 1° Special courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order.  
2° The constitution, powers, jurisdiction and procedure of such special courts shall be prescribed by law.
4. 1° Military tribunals may be established for the trial of offences against military law alleged to have been committed by persons while subject to military law and also to deal with a state of war or armed rebellion.  
2° A member of the Defence Forces not on active service shall not be tried by any courtmartial or other military tribunal for an offence cognisable by the civil courts unless such offence is within the jurisdiction of any courtmartial or other military tribunal under any law for the enforcement of military discipline.
5. Save in the case of the trial of offences under section 2, section 3 or section 4 of this Article no person shall be tried on any criminal charge without a jury.
6. The provisions of Articles 34 and 35 of this Constitution shall not apply to any court or tribunal set up under section 3 or section 4 of this Article.

### **Article 39**

Treason shall consist only in levying war against the State, or assisting any State or person or inciting or conspiring with any person to levy war against the State, or attempting by force of arms or other violent means to overthrow the organs of government established by this Constitution, or taking part or being concerned in or inciting or conspiring with any person to make or to take part or be concerned in any such attempt.

**THE JUDICIAL BRANCH**  
**SECTION I**  
**The Organization of the Judiciary**

**Art. 101**

Justice is administered in the name of the people.  
Judges are subject only to the law.

**Art. 102**

Judicial proceedings are exercised by ordinary magistrates empowered and regulated by rules of judicial regulations. Extraordinary or special judges may not be established. Only specialized sections for specific issues within the ordinary judicial bodies can be established, and include the participation of qualified citizens who are not members of the judiciary.

The law regulates those cases and the forms of the direct participation of the people in the administration of justice.

**Art. 103**

The Council of State and the other organs of judicial administration have jurisdiction for safeguarding before the public administration legitimate rights and, in particular matters laid out by law, also subjective rights.

The Court of Accounts has jurisdiction in matters of public accounts and in other matters laid out by law.

Military tribunals in time of war have the jurisdiction established by law. In time of peace they have jurisdiction only for military crimes committed by members of the armed forces.

**Art. 104**

The judiciary is an order that is autonomous and independent of all other powers.

The High Council of the Judiciary is presided over by the President of the Republic.

Members by right are the first president and the procurator general of the Court of Cassation.

Two thirds of the other members are elected by all the ordinary judges belonging to the various categories, and one third by Parliament in joint session from among full university professors of law and lawyers after fifteen years of practice.

The Council elects a vice-president from among those members designated by Parliament.

Elected members of the Council remain in office for four years and are not immediately reeligible.

They may not, while in office, be registered in professional rolls, nor serve in parliament or on a regional council.

**Art. 105**

The High Council of the Judiciary, in accordance with the regulations of the judiciary, has jurisdiction for employment, assignments and transfers, promotions and disciplinary measures of judges.

**Art. 106**

Judges are appointed by means of competitive examinations.

The law on the regulations of the judiciary allows the appointment, even by election, of honorary judges for all the functions performed by single judges.

Following a proposal of the High Council of the Judiciary it is possible for their outstanding merits to appoint as councilors in cassation, full university professors of law and lawyers with fifteen years of practice and registered in the special professional lists for the higher courts.

**Art. 107**

Judges may not be removed from office. Neither may they be dismissed or removed from office nor assigned to other courts or functions unless following a decision of the High Council of the Judiciary, taken either for the motives and

with the guarantees of defence established by the rules of the judiciary or with their consent.  
The Minister of Justice has power to originate disciplinary action.  
Judges are distinguished only by their different functions.  
The state prosecutor enjoys the guarantees established in his favour by the rules of the judiciary.

**Art. 108**

The rules governing the judiciary and the judges are laid out by law. The law ensures the independence of judges of special courts, of state prosecutors of those courts, and of other persons participating in the administration of justice.

**Art. 109**

The legal authorities have direct use of the judicial police.

**Art. 110**

Without prejudice to the authority of the High Council of the Judiciary, it is the Minister of Justice which has responsibility for the organization and functioning of those services involved with justice.

**SECTION II**  
**Rules on Jurisdiction**

**Art. 111**

The law shall be administered by means of a fair trial governed by Act of Parliament.

The parties to all trials may speak in their own defence in the presence of the other parties, with an equal status, before an independent and impartial court. An Act of Parliament shall lay down provisions to ensure that trials are of a reasonable length.

In the criminal process, all individuals charged with a criminal offence have the statutory right to be notified promptly and confidentially of the nature and cause of the charges made against them; they shall be given adequate time and conditions to prepare their defence; they have the statutory right to examine, or have examined, the witnesses testifying against them in court and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them, and to obtain all other evidence on their behalf; they shall be assisted by an interpreter if they cannot understand or speak the language used during the trial.

The criminal process is governed by the principle that all the parties may speak in their own defence in the presence of the other parties during the taking of evidence. Guilt shall not be established on the basis of statements made by anyone who has freely chosen not to submit to questioning by the defendant or the defendant's Counsel ad litem.

An Act of Parliament shall govern the cases in which evidence is not to be taken in the presence of both parties with the consent of the defendant or when it is objectively proven to be impossible, or as a result of proven unlawful conduct.

All judicial decisions must be motivated.

Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures on personal freedom pronounced by ordinary and special courts. This rule can only be waived in cases of sentences by military tribunals in time of war.

Appeals to Cassation against decisions of the Council of State and the Court of Accounts are permitted only for motives arising from judicial flaws.

**Art. 112**

The public prosecutor has the duty to exercise criminal proceedings.

**Art. 113**

Against acts of the public administration the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted.

Such judicial protection may not be excluded or limited in particular kinds of appeal or for particular categories of acts.

	<p>The law determines which judicial bodies are empowered to annul acts of public administration in the cases and with the consequences provided for in the law itself.</p>
<p><b>Letonia</b></p>	<p style="text-align: center;"><b>Chapter VI Courts</b></p> <p><b>82.</b> In Latvia, court cases shall be heard by district (city) courts, regional courts and the Supreme Court, but in the event of war or a state of emergency, also by military courts.</p> <p><b>83.</b> Judges shall be independent and subject only to the law.</p> <p><b>84.</b> Judicial appointments shall be confirmed by the <i>Saeima</i> and they shall be irrevocable. The <i>Saeima</i> may remove judges from office against their will only in the cases provided for by law, based upon a decision of the Judicial Disciplinary Board or a judgment of the Court in a criminal case. The age of retirement from office for judges may be determined by law.</p> <p><b>85.</b> In Latvia, there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid. The <i>Saeima</i> shall confirm the appointment of judges to the Constitutional Court for the term provided for by law, by secret ballot with a majority of the votes of not less than fifty-one members of the <i>Saeima</i>.</p> <p><b>86.</b> Decisions in court proceedings may be made only by bodies upon which jurisdiction regarding such has been conferred by law, and only in accordance with procedures provided for by law. Military courts shall act on the basis of a specific law.</p> <p><i>[5 June 1996; 4 December 1997; 15 October 1998]</i></p>
<p><b>Lituania</b></p>	<p style="text-align: center;"><b>CHAPTER VIII THE CONSTITUTIONAL COURT</b></p> <p><b>Article 102</b> The Constitutional Court shall decide whether the laws and other acts of the Seimas are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws. The status of the Constitutional Court and the procedure for the execution of its powers shall be established by the Law on the Constitutional Court of the Republic of Lithuania.</p> <p><b>Article 103</b> The Constitutional Court shall consist of 9 justices, each appointed for a single nine-year term of office. Every three years, one-third of the Constitutional Court shall be reconstituted. The Seimas shall appoint candidates for justices of the Constitutional Court from the candidates, three each submitted by the President of the Republic, the President of the Seimas, and the President of the Supreme Court, and appoint them as justices. The Seimas shall appoint the President of the Constitutional Court from among its justices upon the submission by the President of the Republic. Citizens of the Republic of Lithuania who have an impeccable reputation, who have higher education in law, and who have not less than a 10-year work record in the field of law or in a branch of science and education as a lawyer, may be appointed as justices of the Constitutional Court.</p>

**Article 104**

While in office, justices of the Constitutional Court shall be independent of any other State institution, person or organisation, and shall follow only the Constitution of the Republic of Lithuania.

Before entering office, justices of the Constitutional Court shall take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution.

The limitations on work and political activities which are established for court judges shall apply also to justices of the Constitutional Court.

Justices of the Constitutional Court shall have the same rights concerning the inviolability of their person as shall Members of the Seimas.

**Article 105**

The Constitutional Court shall consider and adopt a decision whether the laws of the Republic of Lithuania and other acts adopted by the Seimas are not in conflict with the Constitution of the Republic of Lithuania.

The Constitutional Court shall also consider if the following are not in conflict with the Constitution and laws:

- 1) acts of the President of the Republic;
- 2) acts of the Government of the Republic.

The Constitutional Court shall present conclusions:

- 1) whether there were violations of election laws during elections of the President of the Republic or elections of members of the Seimas;
- 2) whether the state of health of the President of the Republic allows him to continue to hold office;
- 3) whether international treaties of the Republic of Lithuania are not in conflict with the Constitution;
- 4) whether concrete actions of Members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution.

**Article 106**

The Government, not less than 1/5 of all the Members of the Seimas, and the courts, shall have the right to apply to the Constitutional Court concerning the acts specified in the First Paragraph of Article 105.

Not less than 1/5 of all the Members of the Seimas and the courts shall have the right to apply to the Constitutional Court concerning the conformity of acts of the President of the Republic with the Constitution and the laws.

Not less than 1/5 of all the Members of the Seimas, the courts, as well as the President of the Republic, shall have the right to apply to the Constitutional Court concerning the conformity of acts of the Government with the Constitution and the laws.

The presentation by the President of the Republic for the Constitutional Court or the resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act.

The Seimas may request a conclusion from the Constitutional Court, and in cases concerning Seimas elections and international treaties, the President of the Republic may also request a conclusion.

The Constitutional Court shall have the right to refuse to accept a case for consideration or to prepare a conclusion if the application is based on non-legal reasoning.

**Article 107**

A law (or part thereof) of the Republic of Lithuania or other act (or part thereof) of the Seimas, act of the President of the Republic, act (or part thereof) of the Government may not be applied from the day of official promulgation of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on issues ascribed to its competence by the Constitution shall be final and not subject to appeal.

On the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues set forth in the Third Paragraph of Article 105 of the Constitution.

**Article 108**

The powers of a justice of the Constitutional Court shall cease:

- 1) upon the expiration of the term of powers;
- 2) upon his death;
- 3) upon his resignation;
- 4) when he is incapable to hold office due to the state of his health;
- 5) when the Seimas removes him from office in accordance with the procedure for impeachment proceedings.

**CHAPTER IX  
THE COURT****Article 109**

In the Republic of Lithuania, justice shall be administered only by courts.

While administering justice, the judge and courts shall be independent.

When considering cases, judges shall obey only the law.

The court shall adopt decisions in the name of the Republic of Lithuania.

**Article 110**

A judge may not apply a law, which is in conflict with the Constitution.

In cases when there are grounds to believe that the law or other legal act which should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court requesting it to decide whether the law or other legal act in question is in compliance with the Constitution.

**Article 111**

The courts of the Republic of Lithuania shall be the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts and local courts.

For the consideration of administrative, labour, family and cases of other categories, specialised courts may be established according to law.

Courts with extraordinary powers may not be established in the Republic of Lithuania in a time of peace.

The formation and competence of courts shall be established by the Law on Courts of the Republic of Lithuania.

**Article 112**

In Lithuania, only citizens of the Republic of Lithuania may be judges.

Justices of the Supreme Court as well as its President chosen from among them shall be appointed and dismissed by the Seimas upon the submission of the President of the Republic.

Judges of the Court of Appeal as well as its President chosen from among them shall be appointed by the President of the Republic upon the assent of the Seimas.

Judges and presidents of local, regional, and specialised courts shall be appointed, and their places of work shall be changed by the President of the Republic.

A special institution of judges provided for by law shall advise the President of the Republic on the appointment, promotion, transfer of judges, or their dismissal from office.

A person appointed judge shall take an oath, according to the procedure established by law, to be faithful to the Republic of Lithuania and to administer justice only according to law.

**Article 113**

A judge may not hold any other elected or appointed office, may not work in any business, commercial, or other private establishments or enterprises. Also he may not receive any remuneration other than the remuneration established for the judge and payment for educational or creative activities.

A judge may not participate in the activities of political parties and other political organisations.

**Article 114**

Interference by institutions of State power and governance, Members of the Seimas and other officials, political parties, political and public organisations, or citizens with the activities of a judge or the court shall be prohibited and shall incur liability provided for by law.

A judge may not be held criminally liable, arrested or have his freedom restricted otherwise without the consent of the Seimas, or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania.

**Article 115**

Judges of courts of the Republic of Lithuania shall be dismissed from office according to the procedure established by law in the following cases:

- 1) of their own will;
- 2) upon expiration of the term of powers or upon reaching the pensionable age established by law;
- 3) due to the state of health;
- 4) upon the election to another office or upon their transfer, with their consent, to another place of work;
- 5) when by their behaviour they discredit the name of the judge;
- 6) upon coming into effect of court judgements convicting them.

**Article 116**

For a gross violation of the Constitution, breach of oath, or when it transpires that a crime has been committed, the President and justices of the Supreme Court as well as the President and judges of the Court of Appeal may be removed from office by the Seimas according to the procedure for impeachment proceedings.

**Article 117**

In all courts, the consideration of cases shall be public. A closed court hearing may be held in order to protect the secrecy of private or family life of the human being, or where public consideration of the case might disclose a State, professional or commercial secret.

In the Republic of Lithuania, court proceedings shall be conducted in the State language.

Persons who have no command of Lithuanian shall be guaranteed the right to participate in investigation and court acts through a translator.

**Article 118**

A pre-trial investigation shall be initiated and directed, and prosecution on behalf of the State shall be upheld by a prosecutor.

In cases provided for by law, the prosecutor shall defend the rights and lawful interests of a person, the public and the State.

When performing his functions, the prosecutor shall be independent and shall obey only the law.

The Prosecutor's Office of the Republic of Lithuania shall be the Office of the Prosecutor General and territorial prosecutors' offices.

The Prosecutor General shall be appointed and dismissed by the President of the Republic with the approval of the Seimas.

The procedure for the appointment and dismissal of prosecutors and their status shall be established by law.

Amendments to the Article:

No. IX-1379, 20.03.2003, Valstybės žinios (Official Gazette), 2003, No. 32-1316 (02.04.2003)

**Article 84 [Civil Rights Jurisdiction]**

Disputes over civil rights lie exclusively within the jurisdiction of the courts.

**Article 85 [Political Rights Jurisdiction]**

Disputes over political rights lie within the jurisdiction of the courts except as otherwise provided by law.

**Article 86 [No Extraordinary Jurisdiction]**

No court or jurisdiction in contentious matters may be set up, except by virtue of a law. No extraordinary commissions or courts may be set up, under whatever name.

**Article 87 [Superior Court of Justice]**

The organization of a Superior Court of Justice is provided for by law.

**Article 88 [Publicity]**

Hearings in court shall be public unless such publicity is a threat to good order and morality, in which case the court so declares by ruling.

**Article 89 [Judgments]**

All judgments shall be reasoned. They are pronounced in public court session.

**Article 90 [Appointment of Judges]**

Justices of the Peace and judges of the courts are appointed directly by the Grand Duke. Members of the Superior Court of Justice and presidents and vice-presidents of the district courts are appointed by the Grand Duke on the advice of the Superior Court of Justice.

**Article 91 [Term, Sanctions]**

(1) Justices of the peace, district court judges, and members of the Superior Court of Justice are appointed for life. None of them may be deprived of his post or suspended save by a judicial decision. None of these judges may be transferred except by way of a new appointment and with his consent.

(2) In the event of infirmity or misconduct, however, he may be suspended, dismissed, or transferred, under the conditions laid down by the law.

**Article 92 [Salaries]**

The salaries of members of the judiciary are fixed by law.

**Article 93 [Incompatibility]**

Except where otherwise provided by law, no judge is allowed to accept salaried functions from the Government unless he performs them free of charge, without prejudice, however, to cases of incompatibility determined by law.

**Article 94 [Military Tribunals, Labor and Social Security Jurisdiction]**

(1) Special laws regulate the organization of military tribunals, their duties, and the rights, obligations, and terms of office of their members.

(2) The law also regulates the organization of the jurisdictions pertaining to labor and social security matters, their duties, the mode of appointment, and the terms of office of their members.

**Article 95 [General and Local Decisions]**

Courts and tribunals may apply general and local decisions and regulations only in so far as these comply with the

laws. The Superior Court of Justice settles disputes as to competence, in accordance with the procedure laid down by the law.

#### **Article 95bis [Administrative courts]**

- (1) Jurisdiction in administrative matters belongs to the Administrative Tribunal and the Administrative Court. These courts also have jurisdiction in tax matters in the cases and under the conditions determined by the law.
- (2) The law may create other administrative jurisdictions.
- (3) The Administrative Court constitutes the supreme court of the administrative order.
- (4) The attributions and the organisation of the administrative courts are regulated by the law.
- (5) The magistrates of the Administrative Court and the Administrative Tribunal are nominated by the Grand-Duke. The nomination of the members of the Administrative Court as well as of the president and the vice-presidents of the Administrative Tribunal are made, except concerning the initial nominations, upon the opinion of the Administrative Court.
- (6) The provisions of Articles [91](#), [92](#), and [93](#) are applicable to the members of the Administrative Court and of the Administrative Tribunal.

#### **Article 95ter [Constitutional Court]**

- (1) The Constitutional Court decides, by way of arrêt, on the conformity of the laws with the Constitution.
- (2) The Constitutional Court is seized, in a prejudicial manner, pursuant to the modalities to be determined by the law, by any court to decide on the conformity of the laws, save the laws approving treaties, to the Constitution.
- (3) The Constitutional Court is composed of the President of the Superior Court of Justice, the President of the Administrative Court, two counselors of the Cour de Cassation and five magistrates nominated by the Grand Duke, upon the joint opinion of the Superior Court of Justice and Administrative Court. The provisions of Articles [91](#), [92](#), and [93](#) apply to them. The Constitutional Court comprehends a chamber sitting with five magistrates.
- (4) The organisation of the Constitutional Court and the manner in which it exercises its attributions are regulated by the law.

Malta

### **CHAPTER VIII The Judiciary**

- 95.** (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 article 63 of the Constitution;
  - (b) any reference made to it in accordance with article 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 article 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 article 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 article 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 sub-article 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 sub-article (2) of this article, if any such question as is referred to in paragraph (d) or (e) of that sub-article 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 sub-article (2) of this article, the court in which the question arose shall dispose of the question in accordance with that decision.

(4) The provisions of sub-articles (6) and (7) of article 46 of this Constitution shall apply to the Constitutional Court and for that purpose references to that article in the said sub-articles shall be construed as references to this article.

(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 article, the said Court shall, thereupon and until otherwise constituted according to law, be constituted by virtue of this subarticle 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 article 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 subarticle 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.

Appointment of judges. *Amended by: LVIII. 1974.47.*

**96.** (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 practiced as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served.

Tenure of office of judges. *Amended by: LVIII. 1974.48.*

**97.** (1) Subject to the provisions of this article, 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 sub-article. Acting Chief Justice and acting judges. *Amended by: LVIII. 1974.49.*

**98.** (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 sub-article (2) of this article 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.

### **Inferior Courts.**

**99.** There shall be in and for Malta such inferior courts having such powers and jurisdiction as may be provided by any law for the time being in force in Malta.

*Magistrates. Amended by: LVIII. 1974.50; XIV. 2007.5.*

**100.** (1) Magistrates of the inferior 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 to or to act in the office of magistrate of the inferior courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.

(3) Subject to the provisions of sub-article (4) of this article, a magistrate of the inferior courts shall vacate his office when he attains the age of sixty-five years.

(4) The provisions of sub-articles (2) and (3) of article 97 of this Constitution shall apply to magistrates of the inferior courts.

### **Oaths to be taken by judges and magistrates.**

**101.** A judge of the Superior Courts or a magistrate of the inferior courts shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.

### **Commission for the Administration of Justice. Added by: IX.1994.2.**

**101A.** (1) There shall be a Commission for the Administration of Justice which shall consist of the President, who shall be the Chairman, and nine other members as follows:

(a) the Chief Justice who shall be Deputy Chairman and shall preside over the Commission in the absence of the Chairman;

(b) the Attorney General, *ex officio*;

(c) two members elected for a period of four years by the judges of the Superior Court from among themselves;

(d) two members elected for a period of four years by the magistrates of the Inferior Courts from among themselves;

(e) two members appointed for a period of four years as to one by the Prime Minister and as to the other by the Leader of the Opposition, being in each case, a person of at least forty-five years of age, and who enjoys the general respect of the public and a reputation of integrity and honesty;

(f) the President of the Chamber of Advocates, *ex officio*.

(2) The President shall only have a casting vote; when the Deputy Chairman presides over a meeting of the Commission he shall retain his original vote together with the casting vote.

(3) The members elected to the Commission for the Administration of Justice shall be elected in accordance with such rules as may be prescribed by the person or authority referred to in sub-article (7) of article 46 of this Constitution.

(4) (a) A person shall not be qualified to be appointed or continue to hold office as a member of the Commission for the Administration of Justice:

(i) if he is a Minister, a Parliamentary Secretary, a Member of the House of Representatives or a member of a local government authority; or

(ii) if he has been convicted of any crime punishable by imprisonment for any term; or

(iii) if he is disqualified to be elected as a member of the House of Representatives for any of the reasons stated in paragraphs (a), (c), (d), (e), (f), (g) or (h) of sub-article (1) of article 54 of this Constitution.

(b) The office of a member of the Commission for the Administration of Justice shall become vacant if any circumstances arise that if he were not a member of the Commission he would not qualify for membership thereof, and a member of the Commission may abstain or be challenged in the same circumstances as a judge of the superior courts.

(5) (a) Where a person fills a vacancy caused by a member of the Commission for the Administration of Justice ceasing to be such a member for any reason, other than the expiration of the period of office, such person shall hold office for the unexpired period of office of the member he replaces.

(b) Where a member of the Commission has been challenged or has abstained, the President acting in accordance with his own deliberate judgement shall appoint as a substitute member to sit on the Commission, a person who in his opinion has as far as may be the same qualities and qualifications as the member substituted.

(c) Where the members who, are to be elected under paragraph (c) and (d) of sub-article (1) of this article, or who are to be appointed under paragraph (e) of the same sub-article, are not so elected or appointed within two weeks from a call for the purpose by the President, the President who in making such appointment shall act in accordance with his own deliberate judgement shall himself appoint members in their stead who where possible in his opinion shall have the same qualities and qualifications as such members.

(6) (a) The Commission for the Administration of Justice shall at all times have a committee for Advocates and Legal Procurators which shall have such composition, functions, powers and duties as may be assigned to it by law. The Commission shall in the exercise of any of its functions in relation to the professions of Advocates and Legal Procurators act through the said committees in such manner and subject to such review as may by the said law be provided.

(b) Notwithstanding the provisions of paragraph (a) of this sub-article, the Commission shall refer to the Committee for Advocates and Legal Procurators (hereinafter in this article referred to as "the Committee") any matter concerning the misconduct of an advocate or legal procurator in the exercise of their profession, and, saving in the case of an appeal, the Commission shall not act otherwise than on receipt of, and in accordance with, the findings of the Committee in any such matter. So however that, where a report of findings by the Committee has not been submitted to the Commission within two months from the day on which the matter was brought before the Committee, or within such further period or periods as the Commission may allow, which shall in no case, except for very exceptional reasons, exceed a further four months, the Commission shall thereupon itself investigate and determine the matter.

(c) Without prejudice to the provisions of the foregoing paragraph the Commission may appoint such other committees to assist it on any matter falling within its functions as it may deem fit.

(7) In the exercise of their functions the members of the Commission and of any of its committees shall act on their individual judgement and shall not be subject to the direction or control of any person or authority.

(8) Sub-articles (2) and (3) of article 121 of this Constitution shall apply to any committee of the Commission.

(9) There shall be a secretary of the Commission for the Administration of Justice who shall also act as secretary of any committee of the Commission. The Secretary of the Commission shall be appointed by the Commission from among public officers assigned to the Courts or from among members of the legal professions. The Secretary shall hold office until such time as his appointment is terminated by the Commission.

(10) A person appointed as a member of the Commission for the Administration of Justice or any of its committees may be removed from office by the President, acting in accordance with the advice of the body or the holder of the office appointing such member, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(11) The functions of the Commission for the Administration of Justice shall be:

(a) to supervise the workings of all the superior and inferior courts and to make such recommendations to the Minister responsible for justice as to the remedies, which appear to it, conducive to a more efficient functioning of such courts;

(b) to advise the Minister responsible for justice on any matter relating to the organisation of the administration of justice;

(c) when so requested by the Prime Minister, to advise on any appointment to be made in terms of articles 96, 98

or 100 of this Constitution;

(d) to draw up a code or codes of ethics regulating the conduct of members of the judiciary;

(e) on the advice of the Committee for Advocates and Legal Procurators to draw up a code or codes of ethics regulating the professional conduct of members of those professions:

Provided that where such advice is not given within such time as the Commission may establish, the Commission may draw up such code or codes without the necessity of such advice;

(f) to draw the attention of any judge or magistrate on any matter, in any court in which he sits, which may not be conducive to an efficient and proper functioning of such court, and to draw the attention of any judge or magistrate to any conduct which could affect the trust conferred by their appointment or to any failure on his part to abide by any code or codes of ethics relating to him;

(g) to exercise, in accordance with any law, discipline over advocates and legal procurators practising their profession; and

(h) such other function as may be assigned to it by law.

(12) The Commission for the Administration of Justice shall each year make a report to the Minister responsible for justice on its activities during the previous calendar year, and shall at any time, when it deems fit or as may be required by the said Minister, make a report on any particular matter to the said Minister.

(13) The powers of the President under any law with regard to the subrogation of judges and magistrates and to the assignment of duties of judges and magistrates shall be exercised on the advice of the Minister responsible for justice, so however that, the Minister shall, in advising the President, act in accordance with any recommendation on the matter by the Chief Justice:

Provided that where the Chief Justice fails to make a recommendation to the Minister, and in any case where the Minister deems it so appropriate, the Minister may advise the President on the matter, in any manner which, in the circumstances, he considers appropriate:

Provided further that in any such case he shall immediately publish in the Gazette, a notice of that fact together with the reasons therefor, and he shall make a statement of such fact in the House of Representatives not later than the second sitting immediately after he has so advised the President.

(14) The question whether the Commission for the Administration of Justice has validly performed any function vested in it by or under this Constitution shall not be enquired into in any court.

**Marea  
Britanie**

**Magna Carta (1297)  
Imprisonment, &c. contrary to Law. Administration of Justice.**

NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor [X5condemn him,] but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.

**Annotations:**

**Editorial Information:** Variant reading of the text noted in *The Statutes of the Realm* as follows: *deal with him,*

**Bill of Rights (1688)**

**Excessive Bail.**

That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.

**Juries.**

That Jurors ought to be duely impanelled and returned . . . F1

## **Union with England Act (1707)**

That the Court of Session or Colledge of Justice do after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom and with the same Authority and Priviledges as before the Union subject nevertheless to such Regulations for the better Administration of Justice as shall be made by the Parliament of Great Britain And thathereafter none shall be named by Her Majesty or Her Royal Successors to be OrdinaryLords of Session but such who have served in the Colledge of Justice as Advocatsor Principal Clerks of Session for the space of five years or as Writers to the Signetfor the space of ten years With this provision That no Writer to the Signet be capableto be admitted a Lord of the Session unless he undergo a private and publick Tryalon the Civil Law before the Faculty of Advocats and be found by them qualified forthe said Office two years before he be named to be a Lord of the Session yet so asthe Qualifications made or to be made for capacitating persons to be named OrdinaryLords of Session may be altered by the Parliament of Great Britain And that the Courtof Justiciary do also after the Union and notwithstanding thereof remain in all timecoming within Scotland as it is now constituted by the Laws of that Kindom and withthe same Authority and Priviledges as before the Union subject nevertheless to suchRegulations as shall be made by the Parliament of Great Britain and without prejudiceof other Rights of Justiciary . . . **F9** And that the Heritable Rights of Admiralty and Vice-Admiralties in Scotland be reserved to the respective Proprietors as Rights of Property

*Union with England Act 1707 (c. 7)*

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*Document Generated: 2012-03-02*

**Changes to legislation:** *There are currently no known outstanding effectsfor the Union with England Act 1707. (See end of Document for details)*

Olanda

## **The administration of justice**

### **Article 112**

1. The adjudication of disputes involving rights under civil law and debts shall be the responsibility of the judiciary.
2. Responsibility for the adjudication 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 trial 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 114**

Capital punishment may not be imposed.

### **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 organisation, 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 by 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 Lower House 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 judgments which infringe the law (cassation).

3. Additional duties may be assigned to the Supreme Court by Act of Parliament.

**Article 119**

Present and former members of the States General, Ministers and State Secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Lower House.

**Article 120**

The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.

**Article 121**

Except in cases laid down by Act of Parliament, trials shall be held in public and judgments shall specify the grounds on which they are based. Judgments shall be pronounced in public.

**Article 122**

1. Pardons shall be granted by Royal Decree upon the recommendation of a court designated by Act of Parliament and with due regard to regulations to be laid down by or pursuant to Act of Parliament.

2. Amnesty shall be granted by or pursuant to Act of Parliament.

Polonia

**Chapter VIII  
COURTS AND TRIBUNALS**

**Article 173**

The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.

**Article 174**

The courts and tribunals shall pronounce judgments in the name of the Republic of Poland.

**COURTS**

**Article 175**

The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts.  
Extraordinary courts or summary procedures may be established only during a time of war.

**Article 176**

Court proceedings shall have at least two stages.  
The organizational structure and jurisdiction as well as procedure of the courts shall be specified by statute.

**Article 177**

The common courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts.

**Article 178**

Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.  
Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.  
A judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges.

**Article 179**

Judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.

**Article 180**

Judges shall not be removable.  
Recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute.  
A judge may be retired as a result of illness or infirmity which prevents him discharging the duties of his office. The procedure for doing so, as well as for appealing against such decision, shall be specified by statute.  
A statute shall establish an age limit beyond which a judge shall proceed to retirement.  
Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration.

**Article 181**

A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible nor deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order an immediate release of the person detained.

**Article 182**

A statute shall specify the scope of participation by the citizenry in the administration of justice.

**Article 183**

The Supreme Court shall exercise supervision over common and military courts regarding judgments.  
The Supreme Court shall also perform other activities specified in the Constitution and statutes.  
The First President of the Supreme Court shall be appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Court.

**Article 184**

The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statute of resolutions of organs of local government and normative acts of territorial organs of government administration.

**Article 185**

The President of the Supreme Administrative Court shall be appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Administrative Court.

**Article 186**

The National Council of the Judiciary shall safeguard the independence of courts and judges.

The National Council of the Judiciary may make application to the Constitutional Tribunal regarding the conformity to the Constitution of normative acts to the extent to which they relate to the independence of courts and judges.

**Article 187**

The National Council of the Judiciary shall be composed as follows:

- 1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic;
- 2) 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts;
- 3) 4 members chosen by the Sejm from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators.

The National Council of the Judiciary shall choose, from amongst its members, a chairperson and two deputy chairpersons.

The term of office of those chosen as members of the National Council of the Judiciary shall be 4 years.

The organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, as well as the manner of choosing its members, shall be specified by statute.

**THE CONSTITUTIONAL TRIBUNAL****Article 188**

The Constitutional Tribunal shall adjudicate regarding the following matters:

the conformity of statutes and international agreements to the Constitution;

the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;

the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;

the conformity to the Constitution of the purposes or activities of political parties;

complaints concerning constitutional infringements, as specified in Article 79, para. 1.

**Article 189**

The Constitutional Tribunal shall settle disputes over authority between central constitutional organs of the State.

**Article 190**

Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.

Judgments of the Constitutional Tribunal regarding matters specified in Article 188, shall be required to be

immediately published in the official publication in which the original normative act was promulgated. If a normative act has not been promulgated, then the judgment shall be published in the Official Gazette of the Republic of Poland, Monitor Polski.

A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.

A judgment of the Constitutional Tribunal on the non-conformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for reopening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

Judgments of the Constitutional Tribunal shall be made by a majority of votes.

#### **Article 191**

The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:

- 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights,
- 2) the National Council of the Judiciary, to the extent specified in Article 186, para. 2;
- 3) the constitutive organs of units of local government;
- 4) the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations;
- 5) churches and religious organizations;
- 6) the subjects referred to in Article 79 to the extent specified therein.

The subjects referred to in para. 1 subparas. 3-5, above, may make such application if the normative act relates to matters relevant to the scope of their activity.

#### **Article 192**

The following persons may make application to the Constitutional Tribunal in respect of matters specified in Article 189: the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, the First President of the Supreme Court, the President of the Supreme Administrative Court and the President of the Supreme Chamber of Control.

#### **Article 193**

Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.

#### **Article 194**

The Constitutional Tribunal shall be composed of 15 judges chosen individually by the Sejm for a term of office of 9 years from amongst persons distinguished by their knowledge of the law. No person may be chosen for more than one term of office.

The President and Vice-President of the Constitutional Tribunal shall be appointed by the President of the Republic from amongst candidates proposed by the General Assembly of the Judges of the Constitutional Tribunal.

#### **Article 195**

Judges of the Constitutional Tribunal, in the exercise of their office, shall be independent and subject only to the Constitution.

Judges of the Constitutional Tribunal shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of the office and the scope of their duties.

Judges of the Constitutional Tribunal, during their term of office, shall not belong to a political party, a trade union or perform public activities incompatible with the principles of the independence of the courts and judges.

#### **Article 196**

A judge of the Constitutional Tribunal shall not be held criminally responsible or deprived of liberty without prior consent granted by the Constitutional Tribunal. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The President of the Constitutional Tribunal shall be notified forthwith of any such detention and may order an immediate release of the person detained.

#### **Article 197**

The organization of the Constitutional Tribunal, as well as the mode of proceedings before it, shall be specified by statute.

### **THE TRIBUNAL OF STATE**

#### **Article 198**

For violations of the Constitution or of a statute committed by them within their office or within its scope, the following persons shall be constitutionally accountable to the Tribunal of State: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the Prime Minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces.

Deputies and Senators shall also be constitutionally accountable to the Tribunal of State to extent specified in Article 107.

The types of punishment which the Tribunal of State may impose shall be specified by statute.

#### **Article 199**

The Tribunal of State shall be composed of a chairperson, two deputy chairpersons and 16 members chosen by the Sejm for the current term of office of the Sejm from amongst those who are not Deputies or Senators. The deputy chairpersons of the Tribunal and at least one half of the members of the Tribunal shall possess the qualifications required to hold the office of judge.

The First President of the Supreme Court shall be chairperson of the Tribunal of State.

The members of the Tribunal of State, within the exercise of their office as judges of the Tribunal, shall be independent and subject only to the Constitution and statutes.

#### **Article 200**

A member of the Tribunal of State shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Tribunal of State. A member of the Tribunal of State shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The chairperson of the Tribunal of State shall be notified forthwith of any such detention and may order an immediate release of the person detained.

#### **Article 201**

The organization of the Tribunal of State, as well as the mode of proceedings before it, shall be specified by statute.

**TITLE V: Courts**  
**CHAPTER I**  
**General principles**

**Article 202 (Jurisdiction)**

1. The courts shall be the bodies that exercise sovereign power which possess the responsibility to administer justice in the name of the people.
2. In administering justice the courts shall ensure the defence of those citizens' rights and interests that are protected by law, repress breaches of the democratic rule of law and rule on conflicts between interests, public and private.
3. In the performance of their functions the courts shall possess the right to the assistance of the other authorities.
4. The law may institutionalise non-judicial instruments and means of settling conflicts.

**Article 203 (Independence)**

The courts shall be independent and subject only to the law.

**Article 204 (Compliance with the Constitution)**

In matters that are brought to trial, the courts shall not apply rules that contravene the provisions of this Constitution or the principles enshrined therein.

**Article 205 (Court rulings)**

1. Court rulings that are not merely administrative in nature shall set out their grounds in the form laid down by law.
2. Court rulings shall be binding on all persons and bodies, public and private, and shall prevail over the decisions of all other authorities.
3. The law shall regulate the terms under which court rulings are implemented in relation to any authority, and shall lay down the penalties to be imposed on any person or body that is responsible for any failure to implement such rulings.

**Article 206 (Court hearings)**

Court hearings shall be public, save in the event that in order to safeguard personal dignity or public morals, or to ensure its own proper operation, the court in question rules otherwise in a written order setting out the grounds for its decision.

**Article 207 (Juries, public participation and experts)**

1. In such cases and with such composition as the law may lay down, and particularly when either the prosecution or the defence so request, a jury may participate in the trial of serious crimes, save those involving terrorism or highly organised crime.
2. The law may provide for the participation of lay magistrates in trials concerning labour-related matters, public health infractions, minor offences, the execution of sentences or other cases that justify special consideration of the social values that have been infringed.
3. The law may also provide for the participation of technically qualified assistants in the trial of certain matters.

**Article 208 (Legal representation)**

The law shall ensure that lawyers enjoy the immunities needed to exercise their mandates and shall regulate legal representation as an element that is essential to the administration of justice.

**CHAPTER II**  
**Organisation of the courts**

**Article 209 (Categories of court)**

1. In addition to the Constitutional Court, there shall be the following categories of court:

- a) The Supreme Court of Justice and the courts of law of first and second instance;
  - b) The Supreme Administrative Court and the remaining administrative and tax courts;
  - c) The Audit Court.
2. There may be maritime courts, arbitration tribunals and justices of the peace.
  3. The law shall lay down the cases and forms in which the courts provided for in the previous paragraphs can separately or jointly be constituted as conflict-resolution tribunals.
  4. Without prejudice to the provisions concerning courts martial, courts with the exclusive power to try certain categories of crime shall be prohibited.

#### **Article 210 (Supreme Court of Justice and other courts of law)**

1. Without prejudice to the specific responsibilities of the Constitutional Court, the Supreme Court of Justice shall be the senior body in the hierarchy of courts of law.
2. The judges of the Supreme Court of Justice shall elect its President.
3. As a general rule the courts of first instance shall be the district courts, the status of which shall be equivalent to that of those referred to in paragraph (2) of the following Article.
4. As a general rule the courts of second instance shall be the Courts of Appeal.
5. The Supreme Court of Justice shall serve as a court of instance in such cases as the law may lay down.

#### **Article 211 (Responsibilities and specialisation of courts of law)**

1. The courts of law shall be the general courts in civil and criminal matters and shall have jurisdiction over every area that is not allocated to other judicial bodies.
2. There may be courts of first instance that possess specific responsibilities or are specialised in the trial of certain matters.
3. The composition of courts of any instance that try crimes of a strictly military nature shall include one or more military judges, as laid down by law.
4. The Courts of Appeal and the Supreme Court of Justice may operate in specialised sections.

#### **Article 212 (Administrative and tax courts)**

1. Without prejudice to the specific responsibilities of the Constitutional Court, the Supreme Administrative Court shall be the senior body in the hierarchy of administrative and tax courts.
2. The judges of the Supreme Administrative Court shall elect its President from among their number.
3. The administrative and tax courts shall try contested suits and appeals, the purpose of which is to settle disputes arising from administrative and fiscal legal relations.

#### **Article 213 (Courts martial)**

During states of war, courts martial with jurisdiction over crimes of a strictly military nature shall be formed.

#### **Article 214 (Audit Court)**

1. The Audit Court shall be the senior body with authority to scrutinise the legality of public expenditure and judge such accounts as the law may require to be submitted to it. It shall particularly be responsible for:
  - a) Issuing an opinion on the General State Accounts, including the social security accounts;
  - b) Issuing an opinion on the accounts of the Azores and Madeira Autonomous Regions;
  - c) Enforcing liability for financial infractions, as laid down by law;
  - d) Fulfilling such other responsibilities as the law may confer upon it.
2. Without prejudice to the provisions of Article 133m, the President of the Audit Court's term of office shall be four years.
3. The Audit Court may operate in a decentralised manner, in regional sections, as laid down by law.
4. In the Azores and Madeira Autonomous Regions there shall be sections of the Audit Court with full responsibility

for the matter in question in the respective region, as laid down by law.

### **CHAPTER III Status of judges**

#### **Article 215 (Judges of the courts of law)**

1. The judges of the courts of law shall form a single body and shall be governed by a single statute.
2. The law shall lay down the requirements and rules governing the recruitment of judges of the courts of law of first instance.
3. The prevailing criterion in the selection of judges of the courts of law of second instance shall be that of merit, to be determined by a competitive submission of curricula by judges of first instance.
4. Appointment to the Supreme Court of Justice shall be determined by a competitive submission of curricula by judges, public prosecutors and other meritorious members of the legal profession, as laid down by law.

#### **Article 216 (Guarantees and incompatibilities)**

1. Judges shall enjoy security of tenure and shall not be transferred, suspended, retired or removed from office except in the cases laid down by law.
2. Save the exceptions laid down by law, judges shall not be held personally liable for their rulings.
3. Serving judges shall not perform any other public or private function, save unremunerated teaching or legal research functions, as laid down by law.
4. Serving judges shall not be appointed to judicial functions unrelated to the work of the courts without the authorisation of the competent Supreme Council.
5. The law may lay down other incompatibilities with the exercise of the office of judge.

#### **Article 217 (Appointment, assignment, transfer and promotion of judges)**

1. The appointment, assignment, transfer and promotion of judges of the courts of law and the exercise of discipline over them shall be the responsibility of the Supreme Judicial Council, as laid down by law.
2. The appointment, assignment, transfer and promotion of judges of the administrative and tax courts and the exercise of discipline over them shall be the responsibility of the respective Supreme Council, as laid down by law.
3. Subject to the guarantees provided for by this Constitution, the law shall define the rules governing the assignment, transfer and promotion of judges of the remaining courts and the exercise of discipline over them, and shall determine the responsibility to do so.

#### **Article 218 (Supreme Judicial Council)**

1. The Supreme Judicial Council shall be chaired by the President of the Supreme Court of Justice and shall also be composed of the following members:
  - a) Two to be appointed by the President of the Republic;
  - b) Seven to be elected by the Assembly of the Republic;
  - c) Seven judges to be elected by their peers in accordance with the principle of proportional representation.
2. The rules governing guarantees enjoyed by judges shall apply to all the members of the Supreme Judicial Council.
3. The law may provide for court officials to be members of the Supreme Judicial Council, in which case they shall be elected thereto by their peers. Such members shall only participate in the discussion and voting on matters concerning the assessment of the professional merit of, and the exercise of discipline over, court officials.

### **CHAPTER IV Public Prosecutors' Office**

#### **Article 219 (Functions, status and role)**

1. The Public Prosecutors' Office shall be responsible for representing the state and defending such interests as the

law may lay down, and, subject to the provisions of the following paragraph and as laid down by law, for participating in the implementation of the criminal policy defined by the bodies that exercise sovereign power, conducting penal action in accordance with the principle of legality, and defending the democratic rule of law.

2. The Public Prosecutors' Office shall possess its own statute and autonomy, as laid down by law.

3. The law shall create special forms of assistance to be provided to the Public Prosecutors' Office in cases involving strictly military crimes.

4. The officials of the Public Prosecutors' Office shall be accountable judicial officers, shall form part of and be subject to a hierarchy and shall not be transferred, suspended, retired or removed from office except in cases provided for by law.

5. The appointment, assignment, transfer and promotion of officials of the Public Prosecutors' Office and the exercise of discipline over them shall be the responsibility of the Attorney General's Office.

#### **Article 220(Attorney General's Office)**

1. The Attorney General's Office shall be the senior body of the Public Prosecutor's Office and shall possess the composition and responsibilities laid down by law.

2. The Attorney General's Office shall be presided over by the Attorney General and shall contain the Supreme Council of the Public Prosecutors' Office, which shall include members elected by the Assembly of the Republic and members whom the public prosecutors shall elect from among their number.

3. Without prejudice to the provisions of Article 133m, the Attorney General's term of office shall be six years.

### **TITLE VI Constitutional Court**

#### **Article 221(Definition)**

The Constitutional Court shall be the court with specific responsibility for administering justice in matters of a legal and constitutional nature.

#### **Article 222 (Composition and status of judges)**

1. The Constitutional Court shall be composed of thirteen judges, ten of whom shall be appointed by the Assembly of the Republic and three co-opted by those ten.

2. Six of the judges who are appointed by the Assembly of the Republic or are co-opted shall obligatorily be chosen from among the judges of the remaining courts, and the others from among jurists.

3. The term of office of judge of the Constitutional Court shall be nine years and shall not be renewable.

4. The judges of the Constitutional Court shall elect its President.

5. Constitutional Court judges shall enjoy the same guarantees of independence, security of tenure, impartiality and absence of personal liability and shall be subject to the same incompatibilities as the judges of the other courts.

6. The law shall lay down the immunities and other rules governing the status of Constitutional Court judges.

#### **Article 223(Responsibilities)**

1. The Constitutional Court shall assess cases of unconstitutionality and illegality in accordance with Articles 277 et sequitur.

2. The Constitutional Court shall also be responsible for:

a) Verifying the death and declaring the permanent physical incapacity of the President of the Republic, and verifying cases in which he is temporarily prevented from performing his functions;

b) Verifying forfeiture of the office of President of the Republic in the cases provided for in Articles 129(3) and 130(3);

c) Issuing rulings of final instance on the proper conduct and validity of electoral acts, as laid down by law;

d) For the purpose of Article 124(3), verifying the death and declaring the incapacity to exercise the office of President of the Republic of any candidate therefore;

e) Verifying the legality of the formation of political parties and coalitions thereof, assessing the legality of their

names, initials and symbols, and ordering their abolition, all as laid down by this Constitution and the law;

f) Verifying in advance the constitutionality and legality of national, regional and local referenda, including assessment of requirements in relation to the electors in each case;

g) At the request of Members and as laid down by law, ruling on appeals concerning losses of seat and elections held by the Assembly of the Republic and the Legislative Assemblies of the autonomous regions;

h) Ruling on such cases involving the impugnation of elections within, and the decisions taken by, political parties as by law are subject to appeal.

3. The Constitutional Court shall also perform such other functions as are conferred upon it by this Constitution and the law.

#### **Article 224 (Organisation and procedure)**

1. The law shall lay down the rules governing the Constitutional Court's seat, manner of organisation and procedures.

2. Except for the purpose of the abstract assessment of constitutionality and legality, the law may require the Constitutional Court to operate in sections.

3. The law shall regulate appeals to the full Constitutional Court against contradictory rulings by different sections on the application of the same rule or provision.

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### **CHAPTER FOUR Judicial Power**

#### **ARTICLE 81**

The judicial power shall be exercised in the name of the Republic by independent courts.

#### **ARTICLE 82**

(1) Judges shall be independent in the performance of their duties. Nobody may threaten their impartiality.

(2) Judges may not be removed or transferred to another court against their will; exceptions resulting especially from disciplinary responsibility shall be laid down in a statute.

(3) The office of a judge is incompatible with that of the President of the Republic, a Member of Parliament, as well as with any other function in public administration; a statute shall specify which further activities are incompatible with the discharge of judicial duties.

### **THE CONSTITUTIONAL COURT**

#### **ARTICLE 83**

The Constitutional Court is the judicial body responsible for the protection of constitutionality.

#### **ARTICLE 84**

(1) The Constitutional Court shall be composed of fifteen Justices appointed for a period of ten years.

(2) The Justices of the Constitutional Court shall be appointed by the President of the Republic with the consent of the Senate.

(3) Any citizen who has a character beyond reproach, is eligible for election to the Senate, has a university legal education, and has been active in the legal profession for a minimum of ten years, may be appointed a Justice of the Constitutional Court.

#### **ARTICLE 85**

(1) A Justice of the Constitutional Court assumes her duties upon taking the oath of office administered by the President of the Republic.

(2) A Justice of the Constitutional Court shall take the following oath of office: "I pledge upon my honor and conscience that I will protect the inviolability of natural human rights and of the rights of citizens, adhere to constitutional acts, and make decisions according to my best convictions, independently and impartially.

(3) Should a Justice refuse to take the oath of office or should he take it with reservations, he shall be deemed not to

have been appointed.

#### **ARTICLE 86**

(1) A Justice of the Constitutional Court may be criminally prosecuted only with the consent of the Senate. If the Senate withholds its consent, such criminal prosecution shall be forever foreclosed.

(2) A Justice of the Constitutional Court may be arrested only if he has been apprehended while committing a criminal act or immediately thereafter. The arresting authority must immediately inform the Chairperson of the Senate of the arrest; if, within twenty-four hours of the arrest, the Chairperson of the Senate does not give her consent to hand the detained Justice over to a court, the arresting authority is obliged to release him. At the very next meeting of the Senate, it shall make the definitive decision as to whether he may be criminally prosecuted.

(3) A Justice of the Constitutional Court has the right to refuse to give evidence as to facts about which she learned in connection with the performance of her duties, and this privilege continues in effect even after she has ceased to be a Justice of the Constitutional Court.

#### **ARTICLE 87**

(1) The Constitutional Court has jurisdiction:

- a) to annul statutes or individual provisions thereof if they are in conflicts with the constitutional order;
- b) to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order, a statute;
- c) over constitutional complaints by the representative body of a self-governing region against an unlawful encroachment by the state;
- d) over constitutional complaints against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms;
- e) over remedial actions from decisions concerning the certification of the election of a Deputy or Senator;
- f) to resolve doubts concerning a Deputy or Senators loss of eligibility to hold office or the incompatibility under Article 25 of some other position or activity with holding the office of Deputy or Senator;
- g) over a constitutional charge brought by the Senate against the President of the Republic pursuant to Article 65, paragraph 2;
- h) to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate pursuant to Article 66;
- i) to decide on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented;
- j) to determine whether a decision to dissolve a political party or other decisions relating to the activities of a political party is in conformity with constitutional acts or other laws;
- k) to decide jurisdictional disputes between state bodies and bodies of self-governing regions, unless that power is given by statute to another body;
- l) over remedial actions from a decision of the President of the Republic declining to call a referendum on the Czech Republic's accession to the European Union;
- m) to determine whether the manner in which a referendum on the Czech Republic's accession to the European Union was held is in harmony with the Constitutional Act on the Referendum on the Czech Republic's Accession to the European Union and with the statute issued in implementation thereof.

(2) Prior to the ratification of a treaty under Article 10a or Article 49, the Constitutional Court shall further have jurisdiction to decide concerning the treaty's conformity with the constitutional order. A treaty may not be ratified prior to the Constitutional Court giving judgment.

(3) An statute may provide that, in place of the Constitutional Court, the Supreme Administrative Court shall have jurisdiction:

- a) to annul legal enactments other than statutes or individual provisions thereof if they are inconsistent with a statute;

b) to decide jurisdictional disputes between state bodies and bodies of self-governing regions, unless that power is given by statute to another body.

#### **ARTICLE 88**

(1) A statute shall specify who shall be entitled to submit a petition instituting a proceeding before the Constitutional Court, and under what conditions, and shall lay down other rules for proceedings before the Constitutional Court.

(2) In making their decisions, the Justices of the Constitutional Court are bound only by the constitutional order and the statute under paragraph 1.

#### **ARTICLE 89**

(1) Decisions of the Constitutional Court are enforceable as soon as they are announced in the manner provided for by statute, unless the Constitutional Court decides otherwise concerning enforcement.

(2) Enforceable decisions of the Constitutional Court are binding on all authorities and persons.

(3) Decisions of the Constitutional Court which declare, pursuant to Article 87 para. 2, that a treaty is not in conformity with the constitutional order, are an obstacle to the ratification of the treaty until such time as they are brought into conformity with each other.

### **COURTS**

#### **ARTICLE 90**

Courts are called upon above all to provide protection of rights in the legally prescribed manner. Only a court may decide upon guilt and determine the punishment for a criminal offense.

#### **ARTICLE 91**

(1) The court system comprises the Supreme Court, the Supreme Administrative Court, superior, regional, and district courts. They may be given a different denomination by statute.

(2) The jurisdiction and organization of the courts shall be provided for by statute.

#### **ARTICLE 92**

The Supreme Court is the highest judicial body in matters that fall within the jurisdiction of courts, with the exception of matters that come under the jurisdiction of the Constitutional Court or the Supreme Administrative Court.

#### **ARTICLE 93**

(1) Judges are appointed to their office for an unlimited term by the President of the Republic. They assume their duties upon taking the oath of office.

(2) Any citizen who has a character beyond reproach and a university legal education may be appointed a judge. Further qualifications and procedures shall be provided for by statute.

#### **ARTICLE 94**

(1) A statute shall specify which cases shall be heard by a panel of judges, as well as the composition thereof. All other cases shall be heard by individual judges.

(2) A statute may specify in which matters and in what manner other citizens shall participate alongside judges in a courts decision-making.

#### **ARTICLE 95**

(1) In making their decisions, judges are bound by statutes and treaties which form a part of the legal order; they are authorized to judge whether enactments other than statutes are in conformity with statutes or with such treaties.

(2) Should a court come to the conclusion that a statute which should be applied in the resolution of a matter is in conflict with the constitutional order, it shall submit the matter to the Constitutional Court.

- (1) All parties to a proceeding have equal rights before the court.  
(2) Proceedings before courts shall be oral and public; exceptions to this principle shall be provided for by statute. Judgments shall always be pronounced publicly.

**CHAPTER FIVE  
The Supreme Auditing Office**

**ARTICLE 97**

- (1) The Supreme Auditing Office shall be an independent body. It shall perform audits on the management of state property and the implementation of the state budget.  
(2) The President of the Republic appoints the President and Vice-President of the Supreme Auditing Office based on the nomination of the Assembly of Deputies.  
(3) The legal status, powers, and organizational structure of the Office, as well as more detailed provisions, shall be set down in a statute.

Slovakia

**CHAPTER SEVEN**

**Judicial Power**

**Part One**

**The Constitutional Court of the Slovak Republic**

**Article 124**

The Constitutional Court of the Slovak Republic is an independent judicial body charged with the protection of constitutionality.

**Article 125**

(1) The Constitutional Court decides on the compatibility of

a) laws with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law,

b) Government ordinances, generally binding legal regulations issued by ministries and other central bodies of the state administration with the Constitution, constitutional laws, international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law; and with laws,

c) generally binding ordinances pursuant to Article 68 with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated as required by law, unless other court is making decision on them,

d) generally binding legal regulations issued by local state administration bodies and generally binding ordinances issued by local self administration bodies issued pursuant to Article 71, paragraph 2 with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law, unless other court is making decision on them,

(2) If the Constitutional Court accepts a petition for a proceeding pursuant to paragraph 1, it may suspend the effectiveness of the challenged legal regulations, their parts or some of their provisions, if their further application could jeopardize the basic rights and freedoms, if there is a threat of a substantial economic damage or other serious irreparable consequence.

(3) If the Constitutional Court states by its decision that there is inconsistency between the legal regulations referred to in paragraph 1, the effect of the respective regulations, their parts or their provisions shall terminate. The bodies that issued these legal regulations are obliged to ensure within six months from promulgation of the decision of the Constitutional Court their compliance with the Constitution, constitutional laws and international treaties promulgated in a manner laid down by law and with respect to the regulations referred to in paragraph 1, letters b) and c) also with other laws, with respect to the regulations referred to in paragraph 1, letter d) with Government ordinances and with generally binding legal regulations issued by ministries and other central bodies of the state administration. If they fail to do so, the validity of such regulations, their parts or provisions shall terminate six months from promulgation of the decision.

(4) The Constitutional Court does not decide on compliance of a draft law, or a draft of other generally binding legal regulation, with the Constitution, an international treaty promulgated in a manner laid down by law, or with a constitutional law.

(5) The validity of a decision suspending the effect of the challenged legal regulations, their parts or some of their provisions terminates by the promulgation of a decision of the Constitutional Court on the merits, unless the Constitutional Court has canceled the decision suspending the effect of the challenged legal regulation before, because the reasons for which it was adopted vanished.

(6) A decision of the Constitutional Court issued pursuant to paragraphs 1, 2 and 5 shall be promulgated in a way established for promulgation of laws. A final decision of the Constitutional Court is generally binding

#### **Article 125a**

(1) The Constitutional Court decides on compliance of the concluded international treaties for which consent of the National Council of the Slovak Republic is required with the Constitution or a constitutional law.

(2) The petition for a decision pursuant to paragraph 1 may be filed with the Constitutional Court by the President of the Slovak Republic or the Government before submitting of the concluded international treaty for a deliberation to the National Council of the Slovak Republic.

(3) The Constitutional Court decides on the petition pursuant to paragraph 2 within the period laid down by law; if the Constitutional Court by its decision expresses that the international treaty is not in compliance with the Constitution or a constitutional law, such international treaty may not be ratified.

#### **Article 125b**

(1) The Constitutional Court decides whether the subject of the referendum to be called on the basis of a citizens' petition, or a resolution of the National Council of the Slovak Republic pursuant to Article 95, paragraph 1, is in compliance with the Constitution or a constitutional law.

(2) The petition for a decision pursuant to paragraph 1 may be filed with the Constitutional Court by the President of

the Slovak Republic before calling of a referendum, when he has doubts if the subject of the referendum to be called on the basis of a citizens' petition, or a resolution of the National Council of the Slovak Republic pursuant to Article 95, paragraph 1, is in compliance with the Constitution or a constitutional act.

(3) The Constitutional Court decides on the petition pursuant to paragraph 2 within 60 days from the day of its delivery; if the Constitutional Court by its decision state that the subject of the referendum to be called on the basis of a citizens' petition, or a resolution of the National Council of the Slovak Republic pursuant to Article 95, paragraph 1, is not in compliance with the Constitution or a constitutional act, the referendum may not be called.

### **Article 126**

(1) The Constitutional Court decides on jurisdiction disputes among central bodies of state administration, unless the law specifies that these disputes are decided by another state body.

(2) The Constitutional Court decides on disputable cases regarding the control power of the Supreme Audit Office.

### **Article 127**

(1) The Constitutional Court decides on complaints by natural persons or legal persons objecting to violation of their basic rights and freedoms, or the basic rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law, unless other court makes decision on the protection of such rights and freedoms.

(2) If the Constitutional Court satisfies the complaint, it will state in its decision that a [disputed] final decision, measure, or other act violated the rights or freedoms pursuant to paragraph 1 and it will annul such decision, measure, or other act. If the violation of rights or freedoms pursuant to paragraph 1 has arisen due to inactivity, the Constitutional Court may order to the person that violated these rights or freedoms to act in that matter. The Constitutional Court may at the same time return the case for further proceeding, prohibit further violation of basic rights and freedoms or human rights and fundamental freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law or, if possible, order the person that violated the rights or freedoms pursuant to paragraph 1 to restore the state before the violation.

(3) The Constitutional Court may, by its decision on satisfaction of the complaint, award an appropriate financial compensation to the person whose rights pursuant to paragraph 1 were violated.

(4) Liability of the person that violated the rights or freedoms pursuant to paragraph 1, for damage or other harm, is not affected by the decision of the Constitutional Court.

### **Article 127a**

(1) The Constitutional Court decides on the complaints filed by the bodies of the territorial self-administration against an unconstitutional or unlawful decision or other unconstitutional or unlawful intervention in the matters of the territorial self-administration, unless another court is making a decision on its protection.

(2) If the Constitutional Court satisfies a complaint of the body of the territorial self-administration, it will state the reasons why the decision, or intervention in the matters of the territorial self-administration, is unconstitutional, or unlawful, which constitutional law or which law was violated and what decision, or act, caused such violation. The

Constitutional Court will cancel the challenged decision, or if violation of law was constituted by another act than a decision, it will prohibit further violation of the right and it orders, if possible, that the state before the violation is restored.

### **Article 128**

The Constitutional Court provides an interpretation of the Constitution or constitutional laws in disputed matters. The decision of the Constitutional Court on interpretation of the Constitution of a constitutional law is promulgated in a manner established for promulgation of laws. The interpretation is generally binding as of the day of its promulgation.

### **Article 129**

(1) The Constitutional Court decides on complaints filed against the decision to verify or not to verify the mandate of a Member of Parliament.

(2) The Constitutional Court decides on the constitutionality and legitimacy of elections to the National Council of the Slovak Republic and territorial self-administration bodies and election in the European parliament.

(3) The Constitutional Court decides on complaints filed against the results on the public voting on recalling of the President of the Slovak Republic.

(4) The Constitutional Court decides whether the decision to disband or suspend the activity of a political party or a political movement was in compliance with constitutional and other laws.

(5) The Constitutional Court decides on high treason charges, or charges of deliberate violation of the Constitution, filed by the National Council of the Slovak Republic against the President of the Slovak Republic.

(6) The Constitutional Court decides whether a decision on declaration of the martial law, or the state of emergency, and relating decisions were issued in compliance with the Constitution or constitutional laws.

(7) Decisions of the Constitutional Court pursuant to the paragraphs hereinabove are binding for all bodies of the public authority, natural persons or legal persons to whom it concerns. The respective body of the public authority is obliged to ensure their execution without undue delay. Details shall be laid down by law.

### **Article 130**

(1) The Constitutional Court initiates proceedings on the basis of a proposal by

- a) at least one-fifth of Members of Parliament,
- b) the President of the Slovak Republic,
- c) the Government of the Slovak Republic,
- d) the court,

e) the general prosecutor,

f) public defender of right in cases of compliance of legal regulations pursuant to Article 125, paragraph 1, if their further application could jeopardize the basic rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law.

g) the Supreme Audit Office of the Slovak Republic in case stipulated in Article 126, paragraph 2,

h) in cases listed under Article 127 and 127a, anyone whose rights are to become the subject of inquiry,

i) anyone objecting to the control power of the Supreme Audit Office of the Slovak Republic in case laid down in Article 126, paragraph 2.

(2) A law will lay down who is entitled to submit a proposal to initiate proceedings according to Article 129.

### **Article 131**

(1) Matters listed under Article 105, paragraph 2, Article 107, Article 125, paragraph 1 letters a) and b), Article 125a paragraph 1, Article 125b paragraph 1, Article 128, Article 129, paragraphs 2 to 6; Article 136, paragraphs 2 and 3, Article 138, paragraphs 2, letters b) and c), as well as unification of legal opinion of senates, matters concerning the arrangement of its internal affairs and draft budget the Constitutional Court are decided by plenary meetings of the Constitutional Court. The plenary meeting of the Constitutional Court decides by more than one-half of all judges. If such majority is not reached, the motion is rejected.

(2) The Constitutional Court decides on the remaining matters in panels of three judges. The panels decides by a more than one-half of its members.

### **Article 132**

Repealed.

### **Article 133**

There exists no legal recourse against a ruling of the Constitutional Court.

### **Article 134**

(1) The Constitutional Court consists of 13 judges.

(2) Constitutional Court judges are appointed by the President of the Slovak Republic for a period of twelve years upon a proposal by the National Council of the Slovak Republic. The National Council of the Slovak Republic proposes twice the number of candidates for judges that the President of the Slovak Republic is to appoint.

(3) Any citizen of the Slovak Republic who may be elected to the National Council of the Slovak Republic, has reached the age of 40, is a law school graduate and has been practicing law for at least 15 years may be appointed judge of the Constitutional Court. The same person may not be repeatedly appointed judge of the Constitutional

Court.

(4) A judge of the Constitutional Court is sworn in by the President of the Slovak Republic by taking the following oath:

"I promise on my honor and conscience that I will protect the inviolability of the natural rights of man and civic rights, protect the principles of the state governed by the rule of law, abide by the Constitution, constitutional laws and international treaties that the Slovak Republic ratified and were promulgated in a manner laid down by law, and decide independently and impartially, according to my best conscience."

(5) A judge of the Constitutional Court takes up office upon taking his oath.

### **Article 135**

The Constitutional Court is headed by its President, who is substituted for by the Vice-President. The President and Vice-President are appointed by the President of the Slovak Republic from among judges of the Constitutional Court.

### **Article 136**

(1) Members of the Constitutional Court enjoy immunity in the same way as Members of Parliament.

(2) The consent to the criminal prosecution of a judge of the Constitutional Court, or to taking him into custody, is given by the Constitutional Court.

(3) The Constitutional Court gives consent to the criminal prosecution or to the taking into custody of a judge and the Prosecutor General. The Constitutional Court executes a disciplinary proceeding against the Chief Justice of the Supreme Court of the Slovak Republic, Deputy Chief Justice of the Supreme Court of the Slovak Republic and the Prosecutor General.

(4) If the Constitutional Court refuses to give a consent, a criminal prosecution or taking into custody is not possible throughout the term of office of a judge of the Constitutional Court, a judge, or the Prosecutor General.

### **Article 137**

(1) If an appointed judge of the Constitutional Court is a member of a political party or a political movement, he must surrender his membership prior to taking his oath.

(2) Judges of the Constitutional Court execute their post as their profession. The execution of this post is incompatible with a post in any other public authority body, a post, or contract of employment in another state body, any contract of employment, or similar employment relation, entrepreneurial activity, membership in a management or control body of a legal person engaged in an entrepreneurial activity or another economic or gainful activity, with the exception of the administration of their own property and scientific, teaching, literary, and artistic activity.

(3) On the day a judge takes up the office, his mandate as a Member of Parliament and his membership in the Government of the Slovak Republic expire.

### **Article 138**

(1) A judge of the Constitutional Court may surrender his post of judge by a written notice to the President of the Constitutional Court. His post terminates at the end of the calendar month when the written notice on surrendering the post was delivered.

(2) The President of the Slovak Republic recalls a judge of the Constitutional Court

a) on the basis of the effective court decision by which he was sentenced for a deliberate criminal act, or by which he was sentenced for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence,

b) on the basis of a disciplinary decision by the Constitutional Court passed because of a deed that is incompatible with the execution of the post of a judge of the Constitutional Court,

c) if the Constitutional Court declares that the judge has not been participating in Constitutional Court proceedings for over a year, or

d) if he ceases to be eligible to be elected to the National Council of the Slovak Republic.

### **Article 139**

If a judge of the Constitutional Court surrenders the post of judge of the Constitutional Court, or if he is recalled from it, the President of the Slovak Republic will appoint, out of two persons proposed by the National Council of the Slovak Republic, another judge of the Constitutional Court for a new term of office.

### **Article 140**

Details on the organization of the Constitutional Court, on the manner of Constitutional Court proceedings and on the status of its judges shall be laid down by law.

## **Part Two**

### **Courts of the Slovak Republic**

### **Article 141**

(1) Justice in the Slovak Republic is administered by independent and impartial courts.

(2) Justice at all levels is administered independently of other state bodies.

### **Article 141a**

The Judicial Council of the Slovak Republic

(1) The chairman of the Judicial Council of the Slovak Republic is the Chief Justice of the Supreme Court of the

Slovak Republic. Its other members are

- a) eight judges elected and recalled by the judges of the Slovak Republic,
- b) three members elected and recalled by the National Council of the Slovak Republic,
- c) three members appointed and recalled by the President of the Slovak Republic,
- d) three members appointed and recalled by the Government of the Slovak Republic.

(2) A person that is irreproachable, has completed a university law education and has been practicing law for at least 15 years may be constituted a member of the Judicial Council of the Slovak Republic pursuant to paragraph 1, letter b) to d).

(3) The term of office of members of the Judicial Council of the Slovak Republic is five years. The same person may be elected or appointed a member of the Judicial Council of the Slovak Republic no more than in two consequent terms of office.

(4) The power of the Council of Judges of the Slovak Republic includes [the right to]

- a) submit to the President of the Slovak Republic names of candidates proposed to be appointed judges and names of judges to be removed,
- b) decide on assignment and transfer of judges,
- c) submit to the President of the Slovak Republic proposals to appoint the Chief Justice of the Supreme Court of the Slovak Republic and a Deputy Chief Justice of the Supreme Court of the Slovak Republic and for their recall,
- d) submit to the Government of the Slovak Republic proposals of candidates for judges who should represent the Slovak Republic in international judicial bodies,
- e) elect and remove members of disciplinary senates and elect and remove chairmen of disciplinary senates,
- f) comment on a draft budget of the Slovak Republic courts in the process of drafting of the state budget,
- g) other powers, if so laid down by law.

(5) A consent of more than one-half of all members is required adopt a decision of the Judicial Council of the Slovak Republic.

(6) Details of the method of constituting the members of the Judicial Council of the Slovak Republic, its powers, its organization and its relation with the court administration bodies and the bodies of judicial self-administration shall be laid down by law.

## **Article 142**

(1) Courts decide on civil law and criminal law matters; examine the lawfulness of public administration bodies'

decisions and lawfulness of decisions, measures, or other acts of the public authority bodies, if so laid down by law.

(2) Court decisions are made by panels of judges, unless the law specifies that the matter is to be decided by a single judge. A law shall lay down in which cases decisions by panels of judges are attended by accessory judges from the ranks of citizens and which matters may be decided also by a court's employee authorized by a judge. A legal recourse against a decision made by the court's employee authorized by the judge is admissible, which is always decided by a judge.

(3) Verdicts are proclaimed in the name of the Slovak Republic. They are always proclaimed publicly.

#### **Article 143**

(1) The system of courts consists of the Supreme Court of the Slovak Republic and other courts.

(2) The detailed arrangement of the court system, the courts' powers and organization, and the manner of court proceedings shall be laid down by law.

(3) The bodies of the judicial self-administration also participate in the management and administration of courts in the extent laid down by law.

#### **Article 144**

(1) Judges are independent in execution of their function and bound solely by the Constitution, constitutional laws, international treaties stipulated in Article 7, paragraphs 2 and 5 and laws.

(2) If the court is of the opinion that another generally binding legal regulation, its part or a particular provision related to the subject-matter of the proceeding contravenes the Constitution, constitutional laws, international treaties stipulated in Article 7, paragraphs 2 and 5 or laws, it will interrupt its deliberations and submit a motion that a proceeding under Article 125, paragraph 1 is initiated. The finding of the Constitutional Court of the Slovak Republic is binding for all courts.

#### **Article 145**

(1) Judges are appointed and recalled by the President of the Slovak Republic at the proposal of the Judicial Council of the Slovak Republic for an unlimited period of time.

(2) Any citizen of the Slovak Republic who can be elected to the National Council of the Slovak Republic, has reached the age of 30 and completed a legal education may be appointed a judge. Other prerequisites for appointment to the post of judge and his promotion, as well as the scope of immunity of judges will be determined by law.

(3) The Chief Justice and Deputy Chief Justice of the Supreme Court of the Slovak Republic are appointed by the President of the Slovak Republic from the ranks of judges of the Supreme Court of the Slovak Republic for a period of five years upon a proposal of the Judicial Council of the Slovak Republic. The same person may be appointed the Chief Justice of the Supreme Court of the Slovak Republic and the Deputy Chief Justice of the Supreme Court of the Slovak Republic for a maximum of two consecutive terms. The President of the Slovak Republic may recall the Chief Justice of the Supreme Court of the Slovak Republic, or the Deputy Chief Justice of the Supreme Court of the Slovak

Republic for reasons stipulated in Article 147.

(4) A judge is sworn in by the President of the Slovak Republic as follows: "I promise on my honor and conscience that I will abide by the Constitution, constitutional laws and international treaties that the Slovak Republic ratified and were promulgated as required by law, and laws, I will interpret laws and decide independently and impartially, according to my best conscience."

(5) A judge shall take up the office upon taking the oath.

#### **Article 145a**

(1) If the appointed judge is a member of a political party or a political movement, he is obliged to give up the membership in them before taking the oath.

(2) A judge executes its function as a profession. The execution of the post of a judge is incompatible with the execution of a post in any other public authority body, a post, or contract of employment in a state body, any contract of employment, or similar employment relation, entrepreneurial activity, membership in a management or control body of a legal person engaged in an entrepreneurial activity or another economic or gainful activity, with the exception of the administration of their own property and scientific, teaching, literary, or artistic activity and membership in the Judicial Board of the Slovak Republic.

#### **Article 146**

A judge may surrender his post by a written notice to the President of the Slovak Republic. His post terminates at the end of the calendar month when the written notice on surrendering the post was delivered.

#### **Article 147**

(1) The President of the Slovak Republic will recall a judge upon the motion of the Judicial Council of the Slovak Republic on the basis of a legally effective sentence passed for a deliberate criminal offense, or if he was sentenced by a legally effective sentence for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence, on the basis of a decision of disciplinary tribunal of judges for a deed that is incompatible with the execution of the post of a judge, or if his eligibility to be elected in the National Council of the Slovak Republic ceased.

(2) The President of the Slovak Republic may recall a judge upon the motion of the Judicial Council,

a) if his state of health does not allow him over the long term, for a period of at least one year, to properly discharge his duties as judge,

b) if he has reached the age of 65.

#### **Article 148**

(1) A judge may be transferred to another court only with his consent or on the basis of a decision of a disciplinary senate.

(3) The reasons for suspension of execution of the post of judge and conditions for a temporary stay of the post of judge or a temporary assignment of a judge shall be laid down by law.

(3) The method of constituting accessory judges shall be laid down by law.

## **CHAPTER EIGHT**

### **The Prosecutor's Office of the Slovak Republic And the Public Protector of Rights**

#### **Part One**

#### **The Prosecutor's Office of the Slovak Republic**

##### **Article 149**

The Prosecutor's Office of the Slovak Republic protects rights and the legally protected interests of natural and legal persons and the state.

##### **Article 150**

The Prosecutor's Office is headed by the Prosecutor General who is appointed and recalled by the President of the Slovak Republic at the proposal of the National Council of the Slovak Republic.

##### **Article 151**

Details on appointing and recalling prosecutors and on their rights and duties, as well as on the organization of the Prosecutor's Office, shall be laid down by law.

#### **Part Two**

#### **The Public Protector of Rights**

##### **Article 151a**

(1) The Public Protector of Rights is an independent body of the Slovak Republic which, within the scope and as laid down by law, protects basic rights and freedoms of natural and legal persons in proceedings before public administration bodies and other bodies of public authority, if their conduct, decision-making, or inaction, is in conflict with the legal order. In cases laid down by law, the Public Protector of Rights may participate in holding the persons working in the public administration bodies accountable, if those persons violated a basic human right or freedom of natural or legal persons. All bodies of public authority shall give the Public Protector of Rights necessary assistance.

(2) The Public Protector of Rights may file a motion with the Constitutional Court of the Slovak Republic to initiate a proceeding pursuant to Article 125, if a generally binding regulation is violating a basic human right or freedom granted to a natural or legal person.

(3) The Public Protector of Rights is elected by the National Council of the Slovak Republic for a period of five years from candidates proposed by at least 15 Members of Parliament. Any citizen of the Slovak Republic who can be

elected to the National Council of the Slovak Republic and reached 35 years of age on the election day may be elected the public protector of rights. The Public Protector of Rights may not be a member of any political party or political movement.

(4) The office of the Public Protector of Rights terminates on the day the court decision becomes effective by which a Public Protector of Rights was sentenced for a deliberate criminal act, or by which a Public Protector of Rights was sentenced for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence, or by the loss of eligibility.

(5) The National Council of the Slovak Republic may recall the Public Protector of Rights if his state of health prevents him over the long term, for a period of at least three months, to properly discharge his duties.

Details on election and recalling of the public protector of rights, his competence, conditions of execution of his office, manner of legal protection and enforcement of the rights of natural persons and legal persons shall be stipulated by law.

## Slovenia

### f) The Judiciary

#### **Article 125 (Independence of Judges)**

Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws.

#### **Article 126 (Organisation and Jurisdiction of Courts)**

The organisation and jurisdiction of courts are determined by law.  
Extraordinary courts may not be established, nor may military courts be established in peacetime.

#### **Article 127 (The Supreme Court)**

The Supreme Court is the highest court in the state. It decides on ordinary and extraordinary legal remedies and performs other functions provided by law.

#### **Article 128 (Participation of Citizens in the Exercising of Judicial Power)**

The circumstances and form of the direct participation of citizens in the exercising of judicial power are regulated by law.

#### **Article 129 (Permanence of Judicial Office)**

The office of a judge is permanent. The age requirement and other conditions for election are determined by law. The retirement age of judges is determined by law.

#### **Article 130 (Election of Judges)**

Judges are elected by the National Assembly on the proposal of the Judicial Council.

#### **Article 131 (Judicial Council)**

The Judicial Council is composed of eleven members. The National Assembly elects five members on the proposal of the President of the Republic from among university professors of law, attorneys, and other lawyers, whereas judges holding permanent judicial office elect six members from among their own number. The members of the council select a president from among their own number.

#### **Article 132 (Termination of and Dismissal from Judicial Office)**

A judge ceases to hold judicial office where circumstances arise as provided by law.

If in the performance of the judicial office a judge violates the Constitution or seriously violates the law, the National Assembly may dismiss such judge on the proposal of the Judicial Council. If a judge is found by a final judgement to have deliberately committed a criminal offence through the abuse of the judicial office, the National Assembly dismisses such judge.

**Article 133 (Incompatibility of Judicial Office)**

Judicial office is not compatible with office in other state authorities, in local self-government authorities, and in bodies of political parties, and with other offices and activities as provided by law.

**Article 134 (Immunity of Judges)**

No one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court. If a judge is suspected of a criminal offence in the performance of judicial office, he may not be detained nor may criminal proceedings be initiated against him without the consent of the National Assembly.

**g) The State Prosecutor's Office**

**Article 135 (State Prosecutor)**

State Prosecutors file and present criminal charges and have other powers provided by law. The organisation and powers of state prosecutor offices are provided by law.

**Article 136 (Incompatibility of the Office of State Prosecutor)**

The office of State Prosecutor is not compatible with office in other state authorities, in local selfgovernment authorities, and in bodies of political parties, and with other offices and activities as provided by law.

**h) Attorneyship and Notariat**

**Article 137 (Attorneyship and Notariat)**

Attorneyship is an independent service within the system of justice, and is regulated by law. The notariat is a public service regulated by law.

Spania

**PART VI  
Judicial Power**

**Article 117**

1. Justice emanates from the people and is administered on behalf of the King by Judges and Magistrates of the Judiciary who shall be independent, irremovable, and liable and subject only to the rule of law.
2. Judges and Magistrates may only be dismissed, suspended, transferred or retired on the grounds, and subject to the guarantees provided by law.
3. The exercise of judicial authority in any kind of action, both in passing judgment and having judgments executed, lies exclusively within the competence of the Courts and Tribunals established by the law, in accordance with the rules of jurisdiction and procedure which may be established therein.
4. The Courts and Tribunals shall exercise only the powers indicated in the foregoing clause and those which are expressly allocated to them by law as a guarantee of some right.
5. The principle of jurisdictional unity is the basis of the organization and operation of the Courts. The law shall regulate the exercise of military jurisdiction strictly within military limits and in cases of state of siege (martial law), in accordance with the principles of the Constitution.
6. Courts of exception are prohibited.

**Article 118**

1. It is compulsory to execute the sentences and other final judgments of Judges and Courts, as well as to collaborate

with them as they may require during the course of trials and execution of judgments.

#### **Article 119**

Justice shall remain free when thus provided by law, and shall in any case be so in respect to those who have insufficient means to litigate.

#### **Article 120**

1. Judicial proceedings shall be public, with the exception of those provided for in the laws of procedure.
2. Proceedings shall be predominantly oral, especially in criminal cases.
3. Judgments shall always contain the grounds therefore, and they shall be delivered in a public hearing.

#### **Article 121**

Damages caused by judicial errors as well as those arising from irregularities in the administration of justice, shall be subject to compensation by the State, in accordance with the law.

#### **Article 122**

1. The Organic Law of the Judiciary shall determine the setting up, operation and control of the Courts and Tribunals as well as the legal status of professional Judges and Magistrates, who shall form a single body, and of the staff serving in the administration of justice.
2. The General Council of the Judiciary is its governing body. An organic law shall set up its statutes and the system of incompatibilities applicable to its members and their functions, especially in connection with appointments, promotions, inspection and the disciplinary system.
3. The General Council of the Judiciary shall consist of the President of the Supreme Court, who shall preside it, and of twenty members appointed by the King for a five-year term, amongst whom shall be twelve judges and magistrates of all judicial categories, under the terms established by the organic law; four nominated by the Congress of Deputies and four by the Senate, elected in both cases by three-fifths of their members from amongst lawyers and other jurists of acknowledged competence and over fifteen years of professional experience.

#### **Article 123**

1. The Supreme Court, with jurisdiction over the whole of Spain, is the highest judicial body in all branches of justice, except with regard to the provisions concerning Constitutional guarantees.
2. The President of the Supreme Court shall be appointed by the King, on being proposed by the General Council of the Judiciary, in the manner to be established by the law.

#### **Article 124**

1. The Office of the Public Prosecutor, without prejudice to the functions entrusted to other bodies, has as its mission that of promoting the operation of justice in the defence of the rule of law, of citizens' rights and of the public interest as safeguarded by the law, whether *ex officio* or at the request of interested parties, as well as that of protecting the independence of the Courts and securing through them the satisfaction of social interest.
2. The Office of Public Prosecutor exercises its duties through its own bodies in accordance with the principles of unity of action and hierarchical dependency, subject in all cases to the principles of the rule of law and of impartiality.
3. The organic statute of the Office of the Public Prosecutor shall be regulated by law.
4. The State Public Prosecutor shall be appointed by the King on being nominated by the Government, after consultation with the General Council of the Judiciary.

#### **Article 125**

Citizens may engage in popular action and participate in the administration of justice through the institution of the Jury, in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts.

**Article 126**

The judicial police are answerable to the Judges, the Courts and the Public Prosecutor when exercising their duties of crime detection and the discovery and apprehension of criminals, under the terms to be established by the law.

**Article 127**

1. Judges and Magistrates, as well as Public Prosecutors, whilst actively in office, may not hold other public office nor belong to political parties or trade unions. The law shall lay down the system and methods of professional association for Judges, Magistrates and Prosecutors.

2. The law shall establish the system of incompatibilities for members of the Judiciary, which must ensure their total independence.

Suedia

**Chapter 11. Administration of justice and general administration**

**Art. 1.** The Supreme Court is the highest court of general jurisdiction, and the Supreme Administrative Court is the highest administrative court. The right to have a case tried by the Supreme Court or by the Supreme Administrative Court may be restricted in law. A person may serve as a member of the Supreme Court or the Supreme Administrative Court only if he holds currently, or has held previously, an appointment as a permanent salaried justice of the Court.

A court of law other than the Supreme Court or the Supreme Administrative Court must be established by virtue of law. Provisions prohibiting the establishment of a court of law in particular cases are laid down in Chapter 2, Article 11, paragraph one.

There shall be a permanent salaried judge in any court under paragraph two. Exceptions to this rule in respect of courts established to try a specific group or specific groups of cases may however be laid down in law.

**Art. 2.** No public authority, including the Riksdag, may determine how a court of law shall adjudicate an individual case or otherwise apply a rule of law in a particular case.

**Art. 3.** A legal dispute between private subjects may not be settled by an authority other than a court of law except by virtue of law. Provisions concerning examination by a court of law of a deprivation of liberty are set out in Chapter 2, Article 9.

**Art. 4.** Provisions concerning the functions of the courts relevant to the administration of justice, the principal features of their organisation, and court procedure are laid down in law.

**Art. 5.** A person who has been appointed a permanent salaried judge may be removed from office only provided

1. he has shown himself through a criminal act or through gross or repeated neglect of his official duties to be manifestly unfit to hold the office;

2. he has reached the relevant retirement age or is otherwise obliged by law to retire on pension.

If a permanent salaried judge has been removed from office by means of a decision of a public authority other than a court of law it shall be possible for him to call for the decision to be examined

before a court of law. The same applies to any decision as a result of which a permanent salaried judge is suspended from duty or ordered to undergo examination by a medical practitioner.

If organisational considerations so dictate, a person who has been appointed a permanent salaried

judge may be transferred to another judicial office of equal status.

**Art. 6.** The Chancellor of Justice, the Prosecutor General, the central administrative boards and the county administrative boards come under the Government. Other State administrative authorities come under the Government, unless they are authorities under the Riksdag according to the present Instrument of Government or by virtue of other law.

Administrative functions may be entrusted to a local authority.

Administrative functions may be delegated to a limited company, association, collective, foundation, registered religious community or any part of its organisation, or to a private person. If such a function involves the exercise of public authority, delegation shall be made by virtue of law.

**Art. 7.** No public authority, including the Riksdag and the decision-making bodies of local authorities, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis a private subject or a local authority, or relating to the application of law.

**Art. 8.** No judicial or administrative function may be performed by the Riksdag except inasmuch as this follows from fundamental law or from the Riksdag Act.

**Art. 9.** Appointments to posts at courts of law or administrative authorities coming under the Government are made by the Government or by a public authority designated by the Government.

When making appointments to posts within the State administration attention shall be directed only to objective factors such as merit and competence.

Only a Swedish citizen may hold or exercise the functions of a judicial office, an office coming directly under the Government, an office or appointment as head of an authority coming directly under the Riksdag or the Government, or as a member of such an authority or its governing board, an appointment in the Government Offices coming directly under a minister, or an appointment as a Swedish envoy. Also in other cases only a person who is a Swedish citizen may hold an office or appointment if the holder of such an office or appointment is elected by the Riksdag. Swedish nationality may otherwise be stipulated as a condition of qualification to hold an office or appointment under the State or under a local authority only with support in law or in accordance with conditions laid down in law.

**Art. 10.** Basic rules concerning the legal status of civil servants in respects other than those covered in this Instrument of Government are laid down in law.

**Art. 11.** Re-opening of closed cases and restoration of lapsed time are granted by the Supreme Administrative Court or, inasmuch as this has been laid down in law, by an inferior administrative court if the case concerns a matter in respect of which the Government, an administrative court or an administrative authority is the highest instance. In all other cases, re-opening of a closed case or restoration of lapsed time is granted by the Supreme Court or, inasmuch as this has been laid down in law, by another court of law which is not an administrative court.

More detailed rules concerning the retrial of closed cases and restoration of lapsed time may be laid down in law.

**Art. 12.** The Government may approve an exception from a provision of a statutory instrument, or from a provision adopted by virtue of a Government decision, unless otherwise provided in an act of law or in a decision concerning a budget appropriation.

**Art. 13.** The Government may, by exercising clemency, remit or reduce a penal sanction or other

legal effect of a criminal act, and remit or reduce any other similar intervention by a public authority concerning the person or property of a private subject.  
Where exceptional grounds exist, the Government may order that no further action shall be taken to investigate or prosecute a criminal act.

**Art. 14.** If a court or other public body finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision may not be applied. If the provision has been approved by the Riksdag or by the Government, however, it shall be waived only if the error is manifest.

## Ungaria

### Courts

#### Article 25

(1) Courts shall administer justice. The supreme judicial body shall be the Curia.

(2) Courts shall decide on:

- a) criminal matters, civil disputes, other matters defined by laws;
- b) the legitimacy of administrative decisions;
- c) the conflict of local ordinances with other legislation and their annulment;
- d) the establishment of a local government's neglect of its statutory legislative obligation.

(3) In addition to the responsibilities defined by Paragraph (2), the Curia shall ensure uniformity in the judicial application of laws and shall make decisions accordingly, which shall be binding on courts.

(4) The judiciary shall have a multi-level organisation. Special courts may be established for particular groups of cases, especially for administrative and labour disputes.

(5) The organs of judicial self-government shall participate in the administration of the courts.

(6) An Act may authorise other organs to act in particular legal disputes.

(7) The detailed rules for the organisation and administration of courts, and of the legal state and remuneration of judges shall be regulated by a cardinal Act.

#### Article 26

(1) Judges shall be independent and only subordinated to laws, and may not be instructed in relation to their judicial activities. Judges may only be removed from office for the reasons and in a procedure defined by a cardinal Act. Judges shall not be affiliated to any political party or engage in any political activity.

(2) Professional judges shall be appointed by the President of the Republic as defined by a cardinal Act. No person under thirty years of age shall be eligible for the position of judge. With the exception of the President of the Curia, no judge may serve who is older than the general retirement age.

(3) The President of the Curia shall be elected from among its members for nine years by Parliament on the recommendation of the President of the Republic. The election of the President of the Curia shall require a two-thirds majority of the votes of the Members of Parliament.

#### Article 27

(1) Unless otherwise provided for by law, courts shall administer justice in panels.

(2) Non-professional judges shall also participate in the administration of justice in the cases and ways defined by laws.

(3) Sole judges and chairpersons of panels shall be professional judges. In cases defined by law, court secretaries may also act within the competence of sole judges subject to Article 26(1).

#### Article 28

In applying laws, courts shall primarily interpret the text of any law in accordance with its goals and the Fundamental Law. The interpretation of the Fundamental Law and other laws shall be based on the assumption that they serve a moral and economical purpose corresponding to common sense and the public benefit.

#### Article 29

### **Prosecution services**

(1) The Supreme Prosecutor and prosecution services shall contribute to the administration of justice by enforcing the State's demand for punishment. Prosecution services shall prosecute offences, take action against any other unlawful act or omission, and shall promote the prevention of unlawful acts.

(2) By statutory definition, the Supreme Prosecutor and prosecution services shall:

- a) exercise rights in conjunction with investigations,
- b) represent public accusation in court proceedings,
- c) supervise the legitimacy of penal enforcement,
- d) exercise other responsibilities and competences defined by law.

(3) The organisation of prosecution shall be led and directed by the Supreme Prosecutor, who shall appoint prosecutors. With the exception of the Supreme Prosecutor, no prosecutor may serve who is older than the general retirement age.

(4) The Supreme Prosecutor shall be elected from prosecutors for nine years by Parliament on the recommendation of the President of the Republic. The election of the Supreme Prosecutor shall require a two-thirds majority of the votes of the Members of Parliament.

(5) The Supreme Prosecutor shall present to Parliament an annual report on his or her activities.

(6) No prosecutor may be affiliated to any political party or engage in any political activity.

(7) The detailed rules for the organisation and operation of prosecution services, and the legal status and remuneration of the Supreme Prosecutor and prosecutors shall be defined by a cardinal Act.