

Constitutional Court Act 1953 - VfGG

1. Part
Organization of the Constitutional Court

§ 1. (1) The Constitutional Court consists of one President, one Vice President twelve further members and six substitute members.

(2) Any vacancies for the President, the Vice President or any of the other members of the substitute members of the Constitutional Court shall be advertised for general invitation of applications in the "Amtsblatt zur Wiener Zeitung" (Official Gazette of the Wiener Zeitung) and in the media of the Laender determined for official announcements. The invitation for applications is the responsibility of the respective chairman of such executive body in charge of having to submit the proposal for the nomination in accordance with Art. 147 para 2 B-VG (Federal Constitution Act).

§ 2. (1) From among its members the Constitutional Court shall elect permanent reporters for a three year period. The vice president can also assume the function of a permanent reporter. As long as an election is not possible, it is the president of the Constitutional Court who appoints the permanent reporters not yet elected.

(2) The president or the vice president, at least two of the permanent reporters and at least two substitute members must be resident in Vienna.

§ 3. (1) The Constitutional Court shall be under the control of the president; he presides over the hearings and deliberations.

(2) In case he is prevented from attending, it is the vice president who shall act for him.

(3) If also he is prevented from attending, the eldest by years from the members of the Constitutional Court shall take the chair.

(4) The provisions of paras 2 and 3 shall also apply if the position of the president is vacant.

(5) The president can also put the vice president in charge of the chair during hearings and deliberations, with the exception of a case of para 2. The vice president is entitled to participate and cast his vote in any hearings not chaired by him.

§ 4. (1) Starting with the first day of the month following their appointment, the members of the Constitutional Court shall receive a remuneration calculated as a percentage rate from the initial amount according to § 1 of the Federal Constitution Act on the limitation of salaries of holders of public offices, Federal Law Gazette I No.64/1997, as follows:

1. the president 180 percent,
2. the vice president and the permanent reporters 160 percent,
3. the other members 90 percent.

(2) If the vice president also assumes the office of a permanent reporter, he shall do so without any additional remuneration.

(3) For each meeting they attended substitute members of the Constitutional Court shall receive for each day of hearing a remuneration in an amount equivalent to one tenth of the remuneration due for one month to such members as named in para 1 subpara 3.

(4) In addition to the remuneration, the members of the Constitutional Court shall receive additional amounts resulting from applying the provisions of §§ 3 paras 3 and 7 and 7 para 2 of the Salaries Act 1956, Federal Law Gazette No. 54, accordingly.

(5) The president of the Constitutional Court is entitled to an official car, which in consensus shall also be available to the vice president and the other members of the Constitutional Court for official travelling. § 9 para 2 of the Federal Salaries Act, Federal Law Gazette I No. 64/1997 shall apply.

(6) Except for the remuneration, the president of the Constitutional Court ranks at the same level with a Federal Minister, the vice president with a State Secretary who is in charge of determined duties.

§ 5a. (1) The members and substitute members not resident in Vienna shall be reimbursed, in addition to the remuneration fixed in § 4, the travelling expenses for each hearing as well as the costs incurred by their stay in Vienna. The amount of the travelling expenses and the costs incurred by their stay in Vienna shall be determined separately by the Federal Government.

(2) The reimbursements under § 4 and para 1 are exempt from attachment.

§ 5b. (1) The members of the Constitutional Court shall, upon their application, be granted a monthly retirement payment after they terminate their period in office. The retirement pay shall be due as of the first of the month following the application, however not earlier than as of expiry of the period for which they continued to receive remuneration in accordance with § 5 para 1.

(2) For the retirement pay the provisions regulating pension payments for civil servants accordingly with the proviso that there shall be no claim to a retirement pay if the term in office terminates due to one of the reasons named in § 10 para 1 subparas b and c, that the basis of calculation of the retirement pay amounts to 80 percent of the remuneration fixed in § 4 para 1 subpara 3, that after completing eight years in office 40 percent of the basis of calculation of the retirement pay shall be due and that the retirement pay increases by 5 percent for each further full year of activity in office and by 0.417 percent for each further full month of activity in office. § 5 para 2 of the Pensions Act 1965, Federal Law Gazette No. 340 shall apply with the proviso that

1. removal from office shall replace retirement before completion of the 65th year of life in accordance with § 10 para 1 subparas a or d of the subject Federal Act and

2. the 80 % calculation basis for the retirement benefit is to be reduced by 0.28 percentage points for each month, to be counted from the date of removal from office until expiry of the month when the Member completes his 65th year of life.

The retirement benefit must not be less than 40 % of its calculation basis. Regarding the age to be taken into account in terms of paras 1 and 2, § 236c para 1 of the Civil Servants' Employment Act 1979, Federal Law Gazette No. 333 shall apply. Any pension benefit expectancies accrued by 31st December 2003 under the provisions of the law as applicable by that date remain unaffected.

§ 5c. (1) Such Members having performed the duties of the President, the Vice President or of a permanent reporter are entitled to an allowance in addition to their retirement benefit. For each full year during which one of these functions is held, this allowance amounts to 8 % of the difference between the remuneration in accordance with § 4 para 1 subparas 1 and 2 and the remuneration in accordance with § 4 para 1 subpara 3, however not more than 80 per cent of the difference amount corresponding to the highest office held. Times not becoming effective for the higher function shall for this purpose be added to the duration of the next lower office held. In case of a reduction of the retirement benefit calculation basis in accordance with § 5b para 2 last clause, the maximum allowance determined in the 2nd clause shall be reduced accordingly.

(2) If the Member is not yet entitled to any retirement benefit in terms of § 5b, however such Member has held offices in terms of para 1 for at least three years, he shall upon application be awarded a monthly retirement benefit equal to the amount of the allowance.

§ 5e. The Member may waive the right to retirement benefits (allowance) under §§ 5b and 5c or under one of these. To the express such waiver has not been stated, the Member shall pay, by way of deduction, 22.79 percent

of the respective remuneration he is entitled to, or, in the case of the partial waiver, of the respective portion of the remuneration, as well as of the additional monthly salaries provided for by the law. Withdrawal of such waiver is not possible.

§ 5f. If a Member of the Constitutional Court dies during his term of office or the person entitled to receive a pension benefit pay in terms of § 5b, his widow and/or surviving dependants are entitled to a maintenance support payment. If a Member of the Constitutional Court dies during his term of office, his widow and/or dependants are entitled to a compensation payable at death. The compensation payable at death and the maintenance payment shall be subject to the same type of provisions applicable to civil servants and their widow and/or dependents. Calculation of maintenance payments shall be based on the pension benefit in terms of § 5b and the allowance in terms of § 5c.

§ 5g. §§ 5b through 5e and § 5f first and last clause shall also apply to former Members of the Constitutional Court and their surviving dependents and widow(er).

§ 5h. The provisions on the contribution in accordance with § 13a of the Pensions Act 1965, Federal Law Gazette No. 340/1965, shall be applied with the following proviso:

1. The term „monthly recurrent payments under the subject Federal Act“ shall be replaced by “retirement (old age) benefits in accordance with §§ 5b through 5g of the subject Federal Act”.
2. The contribution to be paid in accordance with subpara a increases by 5.7 percentage points each.

Attention

Constitutional provision

§ 5i. (Constitutional provision) (1) The total remuneration in accordance with § 4 and the other salaries, retirement benefits and fees a Member of the Constitutional Court draws from a legal entity subject to control by the Board of Audit must not exceed the salary of a Federal Minister.

(2) For former Members of the Constitutional Court, para 1 shall apply with the proviso that the pension benefit (allowance) under §§ 5b and 5c shall replace the remuneration under § 4.

(3) If the total of rights under para 1 or 2 exceeds the limits stated there, the total of emoluments in terms of § 4 is to be reduced accordingly.

(4) If a Member or former Member of the Constitutional Court is entitled to emoluments for an activity or former activity in an organ of the European Communities (Art. 23c para 1 B-VG[Federal Constitution Act]), the rights for payments in accordance with paras 1 or 2 shall be due, contrary to the provisions of para 3, only to the extent by which the total of rights for payments due from such organs of the European Community(with the exception of those expressly granted as reimbursement for the expenditures resulting from the residence on the place of work) falls short of the top limit stated in paras 1 or 2.

(5) The Member or former Member of the Constitutional court is obliged to report without delay any and all rights to payments stated in paras 1 through 4 as well as modifications of such rights to all offices from which payments are due to him.

(6) Paras 1 through 5 shall also apply to the maintenance benefits of the widow and surviving dependents of any former Member of the Constitutional Court.

§ 6. (1) The Vice President and all other Members shall be invited to attend each hearing of the Constitutional Court.

(2) In case a Member is prevented from attending, a substitute Member shall be invited to attend. In doing so, allowance is to be made for the fact whether the Member prevented from attending has been appointed on basis of a proposal of the Federal Government, the National Council or of

the Federal Council. The same shall apply in case the position of a Member has become vacant, for the time until it will be filled. *Vors*

§ 7. (1) A quorum is given in the Constitutional Court whenever the Chairman and at least eight voting Members are present.

(2) In hearings on the following matters the presence of the Chairman and four voting Members is sufficient to constitute a quorum:

a) pecuniary claims against the Federation, the Laender, the municipalities and the municipality associations which are neither to be decided by the courts of law nor by a ruling of an administrative authority (Art. 137 B-VG);

b) conflicts of jurisdiction between courts of law and administrative authorities (Art. 138 para 1 subpara a of the Federal Constitution Act);

c) all cases decided in chambers, with the exception of cases of § 10 paras 2 and 4;

d) upon a motion of the reporter with the consent of the chairman when hearing complaints regarding cases in which the issue of the law already has been sufficiently clarified by precedent court decisions.

§ 8. Before entering into office the Members of the Constitutional Court solemnly vow to unconditionally observe the Constitution and all other laws of the Republic of Austria and to diligently comply with the duties of their office.

(2) The President and the Vice President shall be sworn in office by the Federal President, the Members and the Substitute Members by the President of the Constitutional Court.

(3) Adding a religious oath to the vows to be made in accordance with paras 1 and 2 is permitted.

§ 9. It is up to the Federal President to grant for the President or the Vice President leave. Leave for the Members and the Substitute Members of the Constitutional Court is granted by the President of the Court.

§ 10. (1) A Member or a Substitute Member shall be removed from office by decision of the Constitutional Court if:

a) any occurrence excludes, in accordance with Art. 147 para 4 of the Federal Constitution Act, the Member (substitute Member) from further belonging to the Constitutional Court,

b) the conditions stated in Art. 147 para 7 of the Federal Constitution Act occur,

c) if by his/her conduct in office or otherwise the Member (Substitute Member) has proved unworthy of the respect and confidence required by such office or has grossly disregarded the obligation of non-disclosure of confidential information of his office, or

d) if the Member (Substitute Member) by any physical defect or mental disorder becomes incapacitated to comply with the duties of the office.

(2) In the cases stated in para 1 under paras a through c, the proceeding of removal of a Member (Substitute Member) from office may only be instituted, after hearing such Member (Substitute Member), on basis of an order of the Constitutional Court issued by the President or the Member of the Constitutional Court appointed for such case by the President. The order is issued in chambers after hearing the Procurator General and shall specify the charges. The Constitutional Court may also decide ex officio in chambers the preliminary removal from office of a Member against whom the proceeding has been instituted. §§ 15, 16, 18 through 23 of the Judges' Disciplinary Act dated 21st May 1868, Imperial Law Gazette No. 46, shall apply accordingly to the further course of the proceeding. If failure to comply with a duty constitutes an act punishable by the courts, the provisions of §§ 33 and 34 of the aforementioned Act shall apply accordingly.

(3) The provisions of § 52 para 2 and § 53 of the mentioned Judges' Disciplinary Act shall apply accordingly to the proceeding in a case of para 1 subpara d.

(4) A decision of the Constitutional Court in accordance with para 1 can

be rendered only with a majority of at least two thirds of the Members and shall call for the removal of a Member (Substitute Member) from office. In a case of para 1 subpara b, the Constitutional Court shall only state that the Member (Substitute Member) disregarded three successive invitations to attend a hearing of the Constitutional Court without presenting an adequate excuse; such statement is the equivalent of a decision of removal from office.

§ 11. The President shall inform the Federal Chancellor whenever a position in the Constitutional Court has become vacant, and the Federal Chancellor shall do what is necessary to seek the proposal for nomination of a candidate for this position (Art. 147 para 2 of the Federal Constitution Act).

§ 12. (1) Challenging a Member (substitute Member) in a case to be heard before the Constitutional Court is not admissible.

(2) A Member (Substitute Member) of the Constitutional Court is excluded from exercising his office:

a) in such cases in which a judge would be excluded in accordance with the procedural laws referred to in this act;

b) in a case of having been involved in the issue of a ruling in an administrative proceeding regarding the case filed with the Constitutional Court.

(3) Members (Substitute Members) having participated in taking a decision of an election authority are excluded from any hearing and decision regarding a decision of such authority.

(4) In examining the conformity of regulations or public notices on the republication of an act (treaty) with the law, such Members (Substitute Members) are excluded who at the time of issue of such regulation or public notice were members of the Federal Government or the respective Laender government. In examining the conformity of Federal acts such Members (Substitute Members) are excluded who were at the time of the act being adopted part of the respective legislative authority. In examining the conformity of Federal acts with the Constitution, such Members (substitute Members) are also excluded who were part of the Federal Council at the time of the National Council's voting on the proposed law. In examining the conformity of treaties with the law, the provisions of the first clause, to the extent covering treaties ratified in accordance with Art. 50 para 1 B-VG or treaties modifying or supplementing laws in accordance with Art. 16 para 1 B-VG, as well as the provisions of the second and third clause shall be applied accordingly.

(5) In examining the conformity of regulations or of public notices on the republication of an act (treaty) with the law, the conformity of acts with the Constitution or the conformity of treaties with the law, if such examination is to be carried out upon request of a court of law (an independent administrative panel or the Federal Procurement Authority) such Members (Substitute Members) are excluded who are part of the court (independent administrative panel, Federal Procurement Authority) issuing the request.

(6) The Constitutional Court itself decides in chambers on the existence of any reason for exclusion.

§ 13. (1) Irrespective of Art. 65 para 2 subpara a B-VG, such matters involving the administrative staff of the Constitutional Court as well as the material requirements, shall be handled by the President.

(2) Before taking important decisions on staff, in particular engaging new employees or conferring management functions on administrative employees, the staff panel, consisting of the President, the Vice President and the permanent reporter of the Constitutional Court, shall be heard.

§ 13a. (1) An office of records shall be organized within the Constitutional Court. If the President appoints a Member of the Constitutional Court to be head of the office of records, such Member is, with regard to remuneration and pension benefit rights, placed on the same level as a permanent reporter.

(2) The office of records is in particular in charge of concise registering of the decisions of the Constitutional Court, in case of necessity also the decisions of other supreme courts and the relevant literature.

§ 14. (1) The Constitutional Court autonomously adopts its Standing Orders which shall be notified in public by the Federal Chancellor.

(2) The Standing Orders shall also provide for whatever instruments - in addition to rendering punishment for frivolous procedure or contempt of court in accordance with § 28 - shall be available to the President in executing the Standing Orders and to maintain law and order during hearings and deliberations.

(3) At the end of each year the Constitutional Court prepares a report on its activity and the experience gathered thereby and forwards this report to the Federal Chancellor.

2. Part

The proceeding before the Constitutional Court

1. Main Chapter General Provisions

§ 15. (1) Appeals addressed to the Constitutional Court under Art. 126a, 127c, 137 through 145, 148f and 148i B-VG shall be in writing.

(2) The appeal shall contain the reference to the article of the Federal Constitution Act on basis of which recourse is sought with the Constitutional Court, the presentation of the facts being the basis of the request and a substantiated request for a decision.

§ 16. The President assigns each case arising to a permanent reporter. In exceptional cases he may also assign a case for report to a different Member of the Constitutional Court.

§ 17. (1) Each application shall be accompanied by a sufficient number of copies including the enclosures permitting service of one copy to each party (authority) to be summoned to the hearing.

(2) Complaints according to § 37, applications according to §§ 46, 48, 50, 57, 62 und 66 as well as appeals shall, unless covered by what is provided in § 24 para 2, shall be filed by a lawyer holding a power of attorney.

(3) Applications of one third of the members of the National Council, the Federal Council or a Laender Parliament in accordance with art. 140 para 1 of the Federal Constitution Act need not be filed by a lawyer holding a power of attorney.

(4) The filings may also contain legal arguments.

§ 17a. For applications in accordance with § 15 para 1 including the enclosures a filing fee is payable in accordance with the following provisions:

1. The fee amounts to 180 Euros. The Federal Chancellor and the Federal Minister of Finance are authorized, in coordination with the Main Committee of the National Council, to fix a different amount for the filing fee as soon and to the extent the consumer price index published by the Bundesanstalt "Statistik Österreich" (Federal Institute "Statistics Austria") or any other index replacing it has varied by more than 10% in comparison with the index figure published for the month of January 1997, taken as basis in comparison with the index figure on which the last fixing was based. The new amount shall be calculated on basis of the amount stated in para 1 in relation to the change between the index figure published for January 1997 and the index figure relevant for the new fixing, rounded down to full Euro figures.

2. Regional public bodies are exempt from the duty to pay the fee.

3. The fee becomes payable and due at the time of presenting the filing.

4. The fee shall be paid, mentioning the purpose of the payment, by transfer to an account of the Inland Revenue Office for Fees and Transfer

Taxes in Vienna. Payment of the fee is to be evidenced by an original proof of payment receipt confirmed by a post office or a bank. This document shall accompany the filing. Upon request, the filing office shall return the document to the petitioner (applicant) after having marked it clearly and confirm on the office copy of the filing that payment of the fee has been evidenced by presentation of a proof of payment receipt. For each filing a separate receipt shall be presented. Lawyers (chartered accountants) may evidence payment of the fee also by a copy of the transfer order to be forwarded at the latest on the day of the filing, if they confirm on it indicating date and signature that the irrevocable money transfer order is being given simultaneously .

5. The Inland Revenue Office for Fees and Transfer Taxes in Vienna has first instance jurisdiction to collect the fee.

6. In addition, the provisions of the Fees Act 1957, Federal Law Gazette No 267 are applicable for submissions with exception of § 11 para 1 and § 14, as well as the §§ 74,, 203 and 241 paras 2 and 3 of the Federal Fiscal Code 1961, Federal Law Gazette No.194.

§ 18. The reporter shall return filings not in compliance with the provisions of §§ 15 and 17 or with other formal requirements contained in the subject Federal Act to the party having submitted the filing, for correction within a term to be granted.

§ 19. (1) With the exception of decisions according to § 10, § 36d, § 92 and § 93, the decisions of the Constitutional Court in connection with § 92 shall be taken after a public oral hearing to which applicant, opponent and any other involved parties shall be summoned.

(2) The decisions shall be pronounced and issued in the name of the Republic.

(3) Upon motion of the reporter, the following matters may be decided in chambers without any further proceeding and without previous hearing:

1. to reject hearing a complaint in accordance with art. 144 para 2 B-VG
2. to dismiss an application because

- a) the matter is clearly not in the jurisdiction of the Constitutional Court,
- b) a statutory deadline has been exceeded,
- c) a defective formal requirement has not been remedied,
- d) the matter has been decided with final effect and
- e) applicant's lack of right to apply.

3. to drop the proceeding because the application has been withdrawn or the complaint has been accepted (§ 86).

(4) The Constitutional Court may dispense with an oral hearing if the writings of the parties to the proceeding before and the files submitted to the Constitutional Court show that any oral discussion is not expected to further clarify the legal matter. Upon motion of the reporter, also the following matters may be decided in chambers:

1. To dismiss a complaint if evidently no constitutional right has been infringed;
2. cases in which the legal issue has already been sufficiently clarified on basis of decisions rendered so far;
3. to grant a complaint having caused the repeal of a regulation not in compliance with the law, an unlawful public notice on the republication of a statute (treaty), an unconstitutional statute or a treaty contrary to the law.

(5) In addition, the Court shall decide by order in chambers - except in cases provided for in the subject Federal Act and in the legislative acts stated in § 35 para 1 - on motions for execution of the decisions of the Constitutional Court in accordance with art. 146 para 2 of the Federal Constitution Act and on motions to define the costs in the case of a proceeding having been dropped.

§ 20. (1) Merely procedural matters organized in the pre-trial phase and rulings only serving to prepare the hearing shall be decided by the

reporter without seeking a court order.

(2) In preparation of the hearing the reporter may in particular order parties, witnesses, expert witnesses and informers to be questioned, a court inspection to be held and documents to be procured, and he may seek to obtain information by authorities. The authority shall make the files available. In case the authority did not make the files available, did not submit a reply or, if it did, failed to include the files of the administrative proceeding, the Constitutional Court may decide, provided that he expressly drew the authority's attention in advance to the consequence of this default, on basis of applicant's statements.

(3) Upon presentation of files to the Constitutional Court the authorities may indicate whether and if so, which files or part thereof, are to be excluded in the public interest from the otherwise usual right of inspection of the parties involved. In case the reporter deems the exclusion of files or parts thereof to be too restrictive, he shall hear the authority on his doubts and may, as the case may be, seek a court order in chambers regarding this matter.

(4) The reporter may proceed with the preparatory investigations himself or request the authority having jurisdiction to do so.

(5) Letters of request to authorities shall be issued by the President.

(6) Copies of decisions, court orders and other matters settled by the Constitutional Court and executed in writing shall be certified by the office quoting the signatures given on the original copy with the remark "for the correctness of the copy".

§ 21. (1) Once scheduled, a hearing may be postponed only for important reasons. Any such motion is neither in need of any consent by the opponent, nor would such consent be satisfactory.

(2) If the Court is assembled, it orders the postponement, otherwise it is up to the President to issue the respective ruling.

§ 22. The President orders the hearing to be held. It shall be announced in advance by being posted on the official bulletin board and published in the "Official Gazette to Wiener Zeitung".

§ 23. Failure of the parties to appear however does not prevent the hearing to take place and the decision to be rendered.

§ 24. (1) The parties may, irrespective of what is provided in § 17 para 2, conduct their matter personally before the Constitutional Court or be represented by a lawyer.

(2) The Federation, the Laender, the municipalities and the municipality associations, the foundations, funds and institutes run by organs of such public bodies or by persons (associations of persons) appointed for this purpose by the public bodies mentioned, and the other self-administrating public bodies as well as their authorities will be represented by their organs authorized for representation or holding a power of attorney.

(3) The Federation, the Laender and the foundations, funds and institutions run by organs of the Federation or of the Laender or by persons (associations of persons) appointed for this purpose by organs of these bodies, as well as their authorities, can also be represented by the Federal Attorney's Office, and the Laender, the municipalities and municipality associations and the foundations, funds and institutions run by organs of these public bodies or by persons (associations of persons) appointed for this purpose by organs of these public bodies, as well as their authorities, can also be represented by organs of the Federal Ministries competent in the matter. The Federal Attorney's Office and the organs of the Federal Ministries however may represent a legal entity other than the Federation only in such case where neither a Federal Authority nor the Federation itself are involved in the proceeding and in the case of representation of authorities the Federal Minister competent for the matter, in all other cases the Federal Minister of Finance, agree.

(4) The representation by a lawyer or by the Federal Attorney's Office does not exclude that also the parties themselves appear and submit statements in their own name.

(5) The executive bodies and agents appearing for the parties shall present their powers of attorney.

(6) A regulation of the Federal Government shall determine whether and for which of the agents named in paras 1 and 3 wearing the official robe shall be declared mandatory or admissible during the hearings of the Constitutional Court.

§ 25. The hearing begins with the reporter's statement. His report shall contain the facts as they appear in the files, the wording of the motions filed by the parties and the result of the deliberations, if any. The legal arguments contained in the written filings submitted shall be read only in case of a filing of a party which failed to appear, or if one of the parties present so request.

§ 26. (1) Whenever possible, the decision shall be rendered immediately after termination of the oral hearing and be pronounced immediately including the essential reasons. Pronouncing the decision is not depending on presence of the parties.

(2) If it is not possible to render the decision immediately after termination of the oral hearing, it will be either pronounced orally, in a special public hearing to be announced to the parties immediately upon termination of the hearing, or at the discretion of the Court in writing by service of a copy.

§ 27. Any reimbursement of the costs of the proceeding shall be the case only if expressly provided for in the subject Federal Act. If any award of costs is requested, it is not necessary to record detailed amounts of costs regularly accruing, in particular for the application (the complaint) and for participation in hearings.

§ 28. (1) Persons disturbing the official activity of the Constitutional Court or through improper conduct may be fined, in case a call to order was of no avail, by a punishment for contempt of court up-to an amount of 36 euros and, in case of being not collectible, a confinement up to three days may be imposed. In case of aggravating circumstances a separate or simultaneous sentence of imprisonment up-to the period of time mentioned is admissible. The Constitutional Court may impose such penalties also on persons using offensive language in written submissions. Imposing a penalty for contempt of court shall not exclude criminal prosecution of the same offence.

(2) Persons who in an apparently frivolous manner request the service of the Constitutional Court or who give false information in order to delay a matter can be fined up-to 109 euros by the Constitutional Court or a confinement sentence of up-to nine days in case it is uncollectable.

(3) The penalties imposed for contempt of court or frivolous action shall be collected in favour of the Federation.

(4) The courts of law shall be in charge of execution of the orders of the chairman in accordance with para 1 or of the Constitutional Court in accordance with paras 1 or 2. The order shall be deemed to be the executory title.

§ 29. (1) Minutes shall be kept on the hearing; they shall contain the name of the chairman, the voting Members of the Constitutional Court present, the parties present including their legal counsel as well as the essential points of the hearing, in particular the motions filed by the parties.

(2) Separate minutes shall be kept on the deliberations and vote in chambers. Each set of minutes shall be signed by the chairman and the keeper of the minutes.

§ 30. (1) The deliberations and the vote are not public.

(2) The deliberation begins with the motions of the reporter, after which the debate is initiated. After termination of the debate the voting takes place.

(3) The chairman determines the order of sequence of the motions to be voted on. Upon a motion of a voting judge a court decision shall be sought

for this point.

The voting judges shall cast their votes in accordance with their age, beginning with the oldest judge present.

§ 31. All orders shall be passed with a definite majority. The chairman abstains from voting. If out of more than one opinion at least one was able to accumulate half of all votes, also the chairman is obliged to cast his vote. If in such case he joins an opinion accumulating half of the votes, it has been decided. If in a tie of votes the only difference between two opinions is on amounts, the chairman may also determine an average of the two amounts. Decisions in accordance with § 19 para 3 subpara 1 and para 4 subpara 1 require a unanimous vote.

§ 32. (1) In case none of the opinions reached the majority required for a decision, the question shall be repeated.

(2) If on this occasion it still does not obtain the required number of votes, a new vote shall take place, for which the motions filed shall, if need be, broken down into a number of separate questions.

(3) A decision adopted on one item shall be used as basis in deliberating and deciding on all subsequent items in a way that also those who did not vote in favour of the earlier decision, have to accept it as basis from which they will have to continue to vote.

§ 33. Any reinstatement into the previous legal position because of a deadline having been exceeded is admissible only in the cases of art. 144 of the Federal Constitution Act. On such a motion the Constitutional Court shall decide in chambers.

§ 34. The proceeding may be reopened only in the cases of art. 137, 143 and 144 of the Federal Constitution Act.

On their admissibility the Constitutional Court shall decide in chambers.

§ 35. (1) To the extent the subject Federal Act does not provide differently, the provisions of the Civil Procedure Code and of the Introductory Act to the Civil Procedure Code shall be applied accordingly.

(2) The provisions of these statutes shall apply also to the calculation of deadlines; days in the mail shall not be included in the count for the deadline.

§ 36. For enforcements to be executed on basis of art. 126a, 127c or 137 B-VG the decision of the Constitutional Court shall be deemed to be the execution title.

2. Main Chapter Special provisions

A. In case of differences of opinion on the interpretation of the provisions of the law governing the jurisdiction of the Board of Audit or a Laender institution equivalent to such Board (art. 126a and art 127c of the Federal Constitution Act)

§ 36a. (1) In case of differences of opinion between the Board of Audit and another legal entity (art 121 para 1 B-VG) regarding the interpretation of the legal provisions governing the jurisdiction of the Board of Audit, the Board of Audit, in matters of the administration of Federal funds the Federal Government, and in matters of the administration of funds of the Laender, municipality associations and municipalities the Laender Government, may file the motion to seek decision by the Constitutional Court. A difference of opinion exists if one legal entity expressly denies the jurisdiction of the Board of Audit for the auditing of the administration of funds or effectively refuses such audit to be carried out, or if the Audit Board refuses to carry out particular parts of the audit.

(2) Such motion is no more admissible one year after the difference of opinion arose.

§ 36b. If recourse is sought to the Constitutional Court, the respective

action of the Board of Audit shall be interrupted or postponed until the Court has rendered its decision.

§ 36c. (1) Parties to the proceeding are the applicant and the legal entity between whom a difference of opinion arose regarding the jurisdiction of the Board of Audit, in a case of § 36a para 1 last clause the Board of Audit is also a party.

(2) If the difference of opinion arose with a legal entity which is not a regional public body, in the case of a company such regional bodies holding shares in the company, in the case of a different legal entity, such regional entities in charge of the administration of funds of the respective legal entity, shall be asked by the Constitutional Court to give an opinion and called into the proceeding as party involved.

§ 36d. A decision determining that the Board of Audit has jurisdiction to review the administration of funds of a legal entity shall also state that the legal entity is guilty of having to admit the audit of the administration of funds failing which its immediate execution will be enforced.

§ 36e. To the extent possible, the decision of the Constitutional Court is to be rendered within six months after the application has been filed and to be served to the parties of the proceeding.

§ 36f. (1) In the proceeding regarding a difference of opinion between a regional entity and the Board of Audit no reimbursement of costs shall be awarded.

(2) In the proceeding on a difference of opinion between other legal entities and the Board of Audit, the losing party as well as a party withdrawing its application before oral hearing took place, may, upon request, be imposed to reimburse the costs of the proceeding.

B. In case of pecuniary claims against the Federation, the Laender, the municipalities and the municipality associations which are neither to be decided by the courts of law nor by a ruling of an administrative authority (Art. 137 Federal Constitution Act)

§ 37. A motion for a decision shall be put forward in such complaints directed against the Federation, one of the Laender, a municipality or a municipality association as respondent.

§ 38. The complaint can also be directed at declaratory decision that a right or a legal relationship does or does not exist, if complainant has a legal interest in a declaratory decision regarding the right or the legal relationship without delay.

§ 39. (1) A copy of the complaint including enclosures shall be served to respondent with the order to submit a reply within a determined period of time. Such period shall be at least two weeks.

(2) In preparation of the hearing the parties may also be allowed to submit further statements and replies within periods of time to be determined.

(3) Any extension of such deadlines may be granted only for important reasons; it is however neither required nor sufficient to seek the consent of the opponent for this purpose.

§ 40. After receipt of the reply and any further statements requested, if applicable, or after expiry of the deadlines the President shall schedule the hearing.

§ 41. Upon request reimbursement of the costs of the proceeding may be imposed upon the losing party. Upon request reimbursement of costs may also be imposed upon petitioner if he withdraws his complaint before the beginning of the public oral hearing and costs already accrued to the responding party.

C. In case of decisions regarding issues of jurisdiction

(art. 138 Federal Constitution Act)

- a) In cases of cases of art. 138 para 1 of the Federal Constitution Act (Conflicts of jurisdiction)

§ 42. (1) The motion requesting a decision in cases of conflict of jurisdiction arising when a court and an administrative authority (art. 138 para 1 subpara a of the Federal Constitution Act) claimed jurisdiction in the same case or have themselves rendered a decision in the case (affirmative conflict of jurisdiction), may be filed only as long as a final decision has not been rendered in the merits of the case.

(2) The motion shall be filed by the supreme administrative authority of the Federation or of the Laender having jurisdiction within a period of four weeks to be counted after expiry of the day on which such authority officially obtained information of the conflict of jurisdiction.

(3) Exceeding this deadline shall result in the court having jurisdiction to decide the case.

(4) The authority filing the motion shall inform the competent courts without delay that it has filed the motion.

(5) Receipt of this information shall suspend the pending proceeding until the Constitutional Court will have rendered the decision.

§ 43. (1) If the reason for the conflict of jurisdiction is that the Administrative Court and another court or the Administrative Court and the Constitutional Court themselves or finally a court of general jurisdiction and a different court (art. 138 para 1 subpara b of the Federal Constitution Act) have claimed the jurisdiction to decide the same case (affirmative conflict of jurisdiction), the Constitutional Court shall render a decision only in such cases if a final decision on the merits has not yet been rendered by any of the abovementioned courts.

(2) If a court already has rendered a final decision on the merits, the sole jurisdiction of such court shall remain valid.

(3) If a final decision on the merits has not yet been rendered, the proceeding to decide the conflict of jurisdiction shall be instituted as soon as the Constitutional Court obtains notice of the conflict arisen, either from a report filed by one of the courts mentioned in para 1 or from the authorities or parties involved in the case, or from the contents of its own files.

(4) The authorities mentioned in para 3 are obligated to file such report.

(5) Instituting the proceeding with the Constitutional Court shall suspend the proceeding pending with the respective court until the conflict of jurisdiction will have been resolved.

§ 44. For the duration of this suspension the competent court may authorize postponement of an execution, of a seizure for security, of a temporary injunction or its postponement in accordance with the provisions of the Enforcement Code.

§ 45. The parties involved shall be summoned for the hearing. The authorities involved, including the courts, may be present at their discretion.

§ 46. (1) Only a party involved may file a motion requesting a decision in a conflict of jurisdiction which arose because a court and an administrative authority or the Administrative Court and a different court or the Administrative Court and the Constitutional Court or a court of general jurisdiction and a different court (art. 138 para 1 subparas a and b of the Federal Constitution Act) refused to assume jurisdiction (negative conflict of jurisdiction).

(2) The party involved shall be summoned for the hearing. The authorities involved, including the courts, may be present at their discretion.

§ 47. (1) If a conflict of jurisdiction between two of the Laender or between one of the Laender and the Federation (art. 138 para 1 subpara c of the Federal Constitution Act) arises because each one of the Laender or one

of the Laender and the Federation claimed to be authorized to issue a ruling or render a decision regarding the same administrative matter (affirmative conflict of jurisdiction), each one of the governments involved is entitled to file a motion for a decision.

(2) The motion shall be filed within a period of four weeks to be counted from expiry of the day on which the government filing the motion officially obtained information of the conflict of jurisdiction.

(3) The government filing the motion shall without delay notify the government involved about the motion.

(4) Recourse to the Constitutional Court results in suspension of the proceeding pending with the administrative authorities.

§ 48. In a case of a conflict of jurisdiction according to §§ 42, 43 and 47, the persons involved in the proceeding are entitled to request the administrative or judicial authority in charge of filing a motion to render a decision resolving the conflict of jurisdiction in terms of the law. If such request is not complied with within a four weeks' period, the party itself is entitled to file the motion to render a decision resolving the conflict of jurisdiction within another four weeks' time with the Constitutional Court.

§ 49. (2) The governments involved and the parties involved in the case shall be summoned for the hearing.

§ 50. (1) If a conflict of jurisdiction arises (art. 138 para 1 subpara c of the Federal Constitution Act) because two of the Laender or one of the Laender and the Federation have denied having the jurisdiction to issue a ruling or render a decision (negative conflict of competence), the party whose claim was dismissed is entitled to file a motion requesting a decision.

(2) The applicant and the governments involved shall be summoned for the hearing.

§ 51. The decision of the Constitutional Court regarding the jurisdiction shall also pronounce the repeal of the official steps of the authority contradicting the decision.

§ 52. In case of a conflict of jurisdiction in terms of §§ 46, 48 and 50 brought to court by the party, the Constitutional Court may impose on the authority having wrongly denied or claimed jurisdiction to reimburse the costs of the proceeding accrued to the party.

Reimbursement of the costs can be imposed on the party also in case it withdraws its application before the beginning of the oral public hearing and costs already have accrued to other parties involved.

b) In cases of art. 138 para. 2 of the
Federal Constitution Act

§ 53. The motion in terms of art. 138 para 2 of the Federal Constitution Act shall request the declaratory decision whether the Federation or one of the Laender have jurisdiction in a matter of legislation or enforcement.

§ 54. If it is a case of jurisdiction of legislation, the motion shall contain a draft bill, which is to be the subject of a resolution to be taken in a legislative body.

§ 55. If it is a matter of jurisdiction of enforcement, the motion shall contain:

a) in the case of regulations: the draft of the regulation intended to be issued and the name of the authority which is to issue it;

b) for other measures of enforcement: the facts of the case to be subject to a regulation and the name of the authority which is to issue the ruling.

§ 56. (1) The decision of the Constitutional Court regarding a motion under § 53 shall be rendered after the public oral hearing.

(2) In addition to the government filing the motion, the Federal Government and all of the Laender Governments shall be summoned to the hearing with the indication that participating in the hearing is within

their discretion.

(3) Simultaneously with the hearing being scheduled, the governments not filing a motion will be requested to submit to the Constitutional Court a written statement on the matter in good time as to have such statement available with the Constitutional Court at the latest one week before the date scheduled for the hearing.

(4) The Constitutional Court shall summarize its finding in a rule of law. The Federal Chancellor shall without delay publish such rule of law in the Federal Law Gazette.

D. In case of a motion requesting a declaratory decision of the existence and compliance with agreements between Federation and Laender or among the Laender (art. 138a of the Federal Constitution Act)

§ 56a. (1) The motion in terms of art. 138a para 1 of the Federal Constitution Act shall request the declaratory decision that

1. an agreement between the Federation and one or more than one of the Laender exists or does not exist, or

2. an obligation resulting from an agreement between the Federation and one or more than one of the Laender has been complied with or has not been complied with.

(2) Para 1 shall apply accordingly to agreements among the Laender.

(3) The motion shall contain the reasons in detail.

§ 56b. (1) Without delay the president shall schedule the public oral hearing. The governments involved in the agreement shall be summoned to the hearing. The Federal Government shall represent the Federation, the respective Land shall be represented by its Land government.

(2) Simultaneously with the hearing being scheduled, the governments involved in the cause will be requested to submit to the Constitutional Court a written statement on the matter in good time as to have such statement available with the Court at the latest one week before the date scheduled for the hearing. The Constitutional Court may also request the other governments involved in the agreement to submit statements.

E. In cases of judicial review of regulations (art. 139 of the Federal Constitution Act)

§ 57. (1) The request to repeal a regulation on the grounds of being contrary to law shall claim that either the full contents of the regulation or certain parts of it be repealed on the grounds of being contrary to law. The request shall detail the objections put forward against the lawfulness of the regulation. If such request is filed by a person claiming direct infringement of its rights by the unlawfulness of the regulation, it shall also state to what extent the person has been affected by such regulation without a court decision having been rendered or ruling having been issued.

(2) A request to repeal a regulation or parts of it may be filed by a court (an independent administrative panel, the Federal Procurement Authority) only if the regulation is to be directly applied by the court (the independent administrative panel, the Federal Procurement Authority) with regard to the pending case or if the lawfulness of the regulation is a precondition for the decision regarding the case pending with the court (independent administrative panel, Federal Procurement Authority).

(3) If a court (an independent administrative panel, the Federal Procurement Authority) has filed a request to repeal a regulation or certain parts of it, only such action is allowed to be taken or decision to be rendered or ruling to be issued until the decision of the Constitutional Court will be rendered and served, which cannot be affected by the decision of the Constitutional Court or does not finally settle the issue or cannot be delayed.

(4) If the court (the independent administrative panel, the Federal Procurement Authority) is no longer required to apply the regulation which was requested to be reviewed, the request shall be withdrawn without delay.

§ 58. (1) Without delay the president shall schedule the hearing. The

applicant, the authority having issued the regulation and the supreme administrative authority of the Federation or of the Land having jurisdiction and in charge of defending the contested regulation shall be summoned to participate in this hearing. If the request has been filed by a court (an independent administrative panel, the Federal Procurement Authority), also the parties involved in the case shall be summoned to participate.

(2) The administrative authority having issued the regulation and the supreme administrative authorities of the Federation or of the Land in charge of defending the contested regulation shall within two weeks' time after being served the summons submit a written statement on the subject matter.

§ 59. (1) The decision of the Constitutional Court shall to the extent possible be rendered within one month after receipt of the request.

(2) If the regulation is found to be unlawful, the decision shall pronounce whether the full contents or certain parts are unlawful.

§ 60. (1) The decision of the Constitutional Court shall be served to applicant without delay. If the request has been filed by a court (an independent administrative panel, the Federal Procurement Authority), it shall continue the proceeding without any delay. In deciding the pending case, the court (the independent administrative panel, the Federal procurement Authority) is bound by the legal view expressed by the Constitutional Court in its decision on the lawfulness of the regulation.

(2) The decision of the Constitutional Court shall also be served to the authority having issued the regulation. If it calls for repeal of a regulation, the public announcement to be issued in accordance with art. 139 para 5 of the Federal Constitution Act must state that the regulation has been repealed by the Constitutional Court decision to be quoted.

§ 61. These provisions shall apply accordingly whenever the Constitutional Court has to render a decision ex officio on the unlawfulness of a regulation (art. 139 para 1 Federal Constitution Act).

§ 61a. If the proceeding to review the regulation has been instituted upon request of a person alleging direct infringement of its rights by the unlawfulness of the regulation, such person shall in case of winning the case be reimbursed the costs of the proceeding by the legal entity for which the authority acted when issuing the regulation.

F. In cases of review of the lawfulness of promulgations regarding the renotification of an act (a treaty) (art. 139a of the Federal Constitution Act)

§ 61b. In cases of review of the lawfulness of promulgations regarding the renotification of an act (a treaty) the provisions of section E shall apply accordingly.

G. In examining the lawfulness of legislative acts (art. 140 of the Federal Constitution Act)

§ 62. (1) The request to repeal a legislative act on the grounds of being contrary to law shall claim that either the full contents of the statute or certain of its parts be repealed on the grounds of being contrary to the law. The request shall detail the objections put forward against the constitutionality of the legislative act. If such request is filed by a person claiming direct infringement of its rights by the unconstitutionality of the statute, it shall also state to what extent the person has been affected by such statute without a court decision having been rendered or ruling having been issued.

(2) Requests under para 1 filed by one third of the members of the National Council, the Federal Council or a Laender Parliament and not signed by a lawyer holding a power of attorney shall be signed by all applicants. The applicants shall name one or more authorized

representatives. In case such an authorized representative is not expressly named, the applicant having signed first shall be deemed to be the authorized representative.

(3) If a court (an independent administrative panel, the Federal Procurement Authority) has filed a request to repeal a legislative act or certain parts of it, only such action is allowed to be taken or decision to be rendered or ruling to be issued, which cannot be affected by the decision of the Constitutional Court or does not finally settle the issue or cannot be delayed until the decision of the Constitutional Court will be rendered and served.

(4) If the court (the independent administrative panel, the Federal Procurement Authority) is no longer required to apply the legislative act which was requested to be reviewed, the request shall be withdrawn without delay.

§ 63. (1) Without delay the president shall schedule the hearing. The applicant and the governments in charge of defending the contested statute shall be summoned to participate in the hearing. The Federal Government shall be in charge of defending a contested Federal legislative act, and the government of the Land in the case of a legislative act of the Land. If the request has been filed by a court (an independent administrative panel, the Federal Procurement Authority), also the parties involved in the case shall be summoned to participate.

(2) Simultaneously with the hearing being scheduled, the relevant government in charge will be requested to submit to the Constitutional Court a written statement on the matter in good time as to have such statement available with the Court at the latest one week before the date scheduled for the hearing.

(3) The decision of the Constitutional Court shall to the extent possible be rendered within one month after receipt of the request.

§ 64. (1) The decision shall specify whether the full contents of the legislative act or certain parts will be repealed as unconstitutional.

(2) In case the decision of the Constitutional Court is for repeal, the decision of the Constitutional Court shall also be served to the authority having issued the regulation. The public announcement to be issued in accordance with art. 140 para 5 of the Federal Constitution Act must state that the statute has been repealed by the Constitutional Court decision to be quoted.

§ 65. These provisions shall apply accordingly whenever the Constitutional Court has to render a decision ex officio on the unlawfulness of a statute (art. 140 para 1 Federal Constitution Act).

§ 65a. If the proceeding to review a legislative act has been instituted upon request of a person alleging direct infringement of its rights by the unlawfulness of the legislative act, such person shall in case of winning the case be reimbursed the costs of the proceeding by the Federation in cases of a Federal act, and by the respective Land in case of a legislative act of a Land.

H. In cases of a review of the lawfulness of treaties (art. 140a of the Federal Constitution Act)

§ 66. In examining the conformity of treaties with the law, the provisions of section G shall apply to the treaties approved in accordance with art. 50 para 1 B-VG and the treaties modifying or supplementing legislative acts in accordance with art. 16 para 1 B-VG, and the provisions of section E to all other treaties, always accordingly, with the following provisos:

1. The applicant and the administrative authority having concluded the treaty shall be summoned for the hearing. The Federal Government shall be in charge of defending a treaty concluded by the Federal President, and the government of the Land in the case of a treaty according to art. 16 para 1

B-VG. If the request has been filed by a court (an independent administrative panel, the Federal Procurement Authority), also the parties involved in the case shall be summoned to participate.

2. The decision shall specify whether because of unlawfulness the full contents of the treaty or certain parts shall not be applied by the organs in charge of implementing it.

3. The decision of the Constitutional Court shall also be served to the authority having concluded the treaty. If it was the Federal President who concluded the treaty, the decision shall be served to the Federal Government, in the case of a treaty according to art. 16 para 1 of the Federal Constitution Act to the government of the Land. If the decision concerns a treaty ratified by the National Council, it shall also be served to the Federal Chancellor, if it refers to a treaty ratified by a Land legislature it shall also be served to the Governor of the Land.

4. If the decision of the Constitutional Court pronounces the unlawfulness, the public announcement to be issued in accordance with art.140a of the Federal Constitution Act in connection with art. 139 para 5 or art. 140 para 5 of the Federal Constitution act, must express that, in accordance with the decision to be quoted by name, the treaty shall not be applied by the organs in charge of implementing it and a resolution, if applicable, for ratification of this treaty or an order, if applicable, to comply with the treaty by issuing a regulation shall have become extinct.

I. In the case of results of elections, popular initiatives, people's consultations or referendums challenged and of decisions on the loss of a seat of a people's representative body (art. 141 of the Federal Constitution Act)

§ 67. (1) Results of elections of the Federal President, elections to the general people's representative bodies, the European Parliament, a constituent organ of a statutory association of professions, employers or employees or an executive organ of a municipality (hereinafter named municipal executive) may be challenged on the grounds of any alleged unlawfulness of the election procedure. The challenge shall contain the request to nullify the election proceeding or part of it, and specify the reasons for the request.

(2) Challenging the election to a government of a Land requires a motion of one tenth of all members of the legislative of the Land, in any case at least of two of its members, challenging the election of a municipal executive requires the motion of one tenth of the members of the municipal council, in any case of at least two of its members. Groups of voters (political parties) who have submitted in due time election proposals for the challenged election with an electoral authority prescribed by the election procedure are authorized to challenge the other elections as named in para 1, and they can do so through their authorized recipient. If the election procedure does not provide for any such submission of election proposals, the authorization for challenging elections before the Constitutional Court is governed by the special regulations of such election procedures. A challenge of an election may also be filed by such party intending to run in the election claiming that he had been unlawfully denied the right to run in the election.

(3) If the challenge of the election is based on the unlawfulness of a ruling and a suspension of the enforcement of the ruling contested does not give reason for a substantial disadvantage, the Constitutional Court may, upon request, decide that the challenge has suspensive effect. If the Constitutional Court is not in session, the President shall decide upon a motion of the reporter.

§ 68. (1) The challenge must be filed within four weeks after termination of the election proceeding, if however the respective electoral law provides for appeals, within four weeks after service of the ruling issued in the last stage of appeal. It must be accompanied by the original or a copy of all documents it is based on.

(2) The Constitutional Court shall send one copy of the challenge as filed to the supreme electoral authority in charge in accordance with the electoral regulation applicable, with the order to submit the electoral files within a given time. This electoral authority is free to submit a cross-statement at the latest when submitting the electoral files.

§ 69. (1) In addition to the challenging party, all groups of voters (parties running in the election) shall be summoned to participate in the public oral hearing before the Constitutional Court which have been applicants for the challenged election, or other parties entitled to challenge the election on basis of the respective electoral regulation. The electoral authority named in § 68 para 2 may delegate a representative at its discretion.

(2) If the unlawfulness alleged in the challenge consists in the fact that an ineligible person has been declared elected or an eligible person has been unlawfully declared ineligible, such person shall also be summoned to participate.

§ 70. (1) The Constitutional Court shall allow a challenge filed if evidence of the alleged unlawfulness of the election proceeding has been proved and such unlawfulness has affected the result of the election. In the decision granted to the challenge the Constitutional Court shall repeal either the complete election proceeding or parts of it to be specifically defined.

(2) If the Constitutional Court allows a challenge of an election because a non eligible person has been declared elected, it shall declare the election of such person null and void. In this case the provisions of the respective electoral regulation referring to a seat having become vacant shall apply.

(3) If the Constitutional Court allows a challenge of an election because an eligible person has been wrongly declared non eligible, the decision shall state whether this causes the election of other persons to be void, in which case the election of such persons shall be cancelled. If the contested election has taken place on basis of party lists registered, the electoral authority in charge shall correct the election result it published.

(4) The electoral authorities which, after the challenge of the election has been accepted, have to decide on the merits and issue the further rulings, are bound to the actual facts and the legal view expressed in the decision of the Constitutional Court.

(5) In the cases of paras 1 through 3 the decision of the Constitutional Court shall be served without delay to the chairman of the representative body concerned (the statutory association of professions, employers or employees itself). Those persons whose election is to be considered cancelled or void because of the decision, shall from the day following the date of service not participate in the meetings of the respective representative body and abstain from business in the government of the Land (in the municipality executive body, in the statutory association of professions, employers or employees). If however the decision of the Constitutional Court cancelling the result of the election results in the necessity of a partial or total repetition of the elections to a general representative body, to the European Parliament or to a constituent organ (representative body) of a statutory association of employers, employees or professionals, the members of such representative body concerned shall lose their seat only when the newly elected members take office.

§ 71. (1) The general representative bodies may at any time request the Constitutional Court to declare that a member of the representative body shall lose his/her seat for a reason provided by the law. This shall apply accordingly to the municipality organs with regard to the members of the municipality executive body with regard to such function and to the organs of the statutory representations of employers, employees and professionals as determined in the electoral regulations with regard to the constituent organs (representative bodies) of a statutory association of employers,

employees and professionals. If one of such representative bodies takes such a decision, its chairman, or the deputy chairman, if the chairman himself is involved, shall file the request with the Constitutional Court on behalf of the representative body.

(2) If the right to be elected is lost due to a sentence under penal law, the Constitutional Court shall be bound to the final penal sentence.

(3) The provisions on challenges of elections shall apply accordingly to the proceeding. Also the person whose mandate is to be declared forfeited shall be summoned to the public oral hearing.

(4) Paras 1 through 3 shall apply accordingly if the request to forfeit a mandate is filed under §§ 9 and 10 of the Incompatibility Act 1983, Federal Law Gazette No. 330.

§ 71a. (1) A challenge of a ruling of an administrative authority pronouncing the forfeiture of a seat in a general representative body, the function in a municipal executive board or a constituent organ (representative body) of a statutory association of employers, employees or professionals can only be filed after exhausting the chain of appeals within a period of six weeks after service of the ruling issued in the last instance of appeal.

(2) Also the representative body (the statutory association of employers, employees and professionals) shall have the capacity to be a party in the proceeding before the Constitutional Court.

(3) The challenge has suspensive effect.

(4) The Constitutional Court shall allow the challenge and repeal the ruling challenged if the alleged unlawfulness is true.

(5) §§ 82 paras 2 and 3, 83, 84 para 1, 86 and 88 shall apply accordingly to the proceeding. The party filing the challenge and the authority shall be summoned to the public oral hearing.

J. In cases of suits claiming the constitutional responsibility of the supreme Federal and Laender authorities for legal contraventions culpably ensuing from their official activity (art. 142 and 143 of the Federal Constitution Act)

§ 72. (1) The charges decided by the Federal Assembly, by the National Council or by a legislative of a Land shall be filed with the Constitutional Court by sending a certified copy of the minutes of the meeting (session) in which the respective resolution was adopted.

(2) The respective representative body shall at the same time name the members in charge of bringing the charge before the Constitutional Court.

(3) In the case of a charge according to art. 142 paras e through h of the Federal Constitution Act, the charge raised by the Federal Chancellor shall be accompanied by the certified copy of the parts of the Minutes of the Council of Ministers evidencing the resolution of the Federal Government to raise the charge. This applies accordingly also to the case of a later extension of the charge against a Member of the Land government in charge of matters of indirect Federal administration in accordance with art. 103 para 2 of the Federal Constitution Act.

§ 73. If a charge is raised also under art. 143 of the Federal Constitution Act, the complaint shall specify the penal offences defendant is charged with according to all their elements determining a certain sentence by the law, its name stated in the respective provisions and the items of the Penal Code requested to be applied.

§ 74. (1) A pre-trial investigation shall take place before the public oral hearing is scheduled.

(2) This pre-trial investigation shall be conducted by an investigating judge appointed by the President from among the Members of the Constitutional Court.

(3) When being examined by the investigating judge and during the public oral hearing, civil servants shall be discharged from their official secrecy.

(4) The investigation shall be carried out at a speedy pace.

(5) The pre-trial investigation shall be dismissed if the representative body having raised the charge, or in the case of a charge under art. 142 para 2 subparas e through h of the Federal Constitution Act, the Federal Government has adopted a resolution to withdraw the charge. Regarding this matter the Constitutional Court shall decide in chambers.

§ 75. (1) After terminating the pre-trial investigation, the investigating judge submits the file to the President of the Constitutional Court who shall schedule the public oral hearing.

(2) The date of the public oral hearing shall be scheduled on a day leaving to the defendant a minimum of two weeks' time to prepare his defence, unless he himself requests to reduce such period.

(3) Both defendant including his legal counsel as well the counsel of the prosecution shall be summoned to participate in the public oral hearing.

§ 76. The investigating judge is not allowed to take an active part in the public oral hearing.

§ 77. Only in case of danger to national security the public may be excluded from the oral hearing.

§ 78. The public oral hearing starts out with the charge being read by the keeper of the minutes (law clerk).

§ 79. (1) If defendant is convicted, the Constitutional Court as a rule also shall decide on any claims for reimbursement.

(2) The judgement may be restricted to the pronouncement of the obligation for reimbursement and reserve determination of the amount to the due process of law.

§ 80. (1) The suit must be filed with the Constitutional Court within one year to be counted from the day on which the person accused to which the charge to be raised would refer has left office.

(2) In cases of art. 142 paras a through d of the Federal Constitution Act, the time between the day on which the motion to file suit has been introduced in the respective representative body until final adoption of the resolution regarding this motion - with a maximum of six months - shall not be included in the one year's term.

(3) The proceeding regarding a charge to be raised shall not be barred by expiry of the legislative period of the respective representative body and in cases of a charge in accordance with art. 142 para 2 subparas e through h of the Federal Constitution Act by resignation of the Federal Government.

§ 81. Unless provided differently in the subject Federal Act, the Penal Code shall apply accordingly to proceedings regarding charges raised under art 142 and 143 Federal Constitution Act.

K. In cases of complaints for infringement of constitutionally guaranteed rights or infringement of personal rights on the score of an unlawful regulation, an unlawful promulgation regarding the renotification of a statute (a treaty), a statute or a treaty contrary to law (art. 144 of the Federal Constitution Act)

§ 82. (1) The complaint under art. 144 para 1 of the Federal Constitution Act against a ruling may be filed only, after exhaustion of the chain of appeals, within a period of six weeks after service of the ruling issued by the last instance of appeal.

(2) Such complaint shall contain:

1. the identification of the ruling contested,
2. the authority that issued the contested ruling;
3. the facts of the case,
4. the statement whether applicant claims that his constitutionally guaranteed rights have been infringed by the challenged ruling or because an unlawful regulation has been applied, or by a publication contrary to the law on the renotification of a statute (a treaty), or because of a statute or a treaty contrary to law, in the latter case it shall contain

also the designation of the provision of the law deemed to be contrary to law;

5. the request to repeal the challenged ruling;

6. the information required to determine whether the complaint has been filed in due time.

(3) The original, counterpart, transcript or copy of the challenged ruling shall be included; the day when it has been served shall be stated.

§ 83. (1) The authority having issued the challenged ruling shall be served one counterpart of the complaint including enclosures and containing the information that the respective authority may at its discretion submit a reply statement within a term not longer than three weeks.

(2) In preparation of the hearing the parties may also be allowed to submit further statements and replies within periods of time to be determined.

(3) Any extension of such deadlines may be granted only for important reasons; consent by the opponent is not required for this purpose, nor

would such consent be satisfactory. <<

§ 84. (1) After receipt of the reply statement and any further statements requested, as the case may be, or after expiry of the deadlines and if hearing the complaint has not been rejected by order under § 19 para 3 subpara 1, for which order the reasons shall be given by a brief resume of its essential legal points of view and which shall be served to applicant and authority (§ 83 para 1), the President of the Constitutional Court shall schedule the hearing.

(2) The applicant, the authority (§ 83 para 1) and any other parties involved shall be summoned for the hearing.

§ 85. (1) The appeal has no suspensive effect.

(2) Upon request of applicant, however, the Constitutional Court is to issue a court order in favour of the suspensive effect, unless it would be contrary to mandatory public interest and after consideration of all interests affected, whether the implementation or the use of the license by a third party, as granted by a ruling, would constitute an unreasonable disadvantage for the applicant. After any considerable change in the circumstances relevant for the decision in favour of the suspensive effect of the complaint the case shall be decided anew upon request of applicant, of the authority (§ 83 para 1) or of any other party involved.

(3) Orders according to para 2 shall be served to applicant, the authority (§ 83 para 1) and to any other party involved. In case the suspensive effect is granted, the authority shall suspend execution of the ruling contested and take the necessary steps to this effect; the holder of the contested license is not allowed to practice the license.

(4) If the Constitutional Court is not in session, orders in accordance with para 2 shall be issued, upon request of the reporter, by the President of the Constitutional Court.

§ 86. If before termination of the hearing on the complaint evidence is furnished that applicant's claim will be accepted, the Constitutional Court shall, after examining the applicant, declare the complaint to be irrelevant and dismiss the proceeding.

§ 87. (1) The decision shall specify whether applicant's constitutionally guaranteed rights have been infringed by the challenged ruling or because an unlawful regulation has been applied, or by a publication contrary to the law on the renotification of a statute (a treaty), or because of a statute or a treaty contrary to law, and in the affirmative case the decision repeal the challenged ruling.

(2) If the Constitutional Court has allowed a complaint, the administrative authorities are obliged to immediately establish the legal situation corresponding to the legal opinion of the Constitutional Court.

(3) If the Constitutional Court refuses to hear a complaint or dismisses

it, it shall, if by that date applicant has filed a respective request, or, if such request is filed within two weeks after having been served the decision of the Constitutional Court, the reporter shall, pronounce that the complaint is assigned to the Administrative Court in accordance with art. 144 para 3 B-VG. Such pronouncement shall not be made if it is a case excluded from the jurisdiction of the Administrative Court in accordance with art. 133 B-VG.

§ 88. Upon request the party losing or having accepted applicant's complaint may be imposed to reimburse the costs of the proceeding. The same applies accordingly to the case that applicant withdraws the complaint before the beginning of the oral hearing without his complaint having been accepted.

L. In the case of differences of opinion on the interpretation of provisions of the law governing the jurisdiction of the Ombudsman Board or an Ombudsman of a Land (art. 148f and art. 148i of the Federal Constitution Act)

§ 89. (1) In case of differences of opinion between Ombudsman Board and the Federal Government or a Federal Minister on the interpretation of the provisions of the law governing the jurisdiction of the Ombudsman Board, the Federal Government or the Ombudsman Board may request the Constitutional Court to decide.

(2) The request must be filed within four weeks. This period shall begin for the Federal Government upon expiry of the day on which it officially obtains information that the People's Advocate's Office claims jurisdiction of an official act carried out or intended to be carried out by it against the objection of the Federal Government or the Federal Minister in charge and insists to implement the intended official act; for the People's Advocate's Office the period begins upon expiry of the day on which it officially obtains knowledge of the definitely negative statement of the Federal Government or on which it is prevented from implementing the disputed official act with the knowledge of the Federal Government.

(3) The Federal Government filing the request shall without delay notify the Ombudsman Board, and the Ombudsman Board filing the request shall notify the Federal Government accordingly.

§ 90. Seeking recourse to the Constitutional Court results in postponement or interruption of the official act of the Ombudsman Board until the Constitutional Court will have rendered a decision.

§ 91. Parties in the proceeding are the Federal Government and the Ombudsman Board.

§ 92. To the extent possible, the decision of the Constitutional Court is to be rendered within six months after the application has been filed and to be served both to the Federal Government and the Ombudsman Board.

§ 93. The aforementioned provisions apply accordingly to proceedings in the case of differences of opinion

1. between the Ombudsman Board and a government of a Land or a member of the government of a Land regarding the interpretation of the provisions of the law governing the jurisdiction of the Ombudsman Board (art. 148f B-VG);

2. between the Ombudsman Board of a Land and the government of a Land or a member of the government of a Land regarding the interpretation of the provisions of the law governing the jurisdiction of the Ombudsman Board of a Land (art. 148i para 2 B-VG);

Attention

paras 7 and 10: Constitutional provision

3rd part

Final provisions

§ 94. (1) § 5h as amended by Federal Law Gazette no. 334/1993 shall become legally effective as of 1 July 1993.

(2) § 5e and § 5h as amended by Federal Law Gazette no. 43/1995 shall become legally effective as of 1 January 1995.

(3) § 5e as amended by Federal Law Gazette no. 297/1995 shall become legally effective as of 1 May 1995.

(4) § 5e para 2 and § 5h para 2 as amended by Federal Law Gazette no. 820/1995 shall become legally effective as of 1 January 1996.

(5) As amended by Federal Act Federal Law Gazette no. 201/1996 shall become legally effective:

1. § 5 b para 2 and § 5c para 1 as of 1 May 1996,

2. § 5h as of 1 June 1996.

(6) § 5b para 2 as amended and applicable until expiry of 30th April 1996 shall apply to Members of the Constitutional Court whose removal from office has been instituted before 16 February 1996.

(7) (Constitutional provision) § 5i as amended by Federal Act Federal Law Gazette no. 392/1996 shall become legally effective as of 1 August 1996.

(8) § 5e para 2 and § 5h subpara 2 as amended by Federal Act Federal Law Gazette I no. 3/1997 shall become legally effective as of 1 January 1997.

(9) § 4 para 1, 3, 5 and 6, § 5b para 2, § 5c para 1, § 5d, § 5e and § 5h as amended by Federal Act Federal Law Gazette I no. 64/1997 and the repeal of § 5 by Federal Act Federal Law Gazette I no. 64/1997 shall become legally effective as of 1 August 1997. To the extent that persons the requirements of time necessary for receiving a financial remuneration in accordance with § 5, § 5 continues to be applicable.

(10) (Constitutional provision) § 5i as amended by Federal Act Federal Law Gazette I no. 64/1997 shall become legally effective as of 1 August 1997.

(11) § 17a and § 90 as amended by Federal Act Federal Law Gazette I no. 88/1997 shall become legally effective as of 1 August 1997.

(12) § 5b para 2 and § 5f as amended by Federal Act Federal Law Gazette I no. 86/2001 and the repeal of § 5d by Federal Act Federal Law Gazette I no. 86/2001 shall become legally effective as of 1 October 2000.

(13) The following shall become legally effective:

1. § 5h as amended by Article 65 subpara 4.a of the Federal Act Federal Law Gazette I no. 142/2000 as of 1 October 2000,

2. § 5e, § 5f 1st clause and § 5g as amended by Federal Act Federal Law Gazette I no. 142/2000 and § 5h as amended by Article 65 supara 4.b of Federal Act Federal Law Gazette I no. 142/2000 as of 1 January 2001.

(14) The heading and §§ 17a, 28 para 1 and 2 and 91 as amended by Federal Act Federal Law Gazette I no. 136/2001 shall become legally effective as of 1 January 2002.

(15) § 7 para 2 subpara a, § 13, the heading of §§ 37 through 41, § 71 para 4, § 71a para 5, § 72 para 3, § 74 para 5, § 80 para 2 and 3, § 82 para 3 and § 90 as amended by Federal Act Federal Law Gazette I no. 123/2002 shall become legally effective as of 1 October 2002.

(16) § 5b para 2 and § 5h subpara 2 as amended by Federal Act Federal Law Gazette I no. 71/2003 shall become legally effective as of 1 January 2004.

(17) The heading to the first part (to the former First Section Part), § 5a para 2, § 7 para 2 subpara a, § 12, the headings to the 2nd part (to the former Second Section) and to its first main part (to the §§ 15 through 36), § 17 para 2, § 19 para 1 and para 4 subpara 3, § 22, § 24 para 1 through 3, § 28 para 4, § 36, the headings to the second main part (to §§ 36a through 88) and to its section A, § 36c para 2, § 36d, the heading to section B, § 37, the heading to section E, § 57 para 2 through 4, § 58 para 1, § 60 para 1, the new section F as inserted including the heading, the heading to section G (to the former section F), § 62 para 3 and 4, § 63 para 1, the heading to section H (to former section G), § 66 introduction and para 1, the headings to the sections I and J (to the former sections H and I), § 67 para 1 first clause, § 70 para 5 last clause, § 71a para 1, the heading to section K (to former section J), § 82 paras 1 and 2, § 85 para 3, § 87 para 1, the new section L as inserted, including its heading,

the heading to the 3rd part (to former Third Section), the names for the articles of §§ 94 through 96 (the former §§ 89 through 91) as well as the other headings and provisions as amended by Federal Act Federal Law Gazette I no. 100/2003 shall become legally effective as of 1 January 2004. At the same time § 36g shall lose legal force.

(18) § 15 para 1, § 17a and § 24 para 3 as amended by Federal Act Federal Law Gazette I no. 89/2004 shall become legally effective by expiry of the month in which the subject Federal Act is officially published.

(19) To the extent the Federal Act Federal Law Gazette modifying the Constitutional Court Act, Federal Law Gazette no. 329/1990 is still legally effective, it shall lose legal effects by expiry of the month in which the Federal Law Gazette I no. 89/2004 is officially published. Legal provisions modified by this Federal Act remain unaffected; legal provisions repealed by it shall not become effective again.

§ 95. To the extent not provided differently in the afore mentioned provisions, the President of the Constitutional Court shall be in charge of implementing the subject Federal Act.

§ 96. To the extent the subject Federal Act refers to provisions of other Federal Acts, such provisions shall be applied as amended from time to time.