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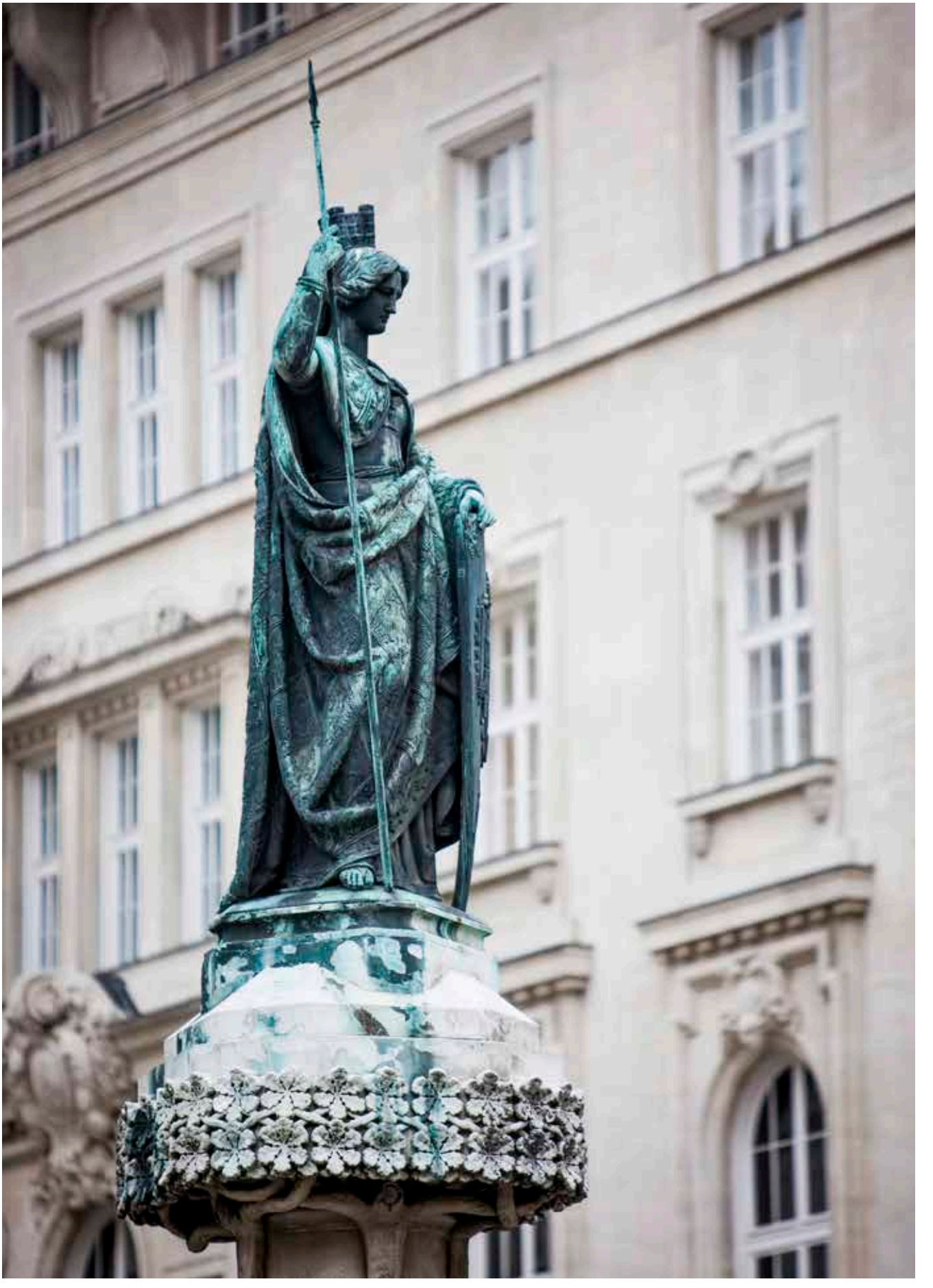

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The Constitutional Court

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„Die Verfassungsgerichtsbarkeit
der Republik Österreich …
gilt mit Recht als die originellste Emi
der österreichischen Bundesverfas
vom 1. Oktober 1920."
Adolf Merkl, Die Verfassungsgerichtsb
in: Verwaltungsa

Foreword

The Constitution is the set of fundamental principles regulating the organization of the state, the actions of its entities and the basic rights of the citizens vis-à-vis the state. Austria is a democratic state under the rule of law. It is based on the principle of the supremacy of the Constitution, which means that any action taken by the state – legislation, jurisdiction and public administration, including government – must be based on and be in accordance with the Constitution.

For the supremacy of the Constitution to be more than a purely theoretical notion and to be effective in practice, the democratic constitutional state needs institutions guaranteeing this supremacy. The most important of these institutions is the Constitutional Court. It is the "guardian of the Constitution".

The primary function of the Constitutional Court is to review laws for their constitutionality and to repeal them, should they prove to be unconstitutional. This is the very core of constitutional jurisdiction. Pursuant to the Austrian Federal Constitution, this task is exclusively reserved to a specialized court, i.e. the Constitutional Court. This type of constitutional jurisdiction is a concept of Austrian origin. Essentially, it is based on the ideas of the Vienna School of Legal Theory, the most important proponents of which were Hans Kelsen and Adolf Julius Merkl. Therefore, reference is often made to the "Austrian" or "Kelsen" model of constitutional jurisdiction, in contrast to the "American" model, under which every court has the right to review the constitutionality of a law and, in the event of its unconstitutionality, not to apply it. Moreover, the Constitutional Court is the most important guarantor of the individual citizen's basic rights vis-à-vis the state.

This publication is intended to convey a clearer picture of the Austrian Constitutional Court and its jurisdiction, its structural and organizational set-up, its mode of operation and its members.

Professor Dr. Gerhart Holzinger
President of the Constitutional Court

●●● Functions

●●● Judicial review (Art. 140 of the Federal Constitutional Law)

The functions of the Constitutional Court are laid down exhaustively and conclusively in the Federal Constitution. The most important of these functions are briefly outlined in the following. The review of laws represents the core of constitutional jurisdiction. However, the Constitutional Court is not free to review, at its own discretion, any legal provision for its constitutionality and to repeal it if it is found to be unconstitutional. The Court's review function is limited to cases in which a review has been applied for by a state body or a duly authorized individual, or to provisions to be applied by the Court itself in a pending law suit.

Within the framework of its abstract review of legal norms, the Constitutional Court pronounces on the constitutionality of laws adopted at provincial level upon application of the federal government, and of laws adopted at federal level upon application of the government of a province. The constitutionality of federal laws can be challenged by one third of the members of the National Council or the Federal Council; one third of the members of a provincial parliament can challenge the constitutionality of a law adopted by the province concerned, if such measure is provided for in the constitution of the province.

Within the framework of its concrete review of legal norms, the Supreme Court and any competent court of second instance, the first-instance administrative tribunals and the Administrative Court (as of 1 January 2015 any court) are authorized and obliged to submit a petition for judicial review to the Constitutional Court if doubts have arisen about the constitutionality of a legal provision to be applied in law suits pending at these courts.

As of 1 January 2015, if no petition for judicial review is submitted to the Constitutional Court by a court of law, any individual claiming that his/her rights as a party to a law suit decided by such court of first instance have been violated is entitled to challenge the constitutionality of a law within the framework of legal remedy sought against the court decision. Under certain conditions, an individual also has the right to address his/her challenge directly to the Constitutional Court, i.e. if he/she claims that his/her rights have been directly violated due to the unconstitutionality of the law, and if the law has taken effect for the individual concerned without a decision having been taken by a court or an administrative decision having been issued. Given the subsidiary character of the so-called "individual petition", the Constitutional Court applies very strict criteria in deciding on its admissibility.


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In the absence of a petition, the Constitutional Court itself can take the initiative to review a legal provision to be applied in a law suit at the Constitutional Court for its constitutionality.

Apart from the exceptional case outlined below, a judicial review performed by the Constitutional Court is always an ex-post review, i.e. it is performed after the promulgation of the law.

As a matter of principle, the repeal of a law found to be unconstitutional is only effective for the future, the only exception being the case that caused the Constitutional Court to initiate the judicial review procedure: The law in question is not to be applied to this case on any account. Moreover, the Constitutional Court may decide, at its own discretion, to extend the effect of the case that triggered the judicial review to other cases that occurred in the past. The Constitutional Court also has the right to set a deadline for the repeal to take effect, which must not exceed eighteen months. During that period of time, the law found to be unconstitutional is "immunized" and therefore has to be applied; pending its repeal, the law cannot be subject to another challenge before the Constitutional Court.

The example of judicial review clearly shows that the Constitutional Court is positioned at the borderline between the law and politics. For the Constitutional Court, the Constitution, i.e. a set of legal provisions, is the yardstick of constitutionality and the one and only basis for its decisions. Never will the political expediency of a law be invoked as a criterion in the Court's judicial review. However, many of the provisions of the Constitution are worded in very general terms. In its interpretation of these provisions and its assessment of the constitutionality of a law, the Constitutional Court therefore often has a broad range of options to consider, which may depend on the values it upholds. Nevertheless, it has to arrive at a legally binding decision based solely on its legal opinion and must not let itself be guided by considerations of political opportuneness. However, decisions taken by the Constitutional Court may have substantial political implications, especially when it comes to the judicial review of legal acts adopted by Parliament as the democratically legitimized legislator. The Constitutional Court has to respect the political freedom of the legislator, but at the same time it also has to safeguard the supremacy of the Constitution.

There is another peculiarity to be considered in judicial review: Pursuant to Austrian constitutional law, any amendment to the Constitution affecting its fundamental principles, i.e. democracy, the republican system of governance, the rule of law and the federal state, requires not only a two-thirds majority in Parliament, but also a majority of votes cast in a referendum. In view of this situation, the Constitutional Court is also called upon to review the compatibility of the provisions of federal constitutional laws with these fundamental principles of the Constitution. If a provision of constitutional law is in conflict with one of these principles and was adopted by a two-thirds majority of Parliament without a majority of votes cast in a referendum in favour of such provision, it has to be repealed.

● ● ● Review of regulations (Art. 139 of the Federal Constitutional Law)

The Constitutional Court also has to review regulations for their legality. Essentially, the above statements on judicial review apply mutatis mutandis.

● ● ● Review of state treaties (At. 140a of the Federal Constitutional Law)

Pursuant to the Federal Constitution, the Constitutional Court is also called upon to review state treaties for their lawfulness (constitutionality or legality). The procedures to be applied and the right to submit a petition for review depend on the status of the state treaty at national level and are subject to the rules on the review of laws and regulations. However, the Constitutional Court is not in a position to invalidate a state treaty that has been found to be against the law; it can only establish its unconstitutionality or unlawfulness. A state treaty that has been pronounced unconstitutional or unlawful must no longer be applied by the entities of the state.

● ● ● Review of rulings by the administrative tribunals (Art. 144 of the Federal Constitutional Law)

The Constitutional Court has the important task of pronouncing on complaints against rulings by the administrative tribunals (but not by the Administrative Court). In such a complaint, the appellant may claim either the violation of a constitutionally guaranteed right through the ruling, or the violation of rights through the application of an unlawful general norm underlying the ruling, above all an unconstitutional law. If the Constitutional Court shares the doubts raised about the norm in question, it will initiate a judicial review procedure.

The Constitutional Court is not the only body endowed with the right to review rulings by the administrative tribunals. The Federal Constitution also calls upon the Administrative Court to do so. However, the yardstick to be applied by the Administrative Court is not the Constitution, but rather the simple-majority law in question.

The Constitutional Court has the authority to reject such complaints if they have no chance of success or if a decision on the complaint cannot be expected to clarify a constitutional issue. Upon application by the appellant, such complaints can be transferred to the Administrative Court for decision.

●●● Decisions in conflicts of jurisdiction (Art. 138, para. 1, of the Federal Constitutional Law)

The Constitutional Court decides in conflicts of jurisdiction arising under constitutional laws between courts and administrative authorities, between courts of law and administrative tribunals or the Administrative Court, between the Constitutional Court and all other courts, between the federal government and a provincial government, or between provincial governments.

●●● Establishment of jurisdiction (Art. 138, para. 2, Art. 126a, Art. 148f of the Federal Constitutional Law)

Upon application of the federal government or a provincial government, the Constitutional Court has to establish whether an intended act of legislation or enforcement is within the jurisdiction of the federal government or the provincial government. The establishment of jurisdiction by the Constitutional Court serves to clarify issues of jurisdiction in the federal state and to prevent disputes. This is the only case of an ex-ante review of norms by the Constitutional Court.

Furthermore, the Constitutional Court decides in differences in opinion between the Court of Audit or the Office of the Ombudsperson, on the one hand, and the governments and legal entities concerned, on the other hand, interpreting legal rules governing the competence of the Court of Audit and/or the Office of the Ombudsperson and establishing their jurisdiction.

●●● Electoral jurisdiction (Art. 141 of the Federal Constitutional Law)

In terms of democratic governance, electoral jurisdiction is a particularly important task of the Constitutional Court. The Court decides on the lawfulness of certain elections, such as the election of the Federal President, elections to the general representative bodies (National Council, Federal Council, provincial parliaments, municipal councils), the European Parliament, the representative bodies of the chambers and the provincial governments, as well as elections of mayors and executive officers of local governments.

The Constitutional Court has to allow an election to be challenged if the alleged unlawfulness of an electoral procedure has been established and has been found to have had an impact on the outcome of the election. In such case, the Constitutional Court will declare the electoral procedure to be null and void as of the stage at which it has been found to be unlawful.

Furthermore, the responsibility for deciding on challenges to the results of popular initiatives, plebiscites, referenda and European citizens' initiatives has been conferred upon the Constitutional Court.

The Constitutional Court also decides on the loss of seats by members of a general representative body, members of the European Parliament or members of statutory bodies of a chamber, and on rulings by administrative bodies resulting in the loss of seats.

●●● Jurisdiction over entities of the state (Art. 142, 143 of the Federal Constitution)

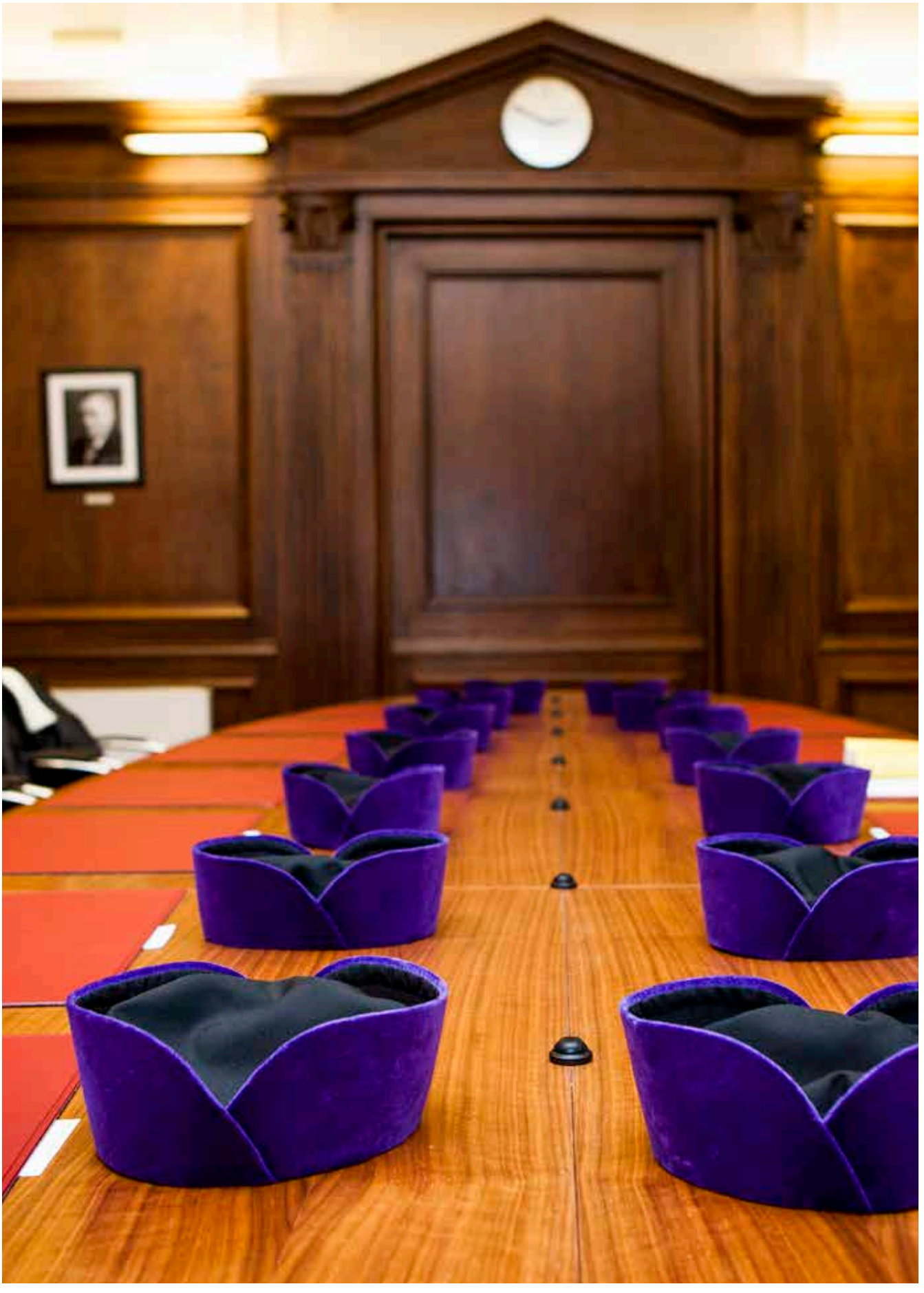
The Constitutional Court also exercises the function of a State Court. As such, it decides on lawsuits brought against the supreme entities of the state for culpable violation of the Constitution and/or the law in an official capacity. This relates, in particular, to the conduct in office of the Federal President, the members of the federal government and the provincial governments, as well as the governor of a province and the other members of the provincial governments in matters subject to indirect federal administration.

Judgements brought against such persons by the Constitutional Court result in the loss of office and, under aggravating circumstances, in the loss of political rights. In certain cases, however, the Constitutional Court merely establishes the fact of an infringement without taking any further measures. The

practical significance of this function is minimal. Since 1920,there have only been three proceedings of this type, two in the era of the First Republic and one in 1985.

● ● ● Additional functions of the Constitutional Court

- Decisions on pecuniary claims against territorial authorities, which cannot be settled by legal procedure or by the ruling of an administrative authority (so-called "causal jurisdiction" – Art. 137 of the Federal Constitutional Law).
- Decisions on certain disputes relating to arrangements pursuant to Art. 15a of the Federal Constitutional Law between the federal government and the provinces or among the provinces (Art. 138a of the Federal Constitutional Law).
- Decisions on violations of international law (Art. 145 of the Federal Constitutional Law). The exercise of this function is subject to the adoption of a simple-majority federal law, which has, however, never been adopted.



Organization and Structure

Appointment and legal status of the members of the Constitutional Court

All essential matters relating to the organization of the Constitutional Court are laid down in Article 147 of the Federal Constitutional Law. The Constitutional Court consists of a president, a vice-president, twelve members and six substitute members, all of them appointed by the Federal President on the basis of proposals made by the federal government or one of the two parliamentary chambers. The federal government has the right to propose candidates for appointment as president, vice-president, six members and three substitute members; three members and two substitute members are appointed on the basis of proposals submitted by the National Council; another three members and one substitute member are proposed by the Federal Council.

All members of the Constitutional Court must have a degree in law and ten years of experience in a legal profession. By and large, this requirement is met by judges of other courts, civil servants working in the public administration, professors of law at a university and lawyers; the latter, however, can only be proposed for appointment by the National Council or the Federal Council, not by the federal government.

All members – except for civil servants working in the public administration, who have to be granted leave with no remuneration paid – are free to continue exercising their own legal profession, in addition to their activity as constitutional judges. In this respect, and also on account of its professionally heterogeneous composition, the Constitutional Court differs from all other courts in Austria, which are exclusively made up of professional judges. This system has proved extremely successful in practice, as it ensures that the knowledge and experience of the most important legal professions are reflected in the decisions taken by the Constitutional Court.

Special rules on incompatibility serve to guarantee objectivity in the conduct of office. Individuals serving as members of government at federal or provincial level, members of general representative bodies or the European Parliament, as well as employees of or office-holders in political parties, are barred from membership in the Constitutional Court. If a member of the Constitutional Court is biased for professional or private reasons in a case to be decided by the Court, he/she does not take part in the deliberations, but is replaced by a substitute member.

The members of the Constitutional Court are judges as defined by the Federal Constitutional Law. In the exercise of their judicial office, they are independent and can neither be removed from office nor transferred to another position. They step down at the end of the year in which they reach the age of seventy. Earlier removal from office is only possible through the Constitutional Court itself for certain reasons laid down in the Federal Constitutional Law or the Constitutional Court Act.

These provisions are highly effective in securing the independence of the members of the Constitutional Court in the exercise of their office. This independence guarantees that the members of the Constitutional Court are exclusively bound by the Constitution and the other laws of the Republic of Austria and not subject to any political influence. Moreover, the deliberations of the Constitutional Court and the votes taken are subject to secrecy. In particular, the votes cast by the individual members on a certain issue are never disclosed.

Another noteworthy constitutional provision states that three members and two substitute members must be domiciled outside Vienna. This provision is intended to ensure that, in accordance with the principle of the federal state, all parts of Austria are represented. On a modest scale, this adds a federalist component to the Constitutional Court as an entity operating on behalf the entire state and, at the same time, underlines the specific character of the Constitutional Court as compared with other courts of law.

●●● Internal organization

The internal organization and mode of operation of the Constitutional Court are laid down in the Constitutional Court Act and the rules of procedure of the Constitutional Court.

The Constitutional Court is headed by the President, in both judicial and administrative matters; in the event of the President's incapacity, he/she is represented by the Vice-President. The President's judicial activities include, in particular, the assignment of legal issues put before the Court to the so-called Permanent Reporters in charge of preparing cases for discussion, the chairmanship of deliberations and hearings, and the approval of the decisions to be issued.

The Constitutional Court is not permanently in session, but is convened four times a year for periods of three and a half weeks each. If need arises, the President may call interim sessions. Within the framework of its sessions, the Court deliberates and decides on the cases ready for decision in more than ninety four- or five-hour meetings a year. Between sessions, the Permanent Reporters, i.e. the members who have been assigned the incoming cases by the President, prepare the draft decisions.

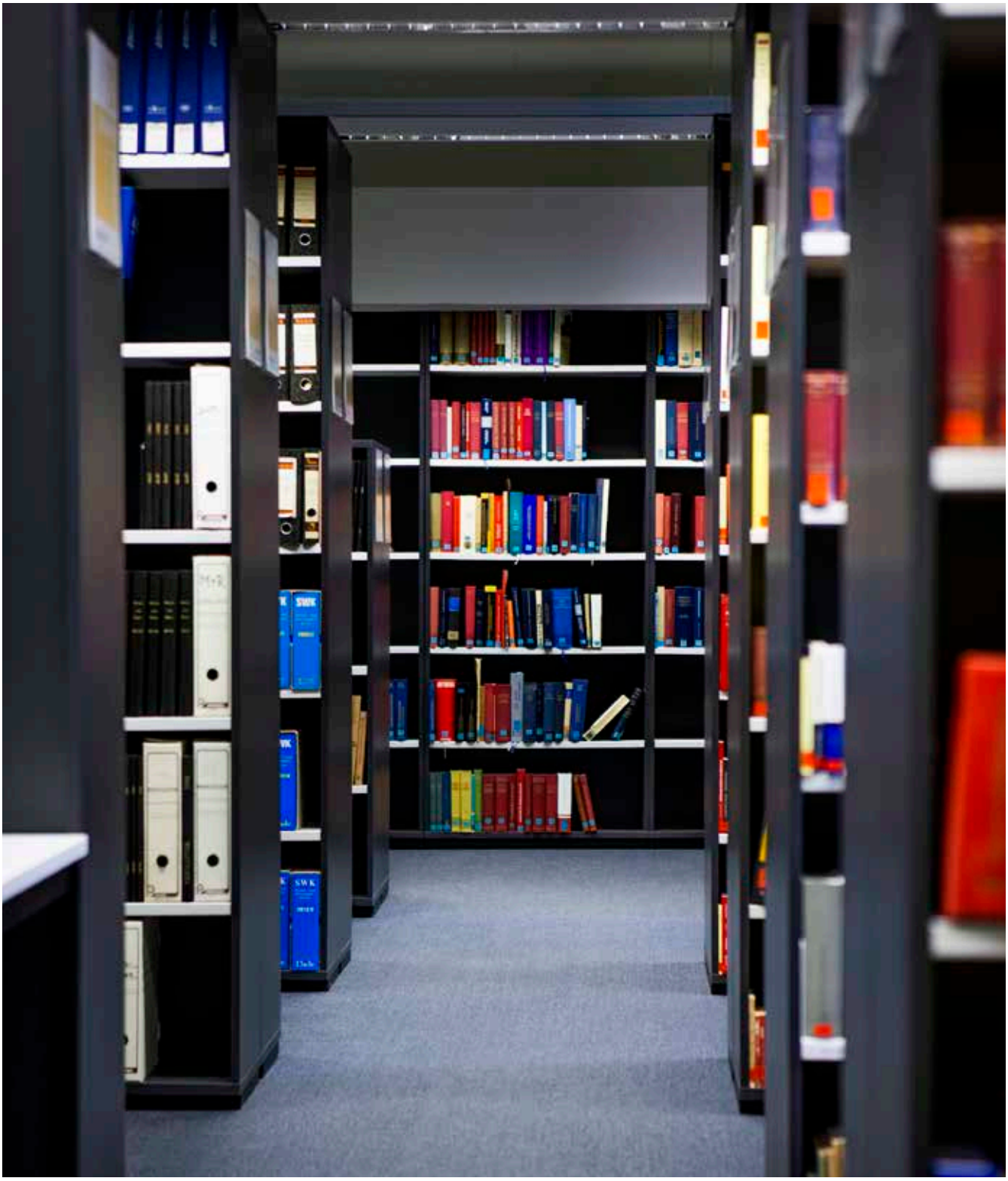
The Permanent Reporters are elected by the plenum of the Constitutional Court from among its members for a term of office of three years. Re-election is not only permitted, but desirable and common practice. Currently, eleven members and the Vice-President act as Permanent Reporters, on average supported by three clerks of the court.

Under the Federal Constitution, the Constitutional Court is a tribunal set up as a homogeneous body that, in principle, takes its decisions in plenary sessions and is not subdivided into senates. In practice, however, the situation changed in the wake of an amendment to the Constitutional Court Act regarding the requirement for a quorum. As a matter of principle, the Constitutional Court is quorate if the chairperson and at least eight voting members are present. However, in less complex cases specified in detail by the law, the presence of the chairperson and four voting members in a "small assembly" formation is sufficient. Nevertheless, the convocation to attend the deliberations, as well as the draft decisions, are communicated to all members. Moreover, any member has the right to demand that the case be dealt with in a plenary session. In practice, the Constitutional Court decides a large majority of the cases put before it in a small assembly consisting of the President and the Vice-President, the Permanent Reporter for the case in question and three other members.

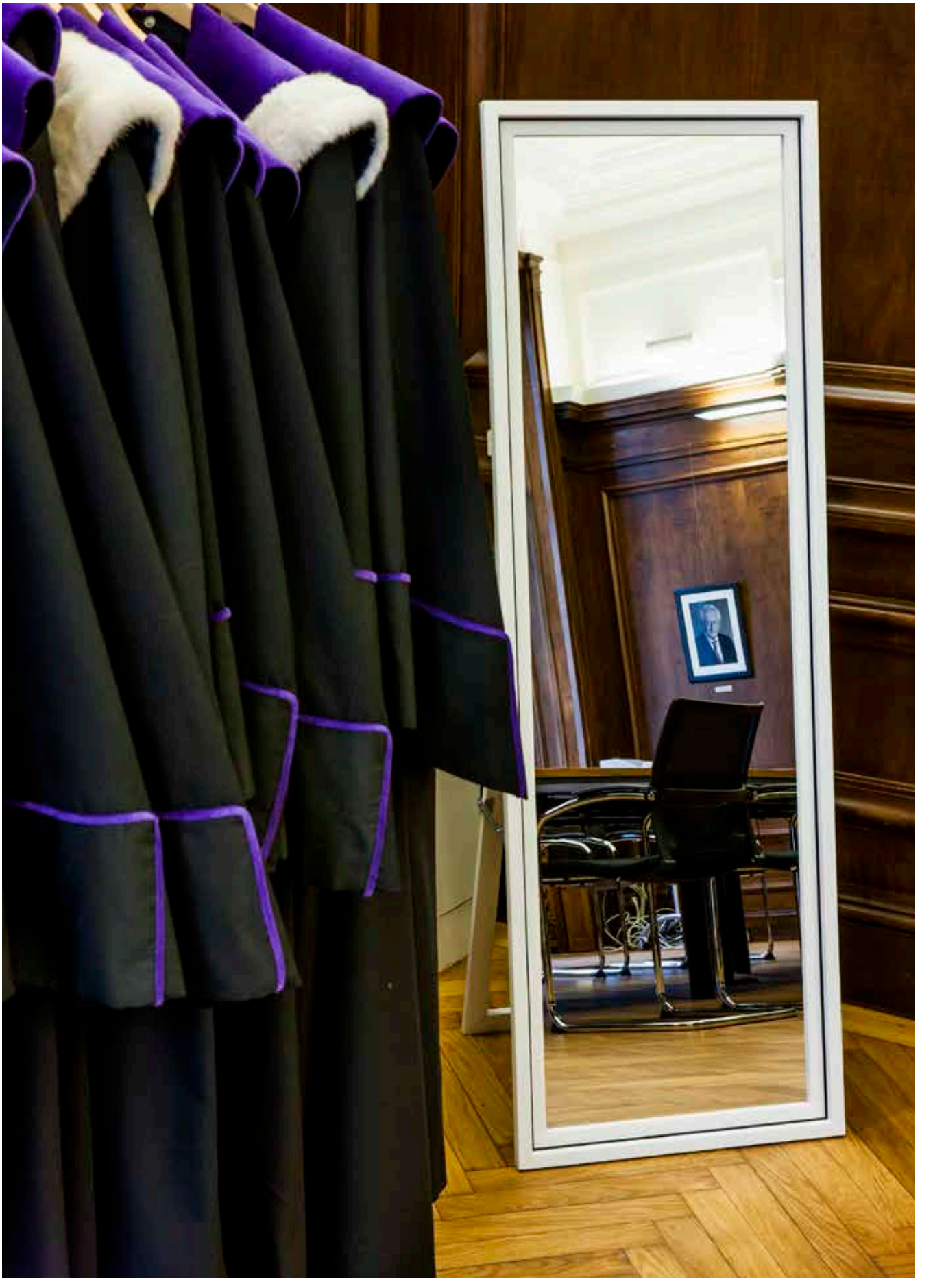
The fact that the Constitutional Court is not divided into senates and that, as a rule, the President and the Vice-President form part of each small assembly, has proved to be highly advantageous in practice, as it makes for uniformity and continuity of jurisdiction. The importance thereof is not to be underestimated, especially for a supreme court, whose essential function is to provide reliable guidance and orientation in the application of the law.

In principle, the Constitutional Court takes its decisions by a simple majority of votes. Unanimity is required for certain decisions – such as the refusal to consider a complaint. The President does not participate in the vote. However, in the event of a tie – which rarely happens – he/she is obliged to cast a vote, which then determines the result of the vote (President's right to cast the decisive vote).

The deliberations of the Constitutional Court and the result of its votes are subject to secrecy. No provision exists for the submission of a dissenting or concurring opinion.



Administrative matters, especially the supervision of administrative staff and provisions to be made for the financial and material requirements of the Constitutional Court, are tasks performed autonomously by the President. Before important personnel measures are taken, the personnel board, consisting of the President, the Vice-President and the Permanent Reporters, must be heard.



The Decision Process

Commencement of proceedings

The Constitutional Court cannot initiate proceedings on its own accord. All Constitutional Court proceedings are triggered by a petition which, depending on the type of proceedings, may be submitted under different names (e.g. complaint, challenge to elections, petition in the narrow sense of the term).

With few exceptions (for territorial authorities and their bodies, as well as in electoral proceedings), every petition has to be submitted by a lawyer equipped with power of attorney. Low-income petitioners may apply for legal aid, including the provision of legal counsel free of charge.

Every incoming case is given a file number and assigned by the President to a Permanent Reporter – or exceptionally to another member of the Court – who will work on the case and prepare the decision. When assigning cases, the President is not bound by any procedural rules, as there is no established division of responsibilities. However, a division by fields of law, considering the specific experience of the Permanent Reporters and ensuring a fair distribution of the work load, has proved its merits in practice.

Preliminary proceedings and preparation of the decision

Having been assigned a case, the Permanent Reporter first examines the requirements of admissibility to establish whether the case is within the jurisdiction of the Constitutional Court, the complaint has been submitted in due time and the petitioner is authorized to submit a petition, as well as to verify compliance with the formal legal requirements. Petitions that do not meet the formal requirements are returned to the petitioner - provided the defect identified can be corrected – for correction and re-submission within a certain period of time.

If an application for legal aid or – in the case of a complaint – for temporary relief (suspensive effect) has been submitted, a decision is usually taken during this stage of the proceedings.

If the Permanent Reporter considers a submission (petition, complaint, law suit, etc.) to be inadmissible or inherently flawed, he/she prepares a draft decision to reject the petition. If he/she regards a complaint against a ruling by the Constitutional Court as manifestly unsuited for further consideration, because it has no chance of success or does not serve to clarify a constitutional issue, he/she proposes rejection of the com-

plaint by the Court (pursuant to Art. 144, para. 2, of the Federal Constitutional Law). In all other cases, the Permanent Reporter invites the opposing party – which, in judicial review proceedings, for example, would be the federal government or the provincial government – as well as any co-petitioners involved to submit their comments, requisitions the complete case file for study and, if necessary, takes further steps to clarify the facts of the case.

Subsequently, following a study of case law relevant to the decision and the related legal literature, a draft decision is elaborated. Together with the pleadings prepared by the parties, as well as relevant case law and literature, the draft is communicated to the other members of the Court by electronic means; it provides the basis for their deliberations and the decision to be taken during the next session.

If the Permanent Reporter considers a public hearing to be necessary or appropriate, e.g. if the facts of the case need to be further clarified, if open legal issues are to be discussed with the parties, or if the case is of special interest for the public, he informs the President thereof.

●●● The public hearing

It is up to the President to demand that a public hearing be held. The parties to the proceedings are summoned to the hearing. Moreover, the date of the hearing has to be posted on the official bulletin board and published in the Wiener Zeitung. In many cases, questions to which the Constitutional Court requires answers from the parties are specified in the summons.

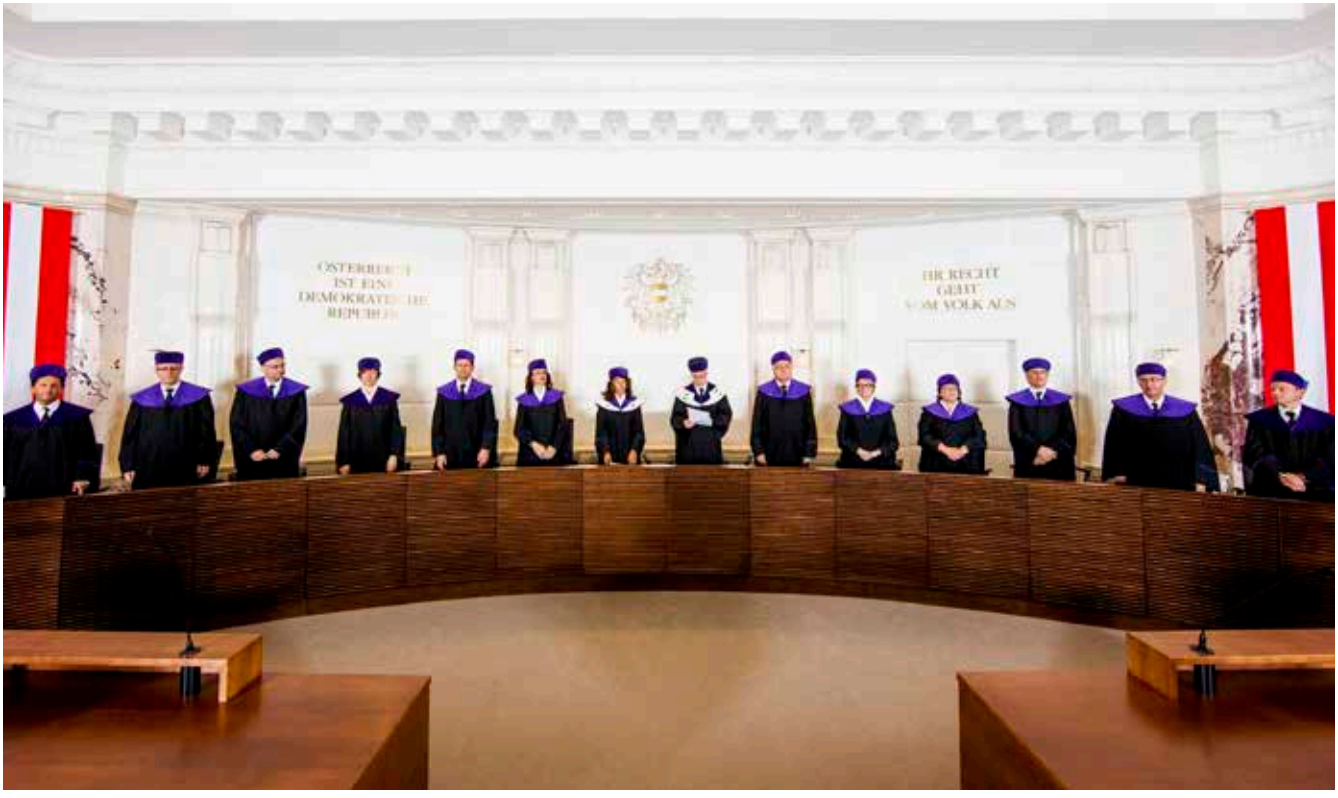
The hearing begins with a presentation by the Permanent Reporter, giving an overview of the facts of the case, the legal situation and the positions taken by the parties. After the presentation, the parties are heard. Usually, the judges then put questions to the parties. Once the case has been discussed in sufficient detail, the President closes the hearing and announces whether the decision is to be pronounced orally or will be communicated in writing. As a rule, decisions are not pronounced orally, unless they are of major significance

●●● Deliberations and decision

The Constitutional Court holds its deliberations behind closed doors. The presentation of the working draft by the Permanent Reporter is followed by a discussion, which may extend over several sessions. Once the case has been sufficiently discussed, a vote is taken on the Permanent Reporter's proposal. As a matter of principle, a distinction is made between the issue of admissibility and the decision on the substance of the case. In complex cases, votes are taken in a step-by-step procedure.

Based on the result of the deliberations, the decision is laid down in writing, usually by the Permanent Reporter, sometimes by another member of the Court. Using the minutes taken during the deliberations as a basis, the chairperson verifies whether the written version duly reflects the decisions taken and confirms this through his/her signature. The decisions are then dispatched to the parties, either by mail or electronically, by the Court registry.

Essentially, all the decision taken by the Constitutional Court are accessible to members of the legal professions and the interested public via the online legal information system of the federal government (RIS); selected decisions are also available in print in an official collection of decisions published by the Court ("Ausgewählte Entscheidungen des Verfassungsgerichtshofes" – A Selection of Decisions by the Constitutional Court).




DEMOKRATISCHE
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Ausgewählte Entscheidungen
des
Verfassungsgerichtshofes

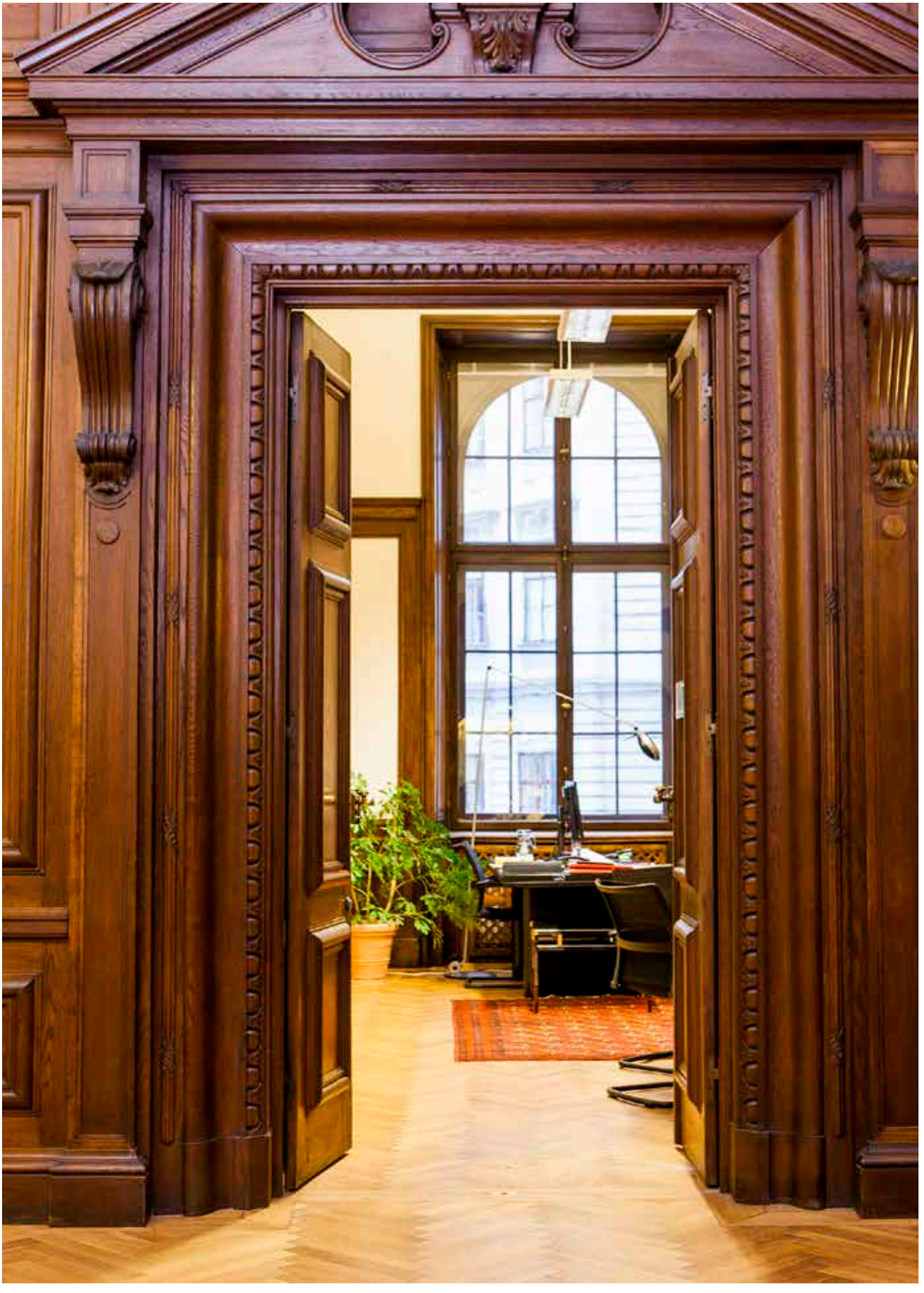

VERFASSUNGSGERICHTSHOF

The Constitutional Court in the International Context

Maintaining intensive international contacts with constitutional courts in Europe and other parts of the world – both bilaterally and multilaterally – is a matter of special importance to the Austrian Constitutional Court. Foreign constitutional courts also greatly appreciate such contacts, given the fact that the Austrian Constitutional Court, as the world's oldest specialized constitutional court, has played a pioneering role in the development of constitutional jurisdiction and enjoys an excellent reputation all over the world.

The regular exchange of opinions and experience with the constitutional courts of Austria's neighbouring states is a special priority for the Constitutional Court. In the wake of the political transformation in Europe over the past two decades, constitutional courts have been set up in all these states – a most welcome development for the benefit of democracy and the rule of law. Moreover, time and human resources permitting, the Constitutional Court also makes an effort to maintain contacts with other European and non-European constitutional courts.

Engaging in dialogue with the European Court of Human Rights in Strasbourg is a matter of particular interest for the Constitutional Court, as it is crucial to secure the uniform interpretation and application of the European Convention on Human Rights at the supranational and national levels. Considering Austria's specific situation, with the European Convention on Human Rights not only having the status of a treaty under international law, but also being part of the Austrian Constitution, such cooperation is particularly important. Close contacts with the Court of Justice of the European Union are equally important for the Constitutional Court. It is beyond any doubt that a uniform application of European Union law, including the EU Charter of Fundamental Rights, which is essential for the functioning of the European Union as a whole, can only be guaranteed through cooperation between the Court of Justice in Luxembourg, on the one hand, and the national constitutional courts, on the other hand.



At the multinational level, the regular meetings of the German-speaking constitutional courts, i.e. those of Germany, Switzerland, Liechtenstein and Austria, with representatives of the European Court of Human Rights and the Court of Justice of the European Union (the so-called "group of six" meetings) deserve to be mentioned. These meetings were initiated in Basel in 2004 and have since taken place every two years in Karlsruhe, Vienna, Lausanne and Luxembourg, providing a platform for open and intensive dialogue among these courts.

At the European level, the Conference of European Constitutional Courts, founded in 1972, has established itself as the most important European forum for the exchange of experience and opinions on constitutional issues among its forty full members. As stated in the preamble to the Statute of the Conference of European Constitutional Courts, the activities of the Conference primarily serve to allow regular contacts among constitutional courts and to promote an exchange of experience on constitutional practice and jurisprudence within the framework of regular specialized congresses. The aim of the Conference is to enhance the independence of constitutional courts as an essential factor in guaranteeing and implementing democracy and the rule of law, in particular with a view to securing the protection of human rights.

The Constitutional Court, convinced of the growing need for networking among national constitutional courts, especially within a European framework, greatly appreciates this Conference as a platform for substantive exchanges.

In view of the new challenges arising for scholars and practitioners of constitutional law, as well as for the Conference of European Constitutional Courts, through the growing internationalization of constitutional law, the dialogue with the European Court of Human Rights, and the advancing constitutionalization of European Union law as a matter of utmost importance for more than half the members of the Conference, the availability of a platform for networking is crucial. The comparative study of constitutions and constitutional jurisprudence is continuously gaining in importance.

Between 2012 and 2014, the Austrian Constitutional Court is presiding over the Conference of European Constitutional Courts. The crowning event of the Austrian presidency will be the XVIth Congress of this Conference on the theme of "Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives". Under this heading, essential questions relating to the mutual influence of the jurisprudence of European constitutional courts as well as the interaction between the European Court of Human Rights and the Court of Justice of the European Union will be discussed against the background of the legal framework provided by the Treaty of Lisbon.

The Austrian Constitutional Court's interest in the international cooperation of constitutional courts is confirmed by its status as a founding member of the World Conference on Constitutional Justice, an institution that was founded in 2011 thanks to a highly commendable initiative of the Venice Commission of the Council of Europe and to which approximately 80 constitutional courts and similar institutions have since acceded.


VERFASSUNGSGERICHTSHOF

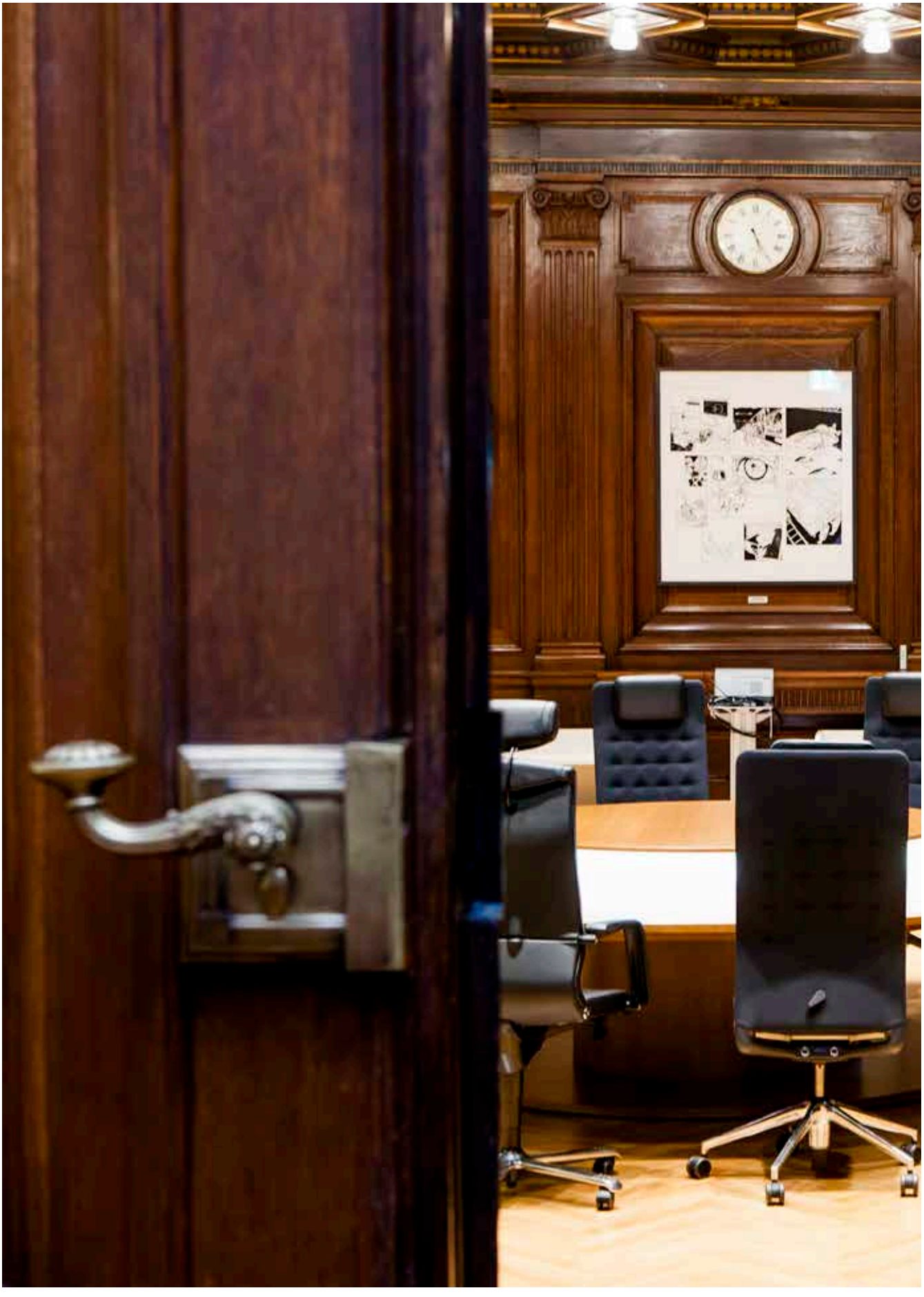
The Building

From 1946 to 2012, the Constitutional Court shared the baroque palais of the former Bohemian Court Chancellery on Judenplatz, built at the beginning of the 18th century, with the Administrative Court. Since August 2012, the Constitutional Court has been located at Freyung 8 in the first district of Vienna, in a building that was formerly occupied by a bank.

This prestigious building, well-known in Vienna as the location of the "Bank Austria Art Forum", was designed by the architects Ernst Gotthilf and Alexander Neumann for an Austrian bank called "Österreichische Creditanstalt für Handel und Gewerbe" and erected between 1914 and 1921. It features elements of neo-classicism and imitates a Renaissance palace. The entrance is modelled on a Roman portico.

From the entrance to the Constitutional Court, an elegant staircase leads up to the first floor, where the rooms have been preserved in their original state and are now listed as a historical monument. The offices of the President and Vice-President of the Constitutional Court, as well as the main courtroom, in which the Constitutional Court holds its public hearings, are located on this floor. A meeting room for the members of the Constitutional Court is also accommodated there. The President's regular press briefings take place in the foyer of the courtroom.

The judges, the clerks of the Court and the administrative staff have their offices on the upper floors. The library and a conference centre equipped for conferences and public functions are located on the fifth floor.



History of the Constitutional Court

1867 to 1919 – Precursors of the Constitutional Court in the Constitutional Monarchy: Imperial Court – State Court

The Constitutional Court has its origin in the 1867 Constitution of the Austro-Hungarian Monarchy. This so-called December Constitution, which transformed Austria into a constitutional monarchy, comprised a number of important constitutional laws, among them the "Basic Law on the General Rights of Nationals", which is still in force today and remains the only genuinely Austrian catalogue of fundamental rights. The **Imperial Court**, the precursor of today's Constitutional Court, was established at the same time.

The Imperial Court owes its special importance to a number of institutional peculiarities that still exist today and distinguish the Austrian Constitutional Court from other constitutional courts. The Court's powers were limited to decisions in certain conflicts of jurisdiction, certain pecuniary claims against and between territorial authorities, and complaints of citizens regarding violations of their "political" rights. They did not include the power to review the constitutionality of laws.

Also in 1867, a **State Court** was established for the purpose of deciding in cases of ministerial impeachment, but it was never called upon to pronounce on such a case.

1919 – Transition to a republican constitution: the Constitutional Court of the Republic of German-Austria

The Constitutional Court of the Republic of German-Austria was set up in 1919. It took over the functions of the Imperial Court and the State Court. Moreover, it was furnished with the power to review laws. However, this power was limited to the review of laws adopted by provincial assemblies and could only be exercised upon the request of the state government.

1920 to 1934 – The First Republic: the Constitutional Court based on the Federal Constitutional Law of 1 October 1920

The Constitutional Court, as it exists today, was set up by virtue of the Federal Constitutional Law of 1 October 1920. The Court not only assumed all the functions exercised by the Imperial Court and the State Court at the time of the

Monarchy, but was also furnished with the power to review laws for their constitutionality.

With this novel institution created by the Constitution, the newly established Republic of Austria set standards for the rest of the world. From the very beginning, it was clearly understood that, in terms of legal policy, the Court's power to review the constitutionality of laws adopted by Parliament would be by far its most important responsibility.

At the time of its establishment, the Austrian Constitutional Court was practically the only court of its type worldwide. The only other country that had set up a constitutional court – even a few months earlier than Austria – was the then Czechoslovak Republic, but this court never achieved any practical importance. In 1921, the Principality of Liechtenstein established a constitutional court, which was called "State Court". It was only decades later, in the second half of the 20th century, that the so-called "Austrian model" of institutionalized judicial review of laws prevailed all over the world.

The introduction of a judicial review of laws also added a new dimension to the protection of fundamental rights. With the Constitutional Court being given the power to repeal laws as unconstitutional, it was made clear that the fundamental rights enshrined in the Constitution provide a yardstick for the constitutionality of laws and, as such, are binding for the legislator. Therefore, a law that violates fundamental rights has to be repealed by the Constitutional Court as unconstitutional, in particular if the law allows disproportionate interferences with a fundamental right.

In 1925 and 1929, the Constitutional Court saw its powers strengthened and extended. The 1929 amendment to the Federal Constitutional Law resulted in far-reaching changes in the constitutional order. The primary goal of the amendment was to strengthen the position of Austria's Federal President as a counterweight to Parliament. In an effort to "depoliticize" the Constitutional Court, modalities for the appointment of members and substitute members were introduced which, to a large extent, still apply today. However, this amendment to the Constitution was not able to ease the tense political atmosphere prevailing in Austria at that time. In the wake of a controversy over a vote taken in the National Council on 4 March 1933, the three speakers of the National Council stepped down all at once. The federal government, stating that the National Council had opted for its "self-elimination", prevented it from reconvening and from then on ruled through regulations on the basis of the 1917 War Powers Act – an authoritarian regime that excluded the legislative bodies. Over 100 petitions for the review of such regulations were submitted to the Constitutional Court in


1.

1. Professor Dr. Hans Kelsen (around 1925), Member of the Constitutional Court from 1919 to 1930.

2. On 3 May 1919, the State Chancellery announced the "appointment of Dr. Hans Kelsen as Member of the Constitutional Court" (Entry in the Presidential Records of the Constitutional Court).

3. The Constitutional Court sitting in an assembly of five judges (around 1925). President Dr. Paul von Vittorelli at the centre, Professor Hans Kelsen to his right.

2.

3.

the course of 1933. However, a government regulation – also based on the War Powers Act – prevented the Court from taking decisions in its regular composition. Thus, the Constitutional Court was paralyzed as well ("elimination of the Constitutional Court").

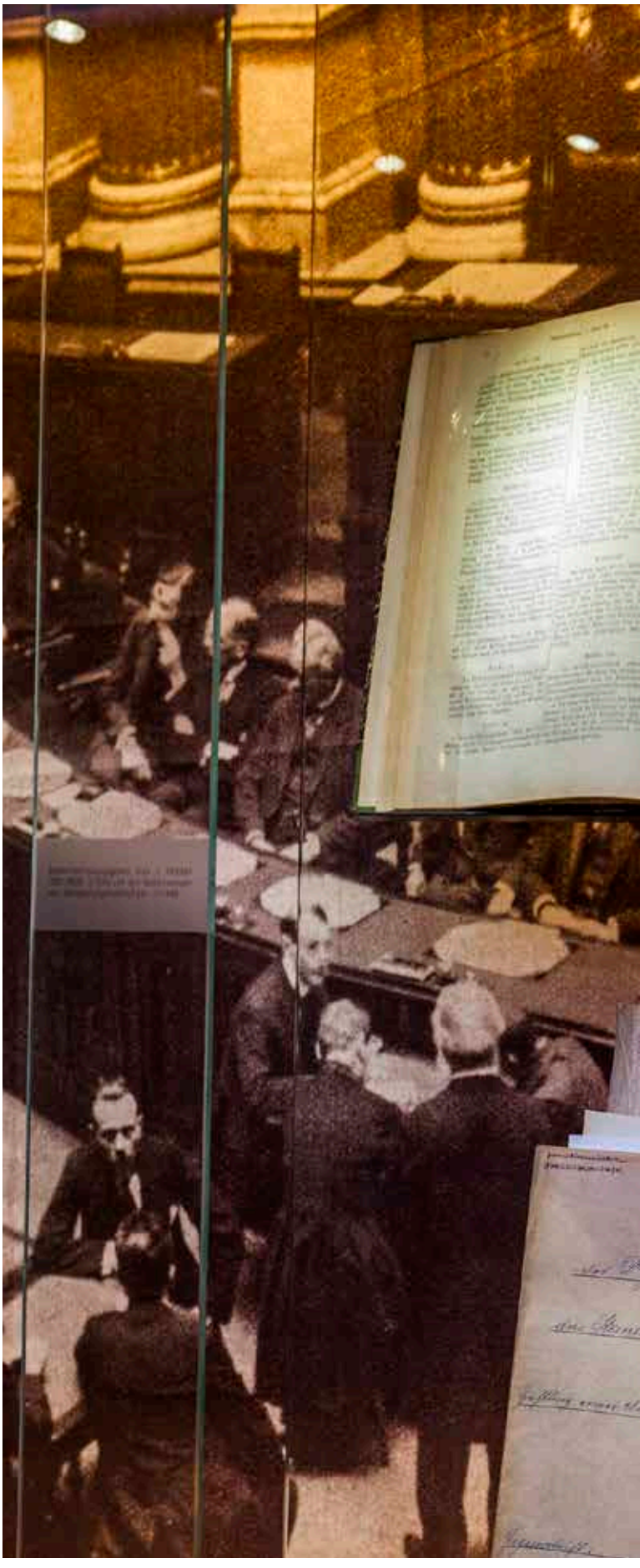
1934 to 1938 - Corporatist-authoritarian regime and annexation to the Third Reich: High Federal Court

The corporatist-authoritarian constitution of 1934 did away with the Constitutional Court, but provided for a High Federal Court, which was called upon to ensure the constitutionality of legislation and the lawfulness of the public administration, essentially exercising the functions of the former Administrative Court and the former Constitutional Court. After the annexation of Austria to the German Reich, the High Federal Court lost its constitutional powers.

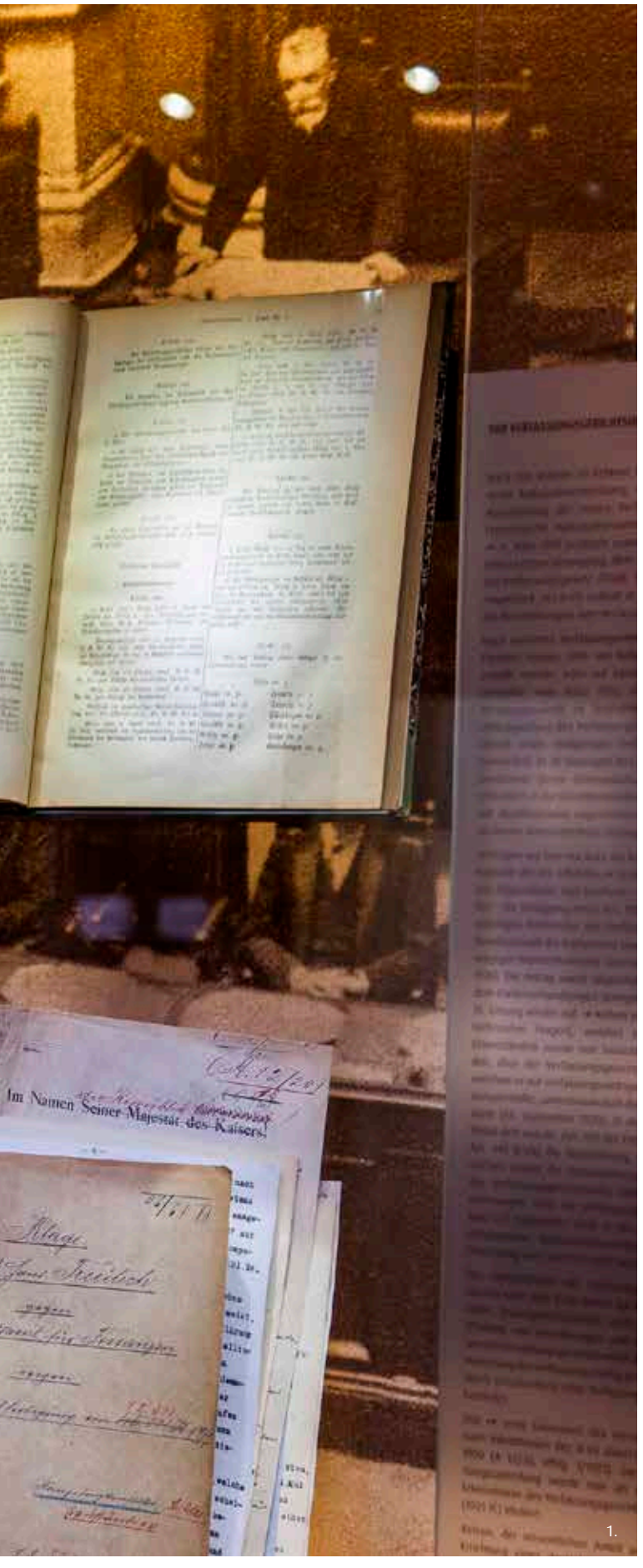
Since 1945 – Restoration of Austria and the Second Republic: Constitutional Court

The Constitutional Court was re-established and restored to its pre-1933 powers in 1945; it resumed its activities in 1946.

In the course of the following decades, the jurisdiction of the Court was repeatedly extended and some of the legal provisions pertaining to its organization were modified.



1. Showcase displaying the history of the Constitutional Court: Federal Law Gazette opened on the page showing the provisions of the 1920 Federal Constitutional Law on the Constitutional Court. Below: The first decision of the Constitutional Court of 14 December 1920, A 12/20.



1.

Members and Substitute Members

President

Dr. Gerhart Holzinger
Born in Gmunden, Upper Austria, in 1947
Former Director General in the Office of the Federal Chancellor, University Professor

Member since 1995, President since 2008

Vice-President

Dr. Brigitte Bierlein
Born in Vienna in 1949
Former Attorney General at the Office of the Procurator General of the Supreme Court

Vice-President since 2003

Members

Dr. Rudolf Müller
Born in Vienna in 1947
Former Senate President at the Administrative Court,
Honorary Professor

Substitute member from 1995 to 1998, member since 1998

Mag. Dr. Eleonore Berchtold-Ostermann
Born in Vienna in 1947
Lawyer

Member since 1997

"The most important power of the Constitutional Court resides it its right to repeal regulations and even laws (Art.139 and 140). This is what makes it unique in modern constitutional history and accounts for its overriding importance in terms of legal policy."

Hans Kelsen/Georg Froehlich/Adolf Merkl, Die Bundesverfassung vom 1. Oktober 1920, 1922, p.253.

Dr. Claudia Kahr
Born in Graz, Styria, in 1955
Former Director General in the Federal Ministry of Transport, Innovation and Technology

Member since 1999

Dr. Johannes Schnizer
Born in Graz, Styria, in 1959
Former senior official in the Austrian Parliament

Member since 2010

“The Republic of Austria’s system of constitutional jurisdiction ..... is rightly considered to be the most original institution of the Austrian Federal Constitution of 1 October 1920.”

Adolf Merkl, Die Verfassungsgerichtsbarkeit in Österreich, in: Verwaltungsarchiv 1933, p.219.

Dr. Helmut Hörtenhuber
Born in Linz, Upper Austria, in 1959
Former Executive Director of the Provincial Parliament of Upper Austria, Honorary Professor

Member since 2008

Dr. Markus Achatz
Born in Graz, Styria, in 1960
University Professor

Member since 2013

"The state under the rule of law provides the framework of public order within which a politically mature people recognizes its limits."

Werner Kägi, Rechtsstaat und Demokratie, in: FS Giacometti, 1953, p.141.

Dr. Christoph Herbst
Born in Vienna in 1960
Lawyer

Member since 2011

Dr. Georg Lienbacher
Born in Hallein, Salzburg, in 1961
University Professor

Member since 2011

"The institution of legal review by the Constitutional Court represents the principle of the rule of law taken to the highest level of perfection."

Ludwig Adamovich, Grundriss des österreichischen Verfassungsrechts, 1947, p. 73.

Dr. Michael Holoubek
Born in Vienna in 1962
University Professor

Member since 2011

Dr. Sieglinde Gahleitner
Born in St.Veit, Upper Austria, in 1965
Lawyer

Member since 2010

"Democracy certainly is a praiseworthy good, but the rule of law is like our daily bread, like the water we drink and the air we breathe; and the best thing is that democracy alone is suited to guarantee the rule of law."

Gustav Radbruch, Gesetzliches Unrecht und übergesetzliches Recht, in: Süddeutsche Juristenzeitung 1946, p.107.

Dr. Ingrid Siess-Scherz
Born in Vienna in 1965
Former senior official in the Austrian Parliament

Member since 2012

DDr. Christoph Grabenwarter
Born in Bruck/Mur, Styria, in 1966
University Professor

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Substitute member since 2008

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Court of Vienna

Substitute member since 1998

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University Professor

Substitute member since 1995

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