The Constitutional Court

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Verfassungsgerichtshof
Österreich

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The Constitutional Court


VERFASSUNGSGERICHTSHOF
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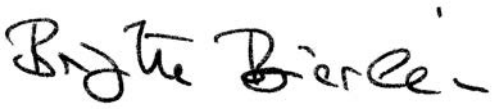
Foreword

The idea of constitutional justice is based on the understanding that disputes over the interpretation and the application of the Constitution concern not only the political but also the legal domain, and therefore have to be resolved by a specific court.

The Austrian Constitutional Court, established by virtue of the 1920 Constitution ("*Bundes-Verfassungsgesetz 1920*"), was the world's first court concentrating entirely on the review of laws for their constitutionality. From the second half of the 20th century onwards, this "Austrian model" of constitutional justice became established not only in almost all the countries of Europe, but also in Asia, Latin America and Africa. The Constitutional Court is the guardian of the Constitution. It protects the individual's fundamental rights in relation to any action taken by administrative authorities and administrative courts as well as the legislator, it reviews legal provisions for their constitutionality and lawfulness, it resolves disputes over the division of powers, and it verifies the results of elections.

The Constitutional Court – together with the other two supreme courts equipped with different powers (the Supreme Court and the Supreme Administrative Court) – is an important guarantor of the modern democratic state under the rule of law and, as such, enjoys the full confidence of the population. The acceptance of its decisions is of fundamental importance.

This brochure provides an overview of the tasks and working methods of the Austrian Constitutional Court.



Dr. Brigitte Bierlein
President of the Constitutional Court


VERFASSUNGSGERICHTSHOF

Tasks

The tasks of the Constitutional Court are laid down exhaustively and in considerable detail in the Constitution.

Judicial review (Article 140 of the Constitution)

The review of laws represents the core of constitutional justice. 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 competent state body or a duly authorised individual, or to provisions to be applied by the Court itself in a pending law suit.

The Constitution, a legal provision in itself, is the standard of review for the Constitutional Court and the basis for its decisions, whereas the political expediency of a provision is not referred to as a criterion of judicial review.

Within the framework of the so-called abstract review of legal norms, the Constitutional Court pronounces on the constitutionality of federal acts upon application of a regional government (*Landesregierung*) and on the constitutionality of *Land* acts upon application of the Federal Government, without its judicial review being triggered by a specific case. The constitutionality of federal acts can be challenged by one third of the members of the National Council or the Federal Council (the two chambers of Parliament); one third of the members of a regional parliament (*Landtag*) can challenge the constitutionality of an act adopted by the *Land* concerned, if such a step is provided for in the constitution of the *Land*. This holds for all *Länder*, except Lower Austria (as of spring 2018).

Within the framework of the concrete review of legal norms, all criminal, civil and administrative courts are authorised and obligated to submit an application 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 any of these courts ("court-filed application").

Moreover, upon conclusion of proceedings before an ordinary (criminal or civil) court of first instance, a party has the right to challenge an act before the Constitutional Court if said party claims a violation of his/her rights through an unconstitutional act. As a prerequisite for such application, legal remedy must be sought against the court decision ("party-filed application").

Under certain conditions, an individual also has the right to challenge an act directly before the Constitutional Court, i.e. if he/she claims that his/her rights have been violated due to the unconstitutionality of the act, and if the act has taken effect for the individual concerned without a court ruling or an administrative decision ("individual application").

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 publication of the act.

As a matter of principle, the repeal of an act found to be unconstitutional is only effective for the future, the only exception being the case that caused the Constitutional

Court to repeal the unconstitutional provision: The act 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 at a later point in time. Thus, the legislator concerned is granted a certain period of time to adopt a new regulation that is in accordance with the Constitution ("deadline for correction").

Pursuant to Article 139a of the Constitution, the Constitutional Court also decides on the lawfulness of re-publication of an act. Re-publication is defined as the (repeated) promulgation of an act, usually after several amendments, in its most recent amended version by the Federal Chancellor and the Federal Minister in charge. Thus, re-publication breaks Parliament's legislative monopoly. The standard of review applied in this case is the authorisation of re-publication under constitutional law.

Review of regulations (Article 139 of the Constitution)

The Constitutional Court also has the power to review regulations for their legality. Essentially, the aforementioned principles of judicial review apply *mutatis mutandis*. Under certain conditions, applications can also be submitted by the Ombudsman's Board, local authorities and the Federal Minister of Finance.

Review of international treaties (Article 140a of the Constitution)

The Constitutional Court is also called upon to review international treaties for their lawfulness (constitutionality or legality). If the Constitutional Court pronounces an international treaty to be unconstitutional or unlawful, the treaty must no longer be applied by the national bodies. However, the treaty remains valid at international level. The only way for the Republic of Austria to remedy the situation is to achieve a diplomatic solution.

The review of laws represents the core of constitutional justice.

The Constitution is the standard of review for the Constitutional Court and the basis for its decisions.

Review of rulings by the administrative courts (Article 144 of the Constitution)

The Constitutional Court has the important task of pronouncing on complaints against rulings by the administrative courts (but not by the Supreme 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 act. If the Constitutional Court shares the doubts expressed in the complaint or has its own concerns, it will initiate an *ex-officio* judicial review procedure.

The Constitutional Court has the authority to refuse to deal with a complaint if it has no chance of success or if it cannot be expected to lead to the clarification of an issue of constitutional law. Upon application by the complainant, such complaints can be transferred to the Supreme Administrative Court for decision.

The standard of review applied by the Constitutional Court is the Constitution. If the complainant holds that rights granted by simple-majority acts have been violated without any issue of unconstitutionality arising, the Supreme Administrative Court has the power to deal with a complaint against a ruling by an administrative court.

Decisions on pecuniary claims (Article 137 of the Constitution)

The Constitutional Court decides on pecuniary claims against territorial authorities, which can be settled neither by way of ordinary legal proceedings nor by a decision by an administrative authority. Such claims include conflicts regarding the sharing of revenues between federal and *Land* level as well as claims for repayment of an administrative fine.

Decisions in conflicts of jurisdiction (Article 138, paragraph 1 of the Constitution)

The Constitutional Court decides in conflicts of jurisdiction arising between courts and administrative authorities, between ordinary courts of law and administrative courts or the Supreme Administrative Court, between the Constitutional Court and all other courts, between the Federal Government and a *Land* government, or between *Land* governments.

Pursuant to Article 138a of the Constitution, the Constitutional Court also decides on certain disputes arising in connection with treaties made pursuant to Article 15a of the Constitution between the Federal Government and *Land* governments or between *Land* governments.

Establishment of jurisdiction (Article 138, paragraph 2, Article 126a, Article 148f of the Constitution)

Upon application by the Federal Government or a *Land* 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 *Land* governments. This is the only case of an *ex-ante* review of norms by the Constitutional Court.

Furthermore, the Constitutional Court decides on differences in opinion between the Court of Audit and the Ombudsman's Board, on the one hand, and the governments and legal entities concerned, on the other hand, regarding the interpretation of the legal provisions governing the review powers of the Court of Audit and the Ombudsman's Board, respectively.

Decision on disputes arising in connection with parliamentary committees of enquiry (Article 138b of the Constitution)

Since 2015, it has been possible for one quarter of the members of the National Council to demand that a parliamentary committee of enquiry be established. In order to guarantee the effectiveness of this parliamentary minority right, the Constitutional Court has been granted the power to decide on clearly defined types of disputes that may arise in connection with the establishment or the activities of a committee of enquiry. This applies, *inter alia*, to the question of whether or not a committee is to be established; moreover, disputes regarding the scope of evidence to be taken and the summoning of persons as sources of information, differences of opinion on the submission of information, and complaints about the violation of the privacy rights of persons heard as sources of information can also be brought before the Constitutional Court.

Electoral jurisdiction (Article 141 of the Constitution)

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, *Land* parliaments, municipal councils), the election of the Austrian members of the European Parliament, the representative bodies of the professional chambers and the *Land* governments, as well as elections of mayors and the executive board

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of municipalities. Moreover, the Constitutional Court decides on the lawfulness of referenda, plebiscites and popular initiatives.

The Constitutional Court also decides on the loss of seats by members of a general representative body, Austrian 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.

Impeachment proceedings (Articles 142 and 143 of the Constitution)

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

Judgments 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. This power of the Constitutional Court is of hardly any practical significance. Since 1920, there have only been three proceedings of this type, two in the era of the First Republic and one in 1985.

Organisation and Structure

Appointment and legal status of the members of the Constitutional Court

All essential matters relating to the organisation of the Constitutional Court are laid down in Article 147 of the Constitution. The Constitutional Court consists of a President, a Vice-President, twelve members and six substitute members, all of them appointed on the basis of proposals made by the Federal Government (President, Vice-President, six members, three substitute members), the National Council (three members, two substitute members) and the Federal Council (two members, one substitute member).

All members of the Constitutional Court must have a degree in law and at least ten years of experience in a legal profession. This means that the Constitutional Court comprises representatives of the most important legal professions. Currently (as of July 2018), these include six university professors, five civil servants from the public administration, and three lawyers. Four of its 14 members are women. Among the six substitute members (three women and three men) there are four judges, one university professor and one lawyer.

All members, except for civil servants from the public administration, are free to continue exercising their legal profession, in addition to their activity as constitutional judges. This system 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 *Land* 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 within the meaning of the definition given by the Constitution. Hence, in the exercise of their judicial office, they are independent and can neither be removed from office nor transferred to another position. They retire at the end of the year in which they reach the age of 70. Earlier removal from office is only possible through the Constitutional Court itself for certain reasons laid down in the Constitution or the Constitutional Court Act.

These provisions ensure 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 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 and remain confidential. In particular, the votes cast by the individual members on a certain issue are not disclosed.

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.

This independence guarantees that the members of the Constitutional Court are exclusively bound by the Constitution and the laws of the Republic of Austria and not subject to any political influence.

Internal organisation

The internal organisation 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, whose responsibility covers both judicial and administrative matters; in the event of the President's incapacity, he/she is represented by the Vice-President.

The full bench of the Constitutional Court elects so-called permanent rapporteurs from among its members for a term of office of three years each. As a rule, permanent rapporteurs are re-elected upon expiry of their three-year terms. Supported by the clerks of the Court, the permanent rapporteurs prepare the draft decisions. Given the huge number of files to be processed, it is not uncommon for all members – except for the President – to act as permanent rapporteurs, possible after a phase of orientation, if necessary.

The Constitutional Court is convened four times a year for periods of three weeks each. Should the need arise, the President may also call interim sessions. It is therefore not permanently in session. Within the framework of its sessions, the Court deliberates and decides on the cases ready for decision in more than 90 meetings a year taking four to five hours.

As laid down in the Constitution, the Constitutional Court is an individual body that is not subdivided into senates. In principle, the Court has the necessary quorum if the chairperson and at least eight voting members are present. However, in less complex cases the presence of the chairperson and four voting members in a "small formation" is sufficient. Nevertheless, any member has the right to demand that the case be dealt with in a plenary session.

The fact that the Constitutional Court is not divided into senates and that, as a rule, the President and the Vice-President take part in all „small formations", promotes the uniformity and continuity of jurisprudence.

In principle, the Constitutional Court takes its decisions by a simple majority of votes. The President – or the Vice-President if he/she is chairing the session – does not participate in the vote. In rare cases, this may result in a tie, for instance if a member is absent for reasons of ill health or steps down while a case is still being deliberated. Bringing in a substitute member is not allowed in such cases. In the event of a tie, the President is obligated 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 confidential. The expression of a dissenting opinion is not provided for.

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.


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The Decision Process

Commencement of proceedings

All proceedings before the Constitutional Court are initiated by a "procedural brief" which, depending on the type of proceedings, may be submitted as a "complaint" (in particular Article 144 of the Constitution), an "application" (in particular Articles 138 to 140 of the Constitution), a "claim" (Article 137 of the Constitution), a "challenge" (in particular Article 141 of the Constitution) or a "suit" (Articles 142 and 143 of the Constitution). With few exceptions (for territorial authorities and their bodies, as well as in electoral proceedings), every application has to be submitted by a lawyer equipped with power of attorney. Low-income applicants 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 rapporteur or, exceptionally, to another member of the Court. 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 individual judges and ensuring a fair distribution of the workload, has proved its merits in practice.

Preliminary proceedings and preparation of the decision

Having been assigned a case, the permanent rapporteur first examines the conditions of admissibility to establish whether the case is within the jurisdiction of the Constitutional Court, the complaint has been submitted in due time by an applicant authorised to submit a file, as well as to verify compliance with the formal legal requirements. Submissions that do not meet the formal requirements are returned to the applicant provided the defect identified can be corrected – for correction and re-submission within a certain period of time.

If a submission (application, complaint, law suit, etc.) is considered to be inadmissible or inherently flawed, it will be rejected. If a complaint against a ruling by an administrative court has no chance of success or cannot be expected to clarify a constitutional issue, the Court will refuse to deal with it (Article 144, paragraph 2 of the Constitution).

If the submission is admissible and does not from the outset appear to have no chance of success, the permanent rapporteur will invite the opposing party as well as any other parties involved to submit their comments, ensure requisition of the complete case file and, if necessary, take 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 drawn up. The draft is communicated to the other members of the Court and provides the basis for their deliberations and the decision to be taken during the next session.

The public hearing

If the facts of the case need to be further clarified, if there are open legal issues, or if the case is of special interest for the public, the President, acting upon the proposal of the permanent rapporteur, will decide that a public hearing be held.

The hearing begins with a presentation by the permanent rapporteur, giving an overview of the facts of the case, the law and the positions taken by the parties. After the presentation, the parties are heard. Usually, the judges then put questions to the parties.

Deliberation and decision

The Constitutional Court always holds its deliberations behind closed doors, including in cases in which public hearings are held. The presentation of the working draft by the permanent rapporteur is followed by a discussion, which may extend over several sessions. Once the case has been sufficiently discussed, a vote is taken.

In dealing with a case, the following alternatives are open to the Constitutional Court:
› Granting the application, in particular repealing an act or a regulation, the result of an election or a ruling by an administrative court;
› Dismissal if the judges have dealt with the substance of the case and found no infringement of the Constitution;
› Refusal of a complaint, an application filed by a party or an individual, if the submission has no chance of success or – in the case of complaints – cannot be expected to lead to the clarification of an issue of constitutional law;
› Rejection if the prerequisites for the initiation of proceedings are not met.

As a rule, decisions pronounced by the Constitutional Court are accessible via the online legal database of the Federal Government (RIS https://www.ris.bka.gv.at/vfgh); selected decisions are also available in print in an official compilation of decisions ("*Ausgewählte Entscheidungen des Verfassungsgerichtshofes*" – A Selection of Decisions by the Constitutional Court). Decisions of general public interest are also published on the website of the Constitutional Court (https://www.vfgh.gv.at/index.en.html).

How to contact the Constitutional Court
For detailed information on submissions to and proceedings before the Constitutional Court, please visit the following website of the Court: https://www.vfgh.gv.at/service/faq.en.html

The Constitutional Court always holds its deliberations behind closed doors.


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Duration of Proceedings and Cases Decided by the Court

In 2017, 5047 applications and complaints were brought before the Constitutional Court, which corresponds to an increase by almost 30 % compared to the previous year. At the same time, the judges dealt with and resolved 4719 cases. 45 % of the new cases concerned asylum law. A substantial number of cases, i.e. almost 15 % of all applications and complaints, concerned the law on games of chance.

The number of new cases submitted thus reached a level last seen in 2009 and 2010. However, the workload of the Constitutional Court does not develop in a linear fashion, and ultimately such workload will always depend on current developments and the evolution of the law. For some time from 2008 onwards, for instance, there was no possibility for applicants to submit complaints in asylum matters to the Supreme Administrative Court, which led to an increase in the number of cases brought before the Constitutional Court. In 2016 and 2017, the number of asylum proceedings rose sharply in the wake of the refugee crisis in the winter of 2015/2016.

EDevelopment since 2000: Cases submitted, cases resolved, duration of proceedings in days

Year	Submitted	Resolved	Duration of proceedings in days
2000	2789	2902	281
2001	2261	2706	268
2002	2569	2594	225
2003	2217	2122	235
2004	1957	2280	284
2005	4028	3594	234
2006	2558	2834	211
2007	2835	2565	200
2008	4036	3221	206
2009	5489	5471	248
2010	5133	4719	224
2011	4400	5613	229
2012	4643	4574	210
2013	4158	4527	208
2014	2995	3184	205
2015	3551	3485	153
2016	3920	3895	143
2017	5047	4719	140

Facts and figures
For additional facts and figures, please refer to the activity reports of the Constitutional Court published in German on the following website: https://www.vfgh.gv.at/verfassungsgerichtshof/publikationen/taetigkeitsberichte.de.html

Meeting at the European Court of Human Rights in Strasbourg in 2016 with delegations from the German Federal Constitutional Court, the State Court of the Principality of Liechtenstein, the Austrian Constitutional Court, the Swiss Federal Supreme Court, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) (so-called *Sechser-Treffen*).

The Constitutional Court in the International Context

The Constitutional Court is part of a European and global network of supreme courts that is dedicated to the objective of safeguarding the rule of law and protecting human rights. This network comprises the constitutional courts on the one level and, on the other level, the European courts of justice, such as the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). As the world's first court endowed with the power to review laws according to the model of concentrated constitutional justice, the Austrian Constitutional Court has always played a pioneering role in the further development of constitutional justice. International cooperation has been institutionalised within the framework of the Conference of European Constitutional Courts (CECC) and the World Conference on Constitutional Justice (WCCJ). As a founding member, the Austrian Constitutional Court plays a leading role in both institutions. In 1978 and 2014, it hosted the congress of the Conference of European Constitutional Courts.

The Constitutional Court also maintains intensive contact with other constitutional courts, especially those of Austria's neighbouring countries. In most of these countries, especially in Eastern Europe, the institutions for the protection of the Constitution and the rule of law are modelled on the Austrian Constitutional Court.

Another institution exercising a significant influence on the international evolution of constitutional justice is the **"European Commission for Democracy through Law" ("Venice Commission")**, a body of the Council of Europe. This Commission was established in 1990 with the mandate to support the countries in transition in the drawing up of new constitutions after the fall of the Iron Curtain. It has since evolved into an independent advisory body in constitutional matters. Cooperation between the "Venice Commission" and the constitutional courts has been institutionalised within the framework of the "Joint Council on Constitutional Justice".

The **Conference of European Constitutional Courts**, founded in Dubrovnik in 1972, brings together European constitutional courts and similar institutions with the power to review laws for their constitutionality. It promotes the exchange of information among its members and takes measures to strengthen the independence of constitutional courts as crucial guarantors of democracy and the rule of law. At its last congress in Batumi (Georgia) in June 2017, the Conference, acting upon an initiative of the Austrian Constitutional Court, adopted a resolution on the "Respect for Independence of Constitutional Courts", underlining that the legitimacy and effectiveness of constitutional courts depends on their independence. The Conference called upon the decision-makers in the national parliaments and governments to "respect the Constitution by upholding and protecting the independence of our courts and our justices".

The **World Conference on Constitutional Justice** provides a platform for cooperation among linguistic and regional groups (such as the Conference of European Constitutional Courts, the Association of Asian Constitutional Courts and the Ibero-American Conference on Constitutional Justice), with which the Venice Commission has been in regular contact since 1996. Its main objective is to foster communication among constitutional judges at a global level.

The Building

Since August 2012, the Constitutional Court has been located at Freyung, a square in the first district of Vienna, in a building 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 building, 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 are located on this floor, as is the main courtroom in which the Constitutional Court holds its public hearings.

The judges, the clerks of the Court and the administrative staff have their offices on the upper floors. There is also a room for the judges to withdraw to for their deliberations. The library and a conference centre equipped for conferences, seminars, training events and public functions are located on the fifth floor.


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GEHT
VOM VOLK AUS

Bundesgesetzblatt

für die Republik Österreich

Jahrgang 1920 — Ausgegeben am 10. November 1920 — 1. Stück

1. St. G. Bl. Nr. 450/20

Gesetz vom 1. Oktober 1920, womit die Republik Österreich als Bundesstaat eingerichtet wird (Bundes-Verfassungsgesetz).

Die Nationalversammlung hat beschlossen:

Erstes Hauptstück.

Allgemeine Bestimmungen.

(3) Die für Niederösterreich-Land und Wien geltenden Sonderbestimmungen enthält das vierte Hauptstück.

Artikel 4.

(1) Das Bundesgebiet bildet ein einheitliches Währungs-, Wirtschafts- und Zollgebiet.

(2) Innerhalb des Bundes dürfen Zwischenzollinien oder sonstige Verkehrsbeschränkungen nicht errichtet werden.

Artikel 5.

Bundeshauptstadt und Sitz der obersten Organe des Bundes ist Wien.

Artikel 6.

The 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, and it was furnished with the power to review laws. However, this power was limited to the review of laws adopted by *Land* parliaments and could only be exercised upon the request of the State Government.

1920 to 1934 – The First Republic: the Constitutional Court based on the 1920 Constitution

The Constitutional Court, as it exists today, was set up by virtue of the Constitution of 1 October 1920. Professor Hans Kelsen, one of the most eminent jurists of the 20th century, played an important role in the drafting of the Constitution. He is the father of the pure theory of law and served as a member of the Constitutional Court until the beginning of 1930 (photo p. 31: Kelsen, second from right, sitting next to President Paul Vittorelli). The part of the Constitution which, in his own words, "mattered most" to him and which he regarded as his "most personal work" was the section dealing with constitutional justice. The Constitutional 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.

The Constitutional Court, as it exists today, was set up by virtue of the Constitution of 1 October 1920.

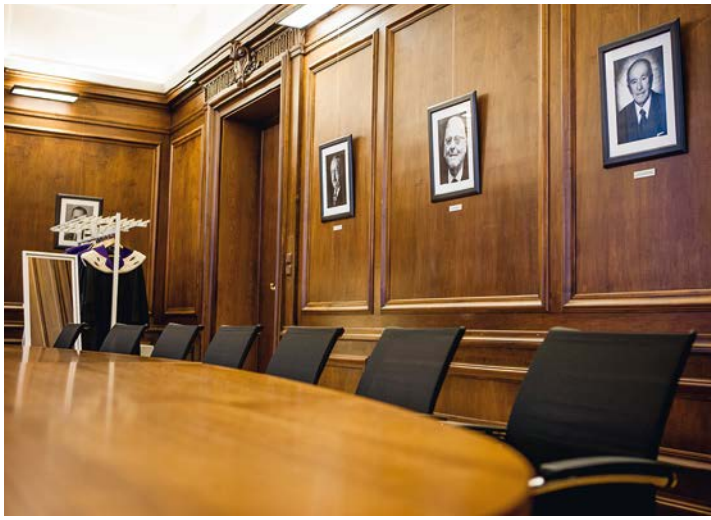
At the time of its establishment, the Austrian Constitutional Court was practically the only court of its type worldwide. The only other country that had set up a constitutional court – just a few months earlier than Austria – was the then Czechoslovak Republic, but this court never achieved any practical importance. In 1921, the Principality of Liechtenstein established a constitutional court, which was called the "State Court". It was only decades later, in the second half of the 20th century, that the so-called "Austrian model" of institutionalised 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 benchmark for the constitutionality of laws and, as such, are binding for the legislator. Therefore, any 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 Constitution 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 "depoliticise" 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 applications for the review of such regulations were submitted to the Constitutional Court in 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. This meant that the Constitutional Court was effectively paralysed 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 organisation were modified.

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

Evolution of jurisprudence
For a selection of the Constitutional Court's landmark decisions, please refer to the following website: https://www.vfgh.gv.at/verfassungsgerichtshof/geschichte/zeitleiste.en.html.

Members and Substitute Members of the Constitutional Court

President

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

Vice-President from 2003 to 2018
President since 2018,
nominated by the Federal Government

Vice-President

Christoph Grabenwarter
Born in Bruck an der Mur in 1966
University Professor

Member since 2005
Vice-President since 2018,
nominated by the Federal Government

Biographies
For biographic details on the members and substitute members of the Constitution Court, please go to the following website: https://www.vfgh.gv.at/verfassungsgerichtshof/verfassungsrichter/verfassungsrichter_ueberblick.en.html

Members

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

Member since 1999, nominated by the Federal Government

Wolfgang Brandstetter
Born in Haag in 1957
University Professor

Member since 2018, nominated by the Federal Government

Johannes Schnizer
Born in Graz in 1959
Former senior official in the Austrian Parliament

Member since 2010, nominated by the Federal Government

Georg Lienbacher
Born in Hallein in 1961
University Professor

Member since 2011, nominated by the Federal Government

Michael Holoubek
Born in Vienna in 1962
University Professor

Member since 2011, nominated by the National Council

Sieglinde Gahleitner
Born in St. Veit im Mühlkreis in 1965
Lawyer, Honorary Professor

Member since 2010, nominated by the Federal Council

Substitute Members

Lilian Hofmeister
Born in Vienna in 1950
Former judge at the Commercial Court of Vienna

Substitute member since 1998, nominated by the Federal Government

Robert Schick
Born in Vienna in 1959
Judge at the Supreme Administrative Court
Honorary Professor

Substitute member since 1999, nominated by the National Council

Werner Suppan
Born in Klagenfurt in 1963
Lawyer

Substitute member since 2017, nominated by the Federal Council

Helmut Hörtenhuber
Born in Linz in 1959
Former Executive Director of the *Land* Parliament of Upper Austria, Honorary Professor

Member since 2008, nominated by the Federal Government

Markus Achatz
Born in Graz in 1960
University Professor

Member since 2013, nominated by the National Council

Christoph Herbst
Born in Vienna in 1960
Lawyer

Member since 2011, nominated by the Federal Council

Andreas Hauer
Born in 1965 in Ybbs an der Donau
University Professor

Member since 2018, nominated by the National Council

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

Member since 2012, nominated by the Federal Government

Michael Rami
Born in 1968 in Vienna
Lawyer

Member since 2018, nominated by the Federal Council

Nikolaus Bachler
Born in Graz in 1967
Judge at the Supreme Administrative Court

Substitute member since 2009, nominated by the Federal Government

Angela Julcher
Born in Vienna in 1973
Judge at the Supreme Administrative Court
Honorary Professor

Substitute member since 2015, nominated by the National Council

Barbara Leitl-Staudinger
Born in Linz in 1974
University Professor

Substitute member since 2011, nominated by the Federal Government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