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Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz, BVerfGG)

Federal Constitutional Court Act as published on 11 August 1993 (Federal Law Gazette I p.
1473), as last amended by Article 2 of the Act of 8 October 2017 (Federal Law Gazette I p.
3546)

Part 1

Constitution and jurisdiction of the Federal Constitutional Court

Section 1

- (1) The Federal Constitutional Court shall be a federal court of justice which is autonomous and independent of all other constitutional organs.
- (2) The seat of the Federal Constitutional Court shall be Karlsruhe.
- (3) The Federal Constitutional Court shall establish its Rules of Procedure, which shall be adopted by the Plenary.

Section 2

- (1) The Federal Constitutional Court shall consist of two Senates.
- (2) Eight Justices shall be elected to each Senate.
- (3) Three Justices of each Senate shall be elected from among the judges of the supreme federal courts. As a general rule, only judges who have served for at least three years at one of the supreme federal courts shall be elected.

Section 3

- (1) The Justices must have reached the age of forty, be eligible for election to the Bundestag and must have declared in writing that they are willing to become a member of the Federal Constitutional Court.
- (2) They must be qualified to hold judicial office under the German Judiciary Act or must be the holder of the *Diplomjurist* degree awarded before 3 October 1990 in the territory referred to in Article 3 of the Unification Treaty and must be allowed to take up a regulated legal profession in accordance with the provisions of the Unification Treaty.
- (3) They may be members neither of the Bundestag, the Bundesrat, the Federal Government nor of any of the corresponding organs of a *Land*. Upon their appointment they shall cease to be members of such organs.
- (4) The judicial office shall be incompatible with any other professional occupation other than that of professor of law at a German higher education institution. The office of Justice of the Federal Constitutional Court shall take precedence over the service as professor.

Section 4

- (1) The term of office of the Justices shall be twelve years, though it shall not extend beyond retirement age.
- (2) Immediate or subsequent re-election of Justices shall not be possible.
- (3) Justices shall retire at the end of the month in which they reach the age of sixty-eight.
- (4) Upon expiry of their term of office the Justices shall continue to carry out their official functions until a successor is appointed.

Section 5

- (1) The Bundestag and the Bundesrat shall each elect half of the Justices of each Senate. Of the Justices to be elected from among the judges at the supreme federal courts, one shall be elected to the Senate by one of the electoral organs, two by the other electoral organ, of the remaining Justices three from one of the electoral organ, two from the other electoral organ.
- (2) Justices shall be elected no earlier than three months before the expiry of their predecessor's term of office or, if the Bundestag is dissolved at the time, within one month of the first meeting of the Bundestag.
- (3) If a Justice ceases to hold office prematurely, a successor shall be elected within one month by the same federal organ which elected the Justice who ceased to hold office.

Section 6

- (1) The Justices to be elected by the Bundestag shall be elected upon proposal by the Selection Committee pursuant to subsection (2) without prior debate and by secret ballot. They shall be elected as Justices if they obtain a two-thirds majority of the votes cast and at least the majority of the votes of the Members of the Bundestag.
- (2) The Bundestag shall, in accordance with the principles of proportional representation, elect a committee for the selection of the Justices of the Federal Constitutional Court which shall consist of twelve Members of the Bundestag. Each parliamentary group may propose a list of candidates. The number of candidates elected from each list shall be calculated from the total number of votes cast for each list pursuant to the d'Hondt method. The members shall be elected in the order in which their names appear on the list. A member of the Selection Committee who ceases to be a member or is unable to carry out his or her functions shall be replaced by the member who was proposed next on the same list.
- (3) The eldest member of the Selection Committee shall without delay call a meeting of the Selection Committee, subject to a one-week notification period, and shall chair the meeting, which shall continue until proposals for all Justices to be elected have been passed.
- (4) The members of the Selection Committee shall be obliged to maintain confidentiality concerning the personal circumstances of the candidates which become known to them in the course of their work in the Selection Committee, concerning the Selection Committee's discussions on this issue and the casting of votes.
- (5) A proposal shall require at least eight votes in the Selection Committee to be passed.

Section 7

The Justices to be elected by the Bundesrat shall be elected by two thirds of the votes of the Bundesrat.

Section 7a

- (1) If no successor has been elected in accordance with section 6 within two months of the expiry of a Justice's term of office or premature departure, the eldest member of the Selection Committee shall without delay request the Federal Constitutional Court to propose candidates for election.
- (2) The Plenary of the Federal Constitutional Court shall decide by a simple majority whom to propose as a candidate. If only one Justice is to be elected, the Federal Constitutional Court shall propose three candidates; if several Justices are to be elected at the same time, the Federal Constitutional Court shall propose twice as many candidates as Justices are to be elected. Section 16 (2) shall apply accordingly.

(3) If the Justice is to be elected by the Bundesrat, subsections (1) and (2) shall apply with the sole difference that the tasks of the eldest member of the Selection Committee shall be performed by the President of the Bundesrat or by the President's deputy.

(4) The right of the electoral organ to elect a candidate who was not proposed by the Federal Constitutional Court shall remain unaffected.

Section 8

(1) The Federal Ministry of Justice and Consumer Protection shall draw up a list of all federal judges who meet the requirements of section 3 (1) and (2).

(2) The Federal Ministry of Justice and Consumer Protection shall keep another list in which it shall enter the names of all those candidates who are proposed by a parliamentary group in the Bundestag, the Federal Government or a *Land* government for the office of Justice of the Federal Constitutional Court and who meet the requirements of section 3 (1) and (2).

(3) The lists shall be continually updated and shall be forwarded to the Presidents of the Bundestag and of the Bundesrat no later than one week before an election.

Section 9

(1) The Bundestag and the Bundesrat shall alternately elect the President and Vice-President of the Federal Constitutional Court. The Vice-President shall be elected from the Senate of which the President is not a member.

(2) In the first election, the Bundestag shall elect the President and the Bundesrat shall elect the Vice-President.

(3) Sections 6 and 7 shall apply accordingly.

Section 10

The Federal President shall appoint the elected Justices.

Section 11

(1) On assuming office, the Justices of the Federal Constitutional Court shall take the following oath before the Federal President:

“I swear that I shall, as an impartial judge, at all times faithfully observe the Basic Law of the Federal Republic of Germany and that I shall faithfully perform my judicial duties towards everyone. So help me God.”

If the oath is taken by a female Justice, the words “*als gerechter Richter*” (as an impartial Justice) shall be replaced by the words “*als gerechte Richterin*”.

(2) If the Justice is a member of a religious community whose members are permitted by law to use a different form of affirmation, the Justice may do so.

(3) The oath may also be taken without any form of religious affirmation.

Section 12

The Justices of the Federal Constitutional Court may at any time request to be discharged from office. The Federal President shall declare the discharge.

Section 13

The Federal Constitutional Court shall decide

1. on the forfeiture of fundamental rights (Article 18 of the Basic Law),
2. on the unconstitutionality of political parties (Article 21 para. 2 of the Basic Law),
- 2a. on the exclusion of political parties from state funding (Article 21 para. 3 of the Basic Law),
3. on complaints against decisions of the Bundestag regarding the validity of an election or the gain or loss of a seat in the Bundestag (Article 41 para. 2 of the Basic Law),

- 3a. on complaints by associations regarding their non-recognition as a political party for an election to the Bundestag (Article 93 para. 1 no. 4c of the Basic Law),
4. on motions for the impeachment of the Federal President by the Bundestag or the Bundesrat (Article 61 of the Basic Law),
5. on the interpretation of the Basic Law in the event of disputes concerning the extent of the rights and obligations of one of the highest federal organs or of other parties who have been vested with own rights under the Basic Law or under the rules of procedure of one of the highest federal organs (Article 93 para. 1 no. 1 of the Basic Law),
6. in cases of disagreement or doubt concerning the formal or substantive compatibility of federal or *Land* law with the Basic Law or the compatibility of *Land* law with other federal law, upon request by the Federal Government, a *Land* government or one quarter of the Members of the Bundestag (Article 93 para. 1 no. 2 of the Basic Law),
- 6a. in cases of disagreement as to whether a law complies with the requirements of Article 72 para. 2 of the Basic Law, upon request by the Bundesrat, a *Land* government or a *Land* parliament (Article 93 para. 1 no. 2a of the Basic Law),
- 6b. on whether, in the case referred to in Article 72 para. 4 of the Basic Law, federal regulation pursuant to Article 72 para. 2 is no longer necessary or whether, in the cases referred to in Article 125a para. 2, first sentence, of the Basic Law, it could no longer be passed as federal law, upon request by the Bundesrat, a *Land* government or a *Land* parliament (Article 93 para. 2 of the Basic Law),
7. in cases of disagreement concerning the rights and obligations of the Federation and the *Länder*, in particular with regard to implementation of federal law by the *Länder* and the exercise of federal supervision (Article 93 para. 1 no. 3 and Article 84 para. 4, second sentence, of the Basic Law),
8. in other public-law disputes between the Federation and the *Länder*, between different *Länder* or within a *Land*, unless there is recourse to other courts (Article 93 para. 1 no. 4 of the Basic Law),
- 8a. on constitutional complaints (Article 93 para. 1 nos 4a and 4b of the Basic Law),
9. on motions for the impeachment of federal and *Land* judges (Article 98 paras 2 and 5 of the Basic Law),
10. on constitutional disputes within a *Land* if the decision is assigned to the Federal Constitutional Court under *Land* legislation (Article 99 of the Basic Law),
11. on the compatibility of a federal or *Land* statute with the Basic Law or the compatibility of a *Land* statute or other *Land* law with a federal statute, at the request of a court (Article 100 para. 1 of the Basic Law),
- 11a. on whether a decision of the Bundestag to establish a committee of inquiry is compatible with the Basic Law, upon referral pursuant to section 36 (2) of the Committees of Inquiry Act,
12. in cases of doubt regarding whether a rule of public international law is part of federal law and whether it directly creates rights and obligations for individuals, upon request by the court (Article 100 para. 2 of the Basic Law),
13. if the constitutional court of a *Land*, when interpreting the Basic Law, intends to deviate from a decision of the Federal Constitutional Court or of the constitutional court of another *Land*, upon request by that constitutional court (Article 100 para. 3 of the Basic Law),

14. in cases of disagreement concerning whether law continues to apply as federal law (Article 126 of the Basic Law),

15. on such other cases as are assigned to it by a federal law (Article 93 para. 3 of the Basic Law).

Section 14

(1) The First Senate of the Federal Constitutional Court shall be competent for judicial review proceedings (section 13 nos 6 and 11) in which the main issue is the alleged incompatibility of a legal provision with fundamental rights or rights under Articles 33, 101, 103 and 104 of the Basic Law, as well as for constitutional complaints, with the exception of constitutional complaints pursuant to section 91 and constitutional complaints concerning electoral law. The same shall apply if a *Land* government files an application for judicial review (section 13 no. 6) pursuant to the first sentence together with an application pursuant to section 13 no. 6a or no. 6b.

(2) The Second Senate of the Federal Constitutional Court shall be competent in the cases referred to in section 13 nos 1 to 5, 6a to 9, 11a, 12 and 14, as well as for judicial review proceedings and constitutional complaints not assigned to the First Senate.

(3) In the cases referred to in section 13 nos 10 and 13, the competences of the Senates shall be governed by subsections (1) and (2).

(4) The Plenary of the Federal Constitutional Court may, with effect from the beginning of the following judicial year,¹ set down rules on the allocation of the competences of the Senates which deviate from subsections (1) to (3) if this becomes imperative due to a work overload of one of the Senates which is not merely of a temporary nature. These rules shall also apply to pending proceedings in which neither an oral hearing nor deliberations have yet taken place. The relevant order shall be published in the Federal Law Gazette.

(5) If it is unclear which Senate is competent for specific proceedings, a committee consisting of the President, the Vice-President and four Justices, of whom each Senate shall appoint two for the duration of the judicial year, shall decide. In the event of a tied vote, the presiding Justice shall have a casting vote.

Footnote: ¹ Pursuant to section 68 of the Rules of Procedure of the Federal Constitutional Court, the "judicial year" is the calendar year.

Section 15

(1) The President and the Vice-President of the Federal Constitutional Court shall preside over their respective Senates. Their deputies shall be the most senior Justice of those present in the respective Senate, in the case of equal seniority, the eldest Justice.

(2) Each Senate shall have a quorum if at least six Justices are present. If in a particularly urgent case a Senate does not have a quorum, the presiding Justice shall order the drawing of lots to designate Justices of the other Senate as substitutes until the quorum is reached. The presiding Justices of the Senates cannot be designated as substitutes. Further details shall be set out in the Rules of Procedure.

(3) Once deliberations on a case have begun, no further Justices may join. If the Senate loses its quorum, the deliberations must begin anew after substitute Justices have joined the Senate.

(4) In proceedings pursuant to section 13 nos 1, 2, 2a, 4 and 9, a decision to the disadvantage of the respondent shall in each case require a two-thirds majority of the members of the Senate. All other cases shall be decided by a majority of the members of the Senate participating in the decision, unless otherwise provided by this Act. In the event of a tied vote, the Court cannot declare that the Basic Law or other federal law has been violated.

Section 15a

(1) The Senates shall appoint several Chambers for the duration of each judicial year. Each Chamber shall consist of three Justices. The composition of a Chamber should not remain unchanged for more than three years.

(2) Before the start of each judicial year, the Senate shall, for the duration of that year, decide the allocation of proceedings pursuant to section 80 and of constitutional complaints pursuant to sections 90 and 91 among the reporting Justices, the number and composition of the Chambers, as well as their substitute members.

Section 16

(1) Should a Senate intend to deviate in a point of law from the legal view expressed in a decision by the other Senate, the matter shall be decided by the Plenary of the Federal Constitutional Court.

(2) The Plenary shall have a quorum if two thirds of the Justices of each Senate are present.

Part 2

Proceedings before the Federal Constitutional Court

Chapter 1

General procedural rules

Section 17

Unless provided otherwise in this Act, Titles 14 to 16 of the Courts Constitution Act shall apply accordingly with regard to admission of the public, police powers in court, the language of the court, deliberations and the casting of votes.

Section 17a

(1) Hearings before the Federal Constitutional Court, including pronouncements of decisions, shall be public. Audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content shall only be permissible

1. during oral hearings, until the Court has established that the parties are present,
2. during public pronouncements of decisions.

By order of the presiding Justice, audio transmissions to a workspace for persons reporting for the press, radio, television or other media may be authorised.

(2) In order to protect the legitimate interests of the parties or of third parties and to ensure the proper course of proceedings, the presiding Justice may prohibit, entirely or in part, the making or transmitting of recordings pursuant to subsection (1), second sentence, as well as the transmission pursuant to subsection (1), third sentence, or may attach further conditions thereto.

(3) Audio recordings of hearings before the Federal Constitutional Court, including the pronouncements of decisions, may be authorised by order of the Senate for academic or historical purposes if the relevant proceedings are of paramount significance for the contemporary history of the Federal Republic of Germany. In order to protect the legitimate interests of the parties or of third parties and to ensure the proper course of proceedings, the presiding Justice may prohibit, in part, the making of such recordings. The recordings shall not be included in the files of the proceedings and may not be disclosed, nor may they be used or reviewed for purposes of the recorded or other proceedings. Upon the conclusion of the proceedings, the Court shall offer to transfer the recordings to the Federal Archives; the Federal Archives must determine, in accordance with the Federal Archives Act, whether the recordings are of lasting value. If the Federal Archives does not accept the recordings, the Court shall delete the recordings. This shall apply without prejudice to section 25a, second sentence.

(4) The orders of the presiding Justice may be challenged before the Senate.

Section 18

(1) Justices of the Federal Constitutional Court shall be barred from exercising their judicial duties if they

1. are a party to the case, or are or were married to a party, or are or were in a civil partnership with a party, are related by blood or marriage in the direct line up to the third degree or by marriage up to the second degree in the collateral line or
 2. have already been involved in the same case due to their office or profession.
- (2) Justices who have an interest in the outcome of the proceedings on the grounds of their marital status, profession, descent, membership of a political party or because of a similarly general consideration shall not be regarded as parties to the case.
- (3) Involvement within the meaning of subsection (1) no. 2 shall not include
1. participating in the legislative process,
 2. expressing a scholarly opinion on a point of law which may be relevant to the case.

Section 19

- (1) If a Justice of the Federal Constitutional Court is challenged on the grounds of possible bias, the Court shall decide in that Justice's absence; in the event of a tied vote, the presiding Justice shall have a casting vote.
- (2) The reasons for the challenge shall be stated. The challenged Justice shall comment on the challenge. The challenge shall not be considered if it is made after the oral hearing has commenced.
- (3) If a Justice who has not been challenged recuses himself or herself, subsection (1) shall apply accordingly.
- (4) If the Federal Constitutional Court has declared a challenge or self-recusal to be well-founded, lots shall be drawn to select a Justice from the other Senate as a substitute. The presiding Justices of the Senates cannot be designated as substitutes. Further details shall be set out in the Rules of Procedure.

Section 20

The parties shall have the right of access to the files.

Section 21

If the proceedings are initiated by a group of persons or against a group of persons, the Federal Constitutional Court may order that the group have its rights, in particular the right to attend hearings, exercised by one or more representatives (*Beauftragter*).

Section 22

- (1) The parties may be represented at any stage of the proceedings by a lawyer or by a professor of law at a state or state-recognised higher education institution of a Member State of the European Union, another Contracting State to the Agreement on the European Economic Area or Switzerland who is qualified to hold judicial office; they must be represented in this manner in the oral hearing before the Federal Constitutional Court. Legislative bodies and parts thereof which have been vested with own rights under the Constitution or their rules of procedure may also be represented by their members. The Federation, the *Länder* and their constitutional organs may also be represented by their civil servants provided they are qualified to hold judicial office or are qualified for higher administrative service on account of having passed the required state examinations. The Federal Constitutional Court may also permit another person to act as adviser to a party (*Beistand*).
- (2) The power of attorney shall be granted in writing. It must expressly be granted for the proceedings in question.
- (3) If an authorised representative (*Bevollmächtigter*) has been appointed, all communications by the Court shall be addressed to him or her.

Section 23

(1) Applications to initiate proceedings shall be submitted to the Federal Constitutional Court in writing. They must state reasons; the necessary evidence must be listed.

(2) The presiding Justice or, if a decision pursuant to section 93c is possible, the reporting Justice shall without delay serve the application on the respondent, other parties and any third parties who are given the opportunity to submit a statement pursuant to section 27a and shall request that they submit a statement on the matter within a period to be specified.

(3) The presiding Justice or the reporting Justice may require any party to submit, within a period to be specified, the necessary number of copies of their briefs and of the challenged decisions for the Court and the other parties.

Section 24

Inadmissible or manifestly unfounded applications may be dismissed by unanimous order of the Court. No further reasons for this order need be stated if the applicant was previously made aware of the concerns regarding the admissibility or the merits of the application.

Section 25

(1) In the absence of provisions to the contrary, the Federal Constitutional Court shall decide on the basis of an oral hearing, unless all the parties have expressly waived their right thereto.

(2) Decisions based on an oral hearing shall be issued as judgments, decisions rendered without an oral hearing as orders.

(3) Decisions on part of an action and interim decisions shall be permissible.

(4) The decisions of the Federal Constitutional Court shall be issued "in the name of the people".

Section 25a

Written minutes shall be taken of the oral hearing. A tape recording shall also be made of the hearing; further details shall be set out in the Rules of Procedure.

Section 26

(1) The Federal Constitutional Court shall take the evidence necessary to establish the truth. It may, outside of the oral hearing, instruct a member of the Court to do so or may request another court to do so in respect of specific facts and individuals.

(2) If so decided by a two-thirds majority of the members of the Court, the Court may refrain from requesting or using individual documents if their use would be contrary to national security interests.

Section 27

All courts and administrative authorities shall provide the Federal Constitutional Court with legal and administrative assistance. If the Federal Constitutional Court requests the files of the original proceedings, these shall be submitted directly to the Court.

Section 27a

The Federal Constitutional Court may give expert third parties the opportunity to submit statements.

Section 28

(1) The provisions of the Code of Criminal Procedure shall apply accordingly to the examination of witnesses and experts in the cases referred to in section 13 nos 1, 2, 2a, 4 and 9, in all other cases, the provisions of the Code of Civil Procedure shall apply accordingly.

(2) If a witness or expert may only be examined with the permission of a superior authority, such permission may only be refused if the welfare of the Federation or of a *Land* so requires. The witness or expert cannot plead his or her obligation to maintain secrecy if the Federal Constitutional Court declares with a two-thirds majority of its members that the refusal to grant permission to testify is unfounded.

Section 29

The parties shall be notified of the dates of all evidentiary hearings and may attend them. They may ask the witnesses and experts questions. If a question is objected to, the Court shall decide.

Section 30

(1) The Federal Constitutional Court shall decide in secret deliberations at its discretion and based on the conviction resulting from the hearing and the evidence taken. The decision shall be put in writing, shall give reasons and shall be signed by the participating Justices. If an oral hearing was held, the decision and the main reasons for the decision shall then be publicly pronounced. The date of pronouncement may be announced during the oral hearing or may be set after the deliberations; in the latter case, it shall be notified to the parties without delay. No more than three months shall lie between the end of the oral hearing and the pronouncement of the decision. The date of pronouncement may be rescheduled by order of the Federal Constitutional Court.

(2) If a Justice expressed a differing view on the decision or its reasoning during the deliberations, he or she may set forth this view in a separate opinion; the separate opinion shall be annexed to the decision. The Senates may disclose the distribution of votes in their decisions. Further details shall be set out in the Rules of Procedure.

(3) All decisions shall be notified to the parties.

Section 31

(1) The decisions of the Federal Constitutional Court shall be binding upon the constitutional organs of the Federation and of the *Länder*, as well as on all courts and those with public authority.

(2) In the cases referred to in section 13 nos 6, 6a, 11, 12 and 14, the decision of the Federal Constitutional Court shall have the force of law. The same shall apply in the cases referred to in section 13 no. 8a if the Federal Constitutional Court declares a law to be compatible or incompatible with the Basic Law, or if it voids a law. If a law is declared to be compatible or incompatible with the Basic Law or other federal law, or if it is voided, the operative part of the decision shall be published in the Federal Law Gazette by the Federal Ministry of Justice and Consumer Protection. This shall apply accordingly to the operative part of the decision in the cases referred to in section 13 nos 12 and 14.

Section 32

(1) In a dispute, the Federal Constitutional Court may provisionally decide a matter by way of a preliminary injunction if this is urgently required to avert severe disadvantage, to prevent imminent violence or for another important reason in the interest of the common good.

(2) The preliminary injunction may be issued without an oral hearing. In particularly urgent cases, the Federal Constitutional Court may refrain from giving the parties to the principal proceedings, the parties entitled to join or the parties entitled to submit statements the opportunity to submit statements.

(3) A protest may be lodged if the Court issues or refuses the preliminary injunction by means of an order. This shall not apply to the complainant in constitutional complaint proceedings. The Federal Constitutional Court shall decide on the protest after an oral hearing. The hearing must be held within two weeks of receipt of the reasons of the protest.

(4) The protest against a preliminary injunction does not have suspensive effect. The Federal Constitutional Court may stay the execution of the preliminary injunction.

(5) The Federal Constitutional Court may communicate its decision on the preliminary injunction or on the protest without giving reasons. In this case, the reasons shall be separately notified to the parties.

(6) The preliminary injunction shall cease to have effect after six months. It may be renewed with a two-thirds majority of the votes.

(7) If a Senate does not have a quorum, the preliminary injunction may be issued in particularly urgent cases if at least three Justices are present and the decision is taken

unanimously. It shall cease to have effect after one month. If it is confirmed by the Senate, it shall cease to have effect six months after the date of issue.

Section 33

- (1) The Federal Constitutional Court may suspend its proceedings until a case pending before another court has been concluded if the findings or the decisions of the other court might be of relevance to its own decision.
- (2) The Federal Constitutional Court may base its decision on the findings of facts of a final judgment rendered in a case in which the truth was to be established *ex officio*.

Section 34

- (1) Proceedings before the Federal Constitutional Court shall be free of charge.
- (2) The Federal Constitutional Court may charge a fee of up to EUR 2,600 if the lodging of a constitutional complaint or of a complaint pursuant to Article 41 para. 2 of the Basic Law or the application for a preliminary injunction (section 32) constitutes an abuse of rights.
- (3) Section 59 (1) of the Federal Budget Code shall apply accordingly to the collection of the fee.

Section 34a

- (1) If an application for the forfeiture of fundamental rights (section 13 no. 1), or a motion for the impeachment of the Federal President (section 13 no. 4) or of a judge (section 13 no. 9) proves to be unfounded, the respondent or the accused shall be reimbursed the necessary expenses, including the costs of the defence.
- (2) If a constitutional complaint proves to be well-founded, the complainant shall be reimbursed the necessary expenses in full or in part.
- (3) In all other cases, the Federal Constitutional Court may order the full or partial reimbursement of expenses.

Section 35

The Federal Constitutional Court may specify in its decision who is to execute it; in individual cases it may also specify the method of execution.

Chapter 2

Access to files outside of proceedings

Section 35a

If applications for information from or access to files of the Federal Constitutional Court which are filed outside of proceedings concern personal data, the provisions of the Federal Data Protection Act shall apply, unless the provisions set out below stipulate otherwise.

Section 35b

- (1) Information from or access to files of the Federal Constitutional Court may be provided to
 1. public entities, to the extent necessary for the administration of justice or if the requirements of section 14 (2) nos 4, 6 to 9 of the Federal Data Protection Act are met,
 2. individuals and other non-public entities, to the extent that they can prove a legitimate interest; information from and access to files shall be denied if the data subject has a legitimate interest in the refusal. Section 16 (3) of the Federal Data Protection Act shall not apply; each release of information and each grant of access to the files shall be recorded in the files.

Information from or access to files may also be provided to the extent that the data subject has consented.

- (2) Access to files may only be granted if reasons are given to establish that merely disclosing information would be insufficient for the public entity making the request (subsection (1) no. 1) to fulfil its tasks or that the legitimate interests of the individual or other

non-public entity making the request (subsection (1) no. 2) would not be satisfied or if providing information would require a disproportionate effort.

(3) Information from files which were requested by the Court but which are not part of the case file may only be disclosed if the party requesting the files can demonstrate that the entity whose files are at issue has consented thereto; the same shall apply to access to such files.

(4) The files of the Federal Constitutional Court shall not be forwarded. Files may be forwarded to public entities if they may be granted access pursuant to subsection (2) or if an individual is to be granted access at that public entity due to special circumstances.

(5) Beginning thirty years after the conclusion of the proceedings, access to files of the Federal Constitutional Court kept at or by the Federal Archives as temporarily archived documents shall be governed by archive laws. After sixty years, these laws shall apply to drafts of judgments, orders and decrees, to preparatory works and to documents relating to the casting of votes. The Federal Constitutional Court shall retain the right to claim transferred documents kept at the Federal Archives with preferential access and at any time if required for internal or procedural purposes. For such purpose, these documents shall be sent to it immediately upon request.

(6) Files relating to Chamber decisions which are not intended for publication, including the drafts of decisions and decrees, preparatory works and documents relating to the casting of votes may, with the consent of the Federal Archives, be destroyed after a period of thirty years.

(7) Files relating to matters which have been recorded in the General Register but not transferred to the Register of Proceedings may, with the consent of the Federal Archives, be destroyed five years after the last decision in the matter.

Section 35c

The Federal Constitutional Court may use personal data filed in a case before the Court for other constitutional court proceedings.

Part 3

Specific types of proceedings

Chapter 1

Procedure in the cases referred to in section 13 no. 1

Section 36

Applications for a decision pursuant to Article 18, second sentence, of the Basic Law may be filed by the Bundestag, the Federal Government or by a *Land* government.

Section 37

The Federal Constitutional Court shall give the respondent the opportunity to submit a statement within a period to be specified and shall then decide whether to reject the application as inadmissible or as insufficiently substantiated, or whether to conduct a hearing.

Section 38

(1) Upon receipt of the application, the Federal Constitutional Court may order a seizure or search in accordance with the provisions of the Code of Criminal Procedure.

(2) The Federal Constitutional Court may order an investigation to prepare the oral hearing. The preparatory investigation shall be conducted by a Justice of the Senate which is not responsible for a decision in the principal proceedings.

Section 39

(1) If the application proves to be well-founded, the Federal Constitutional Court shall declare which fundamental rights the respondent has forfeited. It may limit the forfeiture to a specific period of time, the minimum being one year. It may also impose upon the respondent restrictions of a clearly specified type and duration, provided they do not interfere with

fundamental rights other than those which the respondent forfeited. In this respect, the administrative authorities shall not require any further legal basis for action against the respondent.

(2) The Federal Constitutional Court may, for the duration of the forfeiture of fundamental rights, deny the respondent the right to vote, the right to stand for election and the capacity to hold public office and may, in the case of legal persons, order their dissolution.

Section 40

If the forfeiture is of an unlimited duration or has been declared for a period of more than one year, the Federal Constitutional Court may, if two years have passed since the declaration of forfeiture, upon request of the former applicant or respondent, cancel the forfeiture in whole or in part, or shorten its duration. The request may be repeated if one year has passed since the last decision by the Federal Constitutional Court.

Section 41

If the Federal Constitutional Court has decided an application on the merits, a second application against the same respondent may only be filed if it is based on new facts.

Section 42 (repealed)

Chapter 2

Procedure in the cases referred to in section 13 nos 2 and 2a

Section 43

(1) Applications for a decision on whether a political party is unconstitutional (Article 21 para. 2 of the Basic Law) or excluded from state funding (Article 21 para. 3 of the Basic Law) may be filed by the Bundestag, the Bundesrat or by the Federal Government. An application for a decision on exclusion from state funding may be filed by way of a subsidiary application attached to an application for a decision on whether a political party is unconstitutional.

(2) A *Land* government may file an application only against political parties whose organisational extent is limited to the territory of its *Land*.

Section 44

Entitlement to represent the political party shall be determined in accordance with the relevant legal provisions or, in their absence, in accordance with the party's statutes. If the persons entitled to represent the party cannot be identified or there are no such persons, or if other persons have taken their place since the Federal Constitutional Court received the application, the last persons to actually manage the political party's affairs during the activity which led to the application shall be regarded as entitled to represent it.

Section 45

The Federal Constitutional Court shall give the person entitled to represent the party (section 44) the opportunity to submit a statement within a period to be specified and shall then decide whether to reject the application as inadmissible or as insufficiently substantiated, or whether to conduct a hearing.

Section 46

(1) If the application for a decision pursuant to Article 21 para. 2 of the Basic Law proves to be well-founded, the Federal Constitutional Court shall declare that the political party is unconstitutional.

(2) The declaration may be limited to a legally or organisationally independent section of a political party.

(3) The declaration shall be accompanied by the dissolution of the political party or of its independent section and by the prohibition of establishing a substitute organisation. The Federal Constitutional Court may, in such cases, also declare that the property of the

political party or of its independent section be confiscated in favour of the Federation or of the *Land* to be used for charitable purposes which are for the public benefit.

Section 46a

(1) If the application for a decision pursuant to Article 21 para. 3 of the Basic Law proves to be well-founded, the Federal Constitutional Court shall declare that the party be excluded from the state funding of political parties under section 18 of the Political Parties Act for the duration of six years. The declaration shall extend to substitute organisations. Applying the first sentence accordingly, the Federal Constitutional Court may declare that a party is seeking to pursue or continue, as a substitute party, the endeavours of a party excluded from state funding pursuant to the first sentence. The Federal Constitutional Court shall render a declaration upon application from an entity having legal ability to file an application pursuant to section 43 (1), first sentence; section 45 shall not apply to these proceedings.

(2) If, no later than six months before expiry of the time limit under subsection (1), first sentence, one of the entities having legal ability to file an application applies for an extension of the limit, the party shall continue to be excluded from state funding until a decision on the new application is rendered. Section 45 shall not apply to these proceedings. The Federal Constitutional Court may render a decision without an oral hearing. Subsection (1) shall apply accordingly to the decision. Repeated applications for an extension are admissible.

Section 47

Sections 38 and 41 shall apply accordingly.

Chapter 3

Procedure in the cases referred to in section 13 no. 3

Section 48

(1) Complaints against decisions of the Bundestag concerning the validity of elections, the violation of rights during elections or their preparation, to the extent that they are subject to electoral scrutiny pursuant to Article 41 of the Basic Law, or against decisions concerning the loss of a seat in the Bundestag, may be lodged with the Federal Constitutional Court within two months of the Bundestag's decision by the Member of the Bundestag whose seat is disputed, by an individual or group of individuals who are entitled to vote and whose objections were rejected by the Bundestag, by a parliamentary group or by a minority in the Bundestag comprising at least one tenth of the statutory number of Members; reasons for the complaint shall be given within this period of time.

(2) The Federal Constitutional Court may refrain from conducting an oral hearing if it is unlikely to advance the proceedings.

(3) If the examination of a complaint lodged by an individual or a group of individuals who are entitled to vote proves that their rights have been violated, the Federal Constitutional Court shall declare that this violation has taken place, unless it declares the election invalid.

Chapter 4

Procedure in the cases referred to in section 13 no. 4

Section 49

(1) Impeachment proceedings against the Federal President for an intentional violation of the Basic Law or of another federal law shall be initiated by submitting a motion for impeachment to the Federal Constitutional Court.

(2) On the basis of a decision by one of the two legislative bodies (Article 61 para. 1 of the Basic Law), the president of the entity in question shall prepare the motion for impeachment and send it to the Federal Constitutional Court within one month.

(3) The motion for impeachment shall specify the act or omission for which impeachment proceedings are being initiated, the evidence and the provision of the Constitution or law which has allegedly been violated. It must state that the decision to initiate impeachment

proceedings was taken by a two-thirds majority of the statutory number of Members of the Bundestag or by two thirds of the votes in the Bundesrat.

Section 50

Impeachment proceedings may only be initiated within three months of the circumstances on which they are based becoming known to the entity having legal ability to file an application.

Section 51

The initiation and conduct of the proceedings shall not be affected by the resignation of the Federal President, by his or her ceasing to hold office, or by the dissolution of the Bundestag or by the end of its electoral term.

Section 52

(1) Until the pronouncement of the judgment, the motion for impeachment may be withdrawn on the basis of a decision by the entity which filed the application. The decision to withdraw the motion shall require the approval of the majority of the statutory number of Members of the Bundestag or of the majority of the votes in the Bundesrat.

(2) The president of the entity which filed the application shall withdraw the motion for impeachment by sending a copy of the decision to the Federal Constitutional Court.

(3) The withdrawal of the motion for impeachment shall not take effect if the Federal President objects to it within one month.

Section 53

Following the initiation of impeachment proceedings the Federal Constitutional Court may issue a preliminary injunction stating that the Federal President is precluded from exercising his or her duties.

Section 54

(1) The Federal Constitutional Court may order an investigation to prepare the oral hearing; it must issue such an order if the representative of the entity initiating the impeachment proceedings or the Federal President files such an application.

(2) Conduct of the preparatory investigation shall be assigned to a Justice of the Senate which is not responsible for the principal proceedings.

Section 55

(1) The Federal Constitutional Court shall decide on the basis of an oral hearing.

(2) The Federal President shall be summoned to the oral hearing. The Federal President shall be informed in the summons that the hearing will take place in his or her absence if he or she remains absent without an excuse or leaves early without sufficient reason.

(3) At the hearing, the representative of the entity which filed the application shall first present the motion for impeachment.

(4) The Federal President shall then be given the opportunity to submit a statement on the impeachment.

(5) Thereafter, evidence shall be taken.

(6) Finally, the representative of the entity which initiated the impeachment proceedings shall present that entity's motion and the Federal President shall present his or her defence. The Federal President shall have the last word.

Section 56

(1) The Federal Constitutional Court shall declare in its judgment whether the Federal President is guilty of intentionally violating the Basic Law or a federal law, which must be clearly specified.

(2) In the event of a conviction, the Federal Constitutional Court may declare that the Federal President has forfeited his or her office. The forfeiture shall take effect on pronouncement of the judgment.

Section 57

A copy of the judgment, including the reasons, shall be sent to the Bundestag, the Bundesrat and to the Federal Government.

Chapter 5

Procedure in the cases referred to in section 13 no. 9

Section 58

- (1) If the Bundestag files a motion for the impeachment of a federal judge pursuant to Article 98 para. 2 of the Basic Law, then sections 49 to 55, with the exception of section 49 (3), second sentence, sections 50 and 52 (1), second sentence, shall apply accordingly.
- (2) If the federal judge is accused of having violated a law in his or her official capacity, the Bundestag shall not decide before a final decision has been taken in the judicial proceedings or, if formal disciplinary proceedings have previously been initiated for the same violation, until these proceedings have been opened. The motion for impeachment shall only be admissible within six months of the final conclusion of the judicial proceedings in which the federal judge was claimed to have committed the violation.
- (3) Except for the cases referred to in subsection (2), a motion for impeachment pursuant to subsection (1) shall only be admissible within two years of the violation.
- (4) A person commissioned by the Bundestag shall argue the motion for impeachment before the Federal Constitutional Court.

Section 59

- (1) The Federal Constitutional Court shall order one of the measures provided for in Article 98 para. 2 of the Basic Law or acquittal.
- (2) If the Federal Constitutional Court orders removal from office, the forfeiture of office shall take effect upon pronouncement of the judgment.
- (3) If transfer to another office or retirement is ordered, the order shall be executed by the authority competent for removal of the federal judge.
- (4) A copy of the judgment, including the reasons, shall be sent to the Federal President, the Bundestag and to the Federal Government.

Section 60

As long as proceedings are pending before the Federal Constitutional Court, disciplinary proceedings pending before a disciplinary court which are based on the same facts shall be suspended. If the Federal Constitutional Court orders removal from office, transfer to another office or retirement, the disciplinary proceedings shall be discontinued; otherwise, they shall be continued.

Section 61

- (1) A case shall only be reopened in favour of the convicted judge and only on his or her application or, after his or her decease, on application by his or her spouse, civil partner or one of his or her descendants and under the conditions set out in sections 359 and 364 of the Code of Criminal Procedure. The application must state the legal reasons for reopening the case as well as the supporting evidence. The application to reopen the case shall not suspend the effect of the judgment.
- (2) The Federal Constitutional Court shall decide on the admissibility of the application without an oral hearing. Sections 368, 369 (1), (2) and (4) and sections 370 and 371 (1) to (3) of the Code of Criminal Procedure shall apply accordingly.
- (3) In the new main hearing, the Court shall either uphold the previous judgment or order a more lenient measure or acquittal.

Section 62

In so far as *Land* constitutional law which continues to apply pursuant to Article 98 para. 5, second sentence, of the Basic Law does not provide otherwise, the provisions of this Chapter shall also apply if a *Land* law provides for rules applicable to *Land* judges which correspond to Article 98 para. 2 of the Basic Law.

Chapter 6
Procedure in the cases referred to in section 13 no. 5

Section 63

Applicants and respondents may only be: the Federal President, the Bundestag, the Bundesrat, the Federal Government and those parts of such organs as are vested with own rights pursuant to the Basic Law or the rules of procedure of the Bundestag and of the Bundesrat.

Section 64

- (1) The application shall only be admissible if the applicant asserts that an act or omission on the part of the respondent violated or directly threatened to violate the rights and obligations conferred on the applicant or on the applicant's organ by the Basic Law.
- (2) The provision of the Basic Law which was violated by the respondent's contested act or omission shall be specified in the application.
- (3) The application must be filed within six months of the applicant gaining knowledge of the contested act or omission.
- (4) If the time limit expired before this Act entered into force, the application may be filed within three months of its entry into force.

Section 65

- (1) The applicant and the respondent may be joined at any stage of the proceedings by other parties having the legal ability to file an application and which are referred to in section 63 if the decision is also relevant for delimiting their competences.
- (2) The Federal Constitutional Court shall notify the Federal President, the Bundestag, the Bundesrat and the Federal Government that proceedings have been initiated.

Section 66

The Federal Constitutional Court may join pending proceedings and separate joined ones.

Section 66a

In proceedings pursuant to section 13 no. 5 in conjunction with section 2 (3) of the Committees of Inquiry Act, as well as in proceedings pursuant to section 18 (3) of the Committees of Inquiry Act, also in conjunction with sections 19 and 23 (2) of the Committees of Inquiry Act, the Federal Constitutional Court may decide without an oral hearing. The same shall apply to applications pursuant to section 14 of the Act on the Parliamentary Oversight of Intelligence Activities of the Federation in conjunction with section 63.

Section 67

The Federal Constitutional Court shall declare in its decision whether the respondent's contested act or omission violates a provision of the Basic Law. The provision is to be specified. In the operative part of the decision the Federal Constitutional Court may at the same time decide on a point of law which is relevant for interpreting the provision of the Basic Law on which the declaration pursuant to the first sentence depends.

Chapter 7
Procedure in the cases referred to in section 13 no. 7

Section 68

Applicants and respondents may only be: the Federal Government for the Federation, the *Land* government for a *Land*.

Section 69

Sections 64 to 67 shall apply accordingly.

Section 70

Decisions of the Bundesrat pursuant to Article 84 para. 4, first sentence, of the Basic Law may only be challenged within one month of their having been taken.

Chapter 8
Procedure in the cases referred to in section 13 no. 8

Section 71

(1) Applicants and respondents may only be

1. in public-law disputes pursuant to Article 93 para. 1 no. 4 of the Basic Law between the Federation and the *Länder*: the Federal Government and the *Land* governments;
2. in public-law disputes pursuant to Article 93 para. 1 no. 4 of the Basic Law between the *Länder*: the *Land* governments;
3. in public-law disputes pursuant to Article 93 para. 1 no. 4 of the Basic law within a *Land*: the highest organs of the *Land* and those parts of these organs as are vested with own rights by the *Land* constitution or the organ's rules of procedure, if their rights or competences are directly affected by the dispute.

(2) Section 64 (3) shall apply accordingly.

Section 72

(1) The Federal Constitutional Court may declare in its decision that

1. an act is permissible or impermissible,
2. the respondent is obliged to desist from an act, to reverse it, implement it or tolerate it,
3. there is an obligation to grant a benefit.

(2) In proceedings pursuant to section 71 (1) no. 3 the Federal Constitutional Court shall declare whether the respondent's contested act or omission violates a provision of the *Land* constitution. Section 67, second and third sentences, shall apply accordingly.

Chapter 9
Procedure in the cases referred to in section 13 no. 10

Section 73

(1) Only the highest organs of a *Land* and those parts of such organs as are vested with own rights by the *Land* constitution or the organ's rules of procedure may be parties to a constitutional dispute within a *Land*.

(2) Section 64 (3) shall apply accordingly, unless otherwise provided under *Land* law.

Section 74

If *Land* law does not stipulate the possible content and effect of the Federal Constitutional Court's decision, section 72 (2) shall apply accordingly.

Section 75

With regard to procedure, the general provisions of Part 2 of this Act shall apply accordingly.

Chapter 10
Procedure in the cases referred to in section 13 nos 6 and 6a

Section 76

(1) Applications pursuant to Article 93 para. 1 no. 2 of the Basic Law which are filed by the Federal Government, a *Land* government or one quarter of the Members of the Bundestag shall only be admissible if the applicant considers federal or *Land* law to be

1. void due to being formally or substantively incompatible with the Basic Law or other federal law or

2. valid after a court, an administrative authority, or a federal or *Land* organ did not apply a legal provision because it deemed it to be incompatible with the Basic Law or other federal law.

(2) Applications pursuant to Article 93 para. 1 no. 2a of the Basic Law which are filed by the Bundesrat, a *Land* government or a *Land* parliament shall only be admissible if the applicant considers a federal law to be void for failing to meet the requirements of Article 72 para. 2 of the Basic Law; applications may also be filed if the applicant considers the federal law to be void for failing to meet the requirements of Article 75 para. 2 of the Basic Law.

Section 77

The Federal Constitutional Court shall give the following entities the opportunity to submit statements within a period to be specified:

1. in the cases referred to in section 76 (1), the Bundestag, the Bundesrat, the Federal Government; in cases of disagreement concerning the validity of federal law, also the *Land* governments; and in cases of disagreement concerning the validity of *Land* law, the parliament and government of the *Land* in which the legal provision was promulgated,
2. in the cases referred to in section 76 (2), the Bundestag, the Bundesrat, the Federal Government, and the parliaments and governments of the *Länder*.

Section 78

If the Federal Constitutional Court comes to the conclusion that federal law is incompatible with the Basic Law or that *Land* law is incompatible with the Basic Law or other federal law, it shall void the law. If further provisions of the same law are incompatible with the Basic Law or other federal law for the same reasons, the Federal Constitutional Court may void them as well.

Section 79

- (1) A case based on a legal provision which was declared to be incompatible with the Basic Law or which was voided pursuant to section 78, or which was based on the interpretation of the legal provision which the Federal Constitutional Court declared to be incompatible with the Basic Law may be reopened pursuant to the provisions of the Code of Criminal Procedure to challenge a final conviction.
- (2) In all other cases, but subject to section 95 (2) or a specific statutory provision, non-appealable decisions based on a legal provision which was voided pursuant to section 78 shall remain unaffected. Execution of such a decision is not permissible. If compulsory enforcement is governed by the provisions of the Code of Civil Procedure, section 767 of the Code of Civil Procedure shall apply accordingly. Claims arising from unjust enrichment shall be barred.

Chapter 11

Procedure in the cases referred to in section 13 nos 11 and 11a

Section 80

- (1) If the requirements of Article 100 para. 1 of the Basic Law are met, the courts shall directly request a decision by the Federal Constitutional Court.
- (2) In the reasons the court shall indicate in which respect its decision depends on the validity of the legal provision in question and which higher-ranking legal provision that provision is incompatible with. It shall also attach the files.
- (3) The request of the court shall be independent of any claim on the part of a party to the proceedings that the legal provision is void.

Section 81

The Federal Constitutional Court shall decide solely on the relevant point of law.

Section 81a

The Chamber may, by unanimous order, declare a request pursuant to section 80 to be inadmissible. The decision shall be reserved to the Senate if the request is made by a *Land* constitutional court or by one of the supreme federal courts.

Section 82

- (1) Sections 77 to 79 shall apply accordingly.
- (2) The constitutional organs referred to in section 77 may join the proceedings at any stage.
- (3) The Federal Constitutional Court shall also give the parties to the proceedings before the court which submitted the request the opportunity to submit a statement; it shall summon them to an oral hearing and give the floor to the authorised representatives who are present.
- (4) The Federal Constitutional Court may inquire with supreme federal courts or with highest *Land* courts as to how and on the basis of which considerations they have hitherto interpreted the Basic Law regarding the question in dispute, whether and how they have applied the contested legal provision in their past decisions and which related points of law are awaiting a decision. It may, furthermore, ask them to explain their considerations on a point of law which is relevant for the decision. The Federal Constitutional Court shall notify the parties entitled to submit statements of such statements.

Section 82a

- (1) Subject to subsections (2) and (3), sections 80 to 82 shall apply accordingly to an examination referred to the Court pursuant to section 36 (2) of the Committees of Inquiry Act of whether a decision by the Bundestag to establish a committee of inquiry is compatible with the Basic Law.
- (2) Statements may be submitted by the Bundestag and by the qualified minority pursuant to Article 44 para. 1 of the Basic Law on whose application the decision to establish the committee of inquiry is based. Furthermore, the Federal Constitutional Court may give the Federal Government, the Bundesrat, the *Land* governments, the qualified minority pursuant to section 18 (3) of the Committees of Inquiry Act and individuals the opportunity to submit statements in so far as they are affected by the decision to institute the committee of inquiry.
- (3) The Federal Constitutional Court may decide without an oral hearing.

Chapter 12

Procedure in the cases referred to in section 13 no. 12

Section 83

- (1) In the cases referred to in Article 100 para. 2 of the Basic Law, the Federal Constitutional Court shall declare in its decision whether the rule of public international law in question is part of federal law and whether it directly confers rights and obligations on individuals.
- (2) Prior to this, the Federal Constitutional Court shall give the Bundestag, the Bundesrat and the Federal Government the opportunity to submit a statement within a period to be specified. They may join the proceedings at any stage.

Section 84

Sections 80 and 82 (3) shall apply accordingly.

Chapter 13

Procedure in the cases referred to in section 13 no. 13

Section 85

- (1) If a decision of the Federal Constitutional Court is to be obtained pursuant to Article 100 para. 3, first sentence, of the Basic Law, the *Land* constitutional court shall submit its files to the Federal Constitutional Court and state its legal view.
- (2) The Federal Constitutional Court shall give the Bundesrat, the Federal Government and, if it intends to deviate from a decision by a *Land* constitutional court, that court the opportunity to submit a statement within a period to be specified.
- (3) The Federal Constitutional Court shall decide solely on the relevant point of law.

Chapter 14

Procedure in the cases referred to in section 13 no. 14

Section 86

(1) The Bundestag, the Bundesrat, the Federal Government and the *Land* governments have legal ability to file an application.

(2) If there is a dispute in proceedings in court as to whether a law continues to apply as federal law and this question is essential for the court's decision, the court shall apply section 80 accordingly and request a decision from the Federal Constitutional Court.

Section 87

(1) Applications by the Bundesrat, the Federal Government or a *Land* government shall only be admissible if the permissibility of an already executed or immediately forthcoming act by a federal organ, a federal authority, or by a *Land* organ or authority depends on the decision.

(2) It must follow from the reasons stated in the application that the requirement of subsection (1) is met.

Section 88

Section 82 shall apply accordingly.

Section 89

The Federal Constitutional Court shall declare whether all or part of the law shall continue to apply as federal law in the entire federal territory or in a specific part of the federal territory.

Chapter 15

Procedure in the cases referred to in section 13 no. 8a

Section 90

(1) Any person claiming a violation of one of his or her fundamental rights or one of his or her rights under Article 20 para. 4, Articles 33, 38, 101, 103 and 104 of the Basic Law by public authority may lodge a constitutional complaint with the Federal Constitutional Court.

(2) If legal recourse to other courts exists, the constitutional complaint may only be lodged after all remedies have been exhausted. However, the Federal Constitutional Court may decide on a constitutional complaint lodged before all remedies were exhausted if the complaint is of general relevance or if prior recourse to other courts would cause the complainant severe and unavoidable disadvantage.

(3) The right to lodge a constitutional complaint with a *Land* constitutional court pursuant to the provisions of the *Land* constitution shall remain unaffected.

Section 91

Municipalities and associations of municipalities may lodge a constitutional complaint claiming that federal or *Land* law violates the provision of Article 28 of the Basic Law. A constitutional complaint may not be lodged with the Federal Constitutional Court if *Land* law permits the complainant to lodge a complaint against the violation of the right to self-government with the *Land* constitutional court.

Section 91a (repealed)

Section 92

The reasons of the complaint shall specify the right which has allegedly been violated, as well as the act or omission of the organ or authority by which the complainant claims his or her rights have been violated.

Section 93

(1) The constitutional complaint shall be lodged and reasons stated within one month. The period shall begin to run upon service or informal notification of the complete decision if, pursuant to the relevant procedural provisions, the decision is to be served or notified ex

officio. In other cases, the period shall begin to run upon pronouncement of the decision or, if pronouncement is not required, on it being otherwise communicated to the complainant; if the complainant is not issued with a copy of the complete decision, the period referred to in the first sentence shall be suspended by the complainant requesting a copy of the complete decision either in writing or by making a statement recorded at the Court Registry. The suspension shall continue until the court has issued the complainant with the complete decision or until it has been served *ex officio* or by a party to the proceedings.

(2) If complainants were unable to comply with this time limit through no fault of their own, they shall, upon application, be granted reinstatement into their former procedural position. The application shall be filed within two weeks of the removal of the cause for their non-compliance. Reasons for the request shall be stated either in the application itself or during the proceedings and their factual basis substantiated by *prima facie* evidence. The omitted legal act shall be carried out within this period; complainants who do so may be granted reinstatement without a formal request. Applications made later than one year after the expiry of the time period shall be inadmissible. Fault on the part of the complainant's authorised representative shall be deemed equal to fault on the part of the complainant.

(3) If the constitutional complaint challenges a law or another sovereign act against which legal recourse is not possible, the constitutional complaint may only be lodged within one year of the law entering into force or of the sovereign act being issued.

(4) Constitutional complaints against laws which entered into force before 1 April 1951 may be lodged until 1 April 1952.

Section 93a

(1) A constitutional complaint shall be subject to admission for decision.

(2) It shall be admitted

- a) in so far as it has general constitutional significance,
- b) if it is appropriate to enforce the rights referred to in section 90 (1); this may also be the case if the complainant would suffer a particularly severe disadvantage if the Court refused to decide on the complaint.

Section 93b

The Chamber may refuse to admit a constitutional complaint or may admit it for decision in the case referred to in section 93c. In all other cases, the decision on admission shall be taken by the Senate.

Section 93c

(1) If the requirements of section 93a (2) letter b) are met and if the constitutional issue determining the outcome of the constitutional complaint has already been decided by the Federal Constitutional Court, the Chamber may grant the constitutional complaint if it is manifestly well-founded. The order of the Chamber shall be considered equal to a decision by the Senate. A decision which, with the effect of section 31 (2), declares a law to be incompatible with the Basic Law or other federal law or to be void shall be reserved to the Senate.

(2) Section 94 (2) and (3) and section 95 (1) and (2) shall apply to the proceedings.

Section 93d

(1) Decisions pursuant to section 93b and section 93c shall be issued without an oral hearing. They cannot be appealed. Refusal to admit the constitutional complaint for decision does not require reasons to be given.

(2) As long as and in so far as the Senate has not decided whether to admit the constitutional complaint for decision, the Chamber may issue all decisions concerning the constitutional complaint proceedings. Preliminary injunctions which suspend the application of a law in full or in part may only be issued by the Senate; section 32 (7) shall remain unaffected. The Senate shall also decide in the cases referred to in section 32 (3).

(3) Decisions of the Chamber shall be adopted by unanimous vote. Admission by the Senate is granted if at least three Justices agree.

Section 94

(1) The Federal Constitutional Court shall give the federal or *Land* constitutional organ whose act or omission is challenged by means of the constitutional complaint the opportunity to submit a statement within a period to be specified.

(2) If a minister or a federal or *Land* authority was responsible for the act or omission, the competent minister shall be given the opportunity to submit a statement.

(3) If the constitutional complaint challenges a court decision, the Federal Constitutional Court shall also give the party in whose favour the decision was taken the opportunity to submit a statement.

(4) If the constitutional complaint directly or indirectly challenges a law, section 77 shall apply accordingly.

(5) The constitutional organs referred to in subsections (1), (2) and (4) may join the proceedings. The Federal Constitutional Court may refrain from conducting an oral hearing if it is unlikely to further advance the proceedings and the constitutional organs which are entitled to submit statements and which have joined the proceedings waive their right to an oral hearing.

Section 95

(1) If the Court grants a constitutional complaint, it shall declare in its decision which provision of the Basic Law was violated and by which act or omission. The Federal Constitutional Court may at the same time declare that any repetition of the contested act or omission would also violate the Basic Law.

(2) If the Court grants a constitutional complaint which challenges a decision, the Federal Constitutional Court shall reverse the decision; in the cases referred to in section 90 (2), first sentence, it shall remand the matter to a competent court.

(3) If the Court grants a constitutional complaint which challenges a law, that law shall be voided. The same shall apply if a constitutional complaint is granted pursuant to subsection (2) because the reversed decision was based on an unconstitutional law. Section 79 shall apply accordingly.

Section 95a (repealed)

Chapter 16

Procedure in the cases referred to in section 13 no. 6b

Section 96

(1) It must follow from the reasons stated in the application filed pursuant to Article 93 para. 2, first sentence, of the Basic Law that the requirement of Article 93 para. 2, third sentence, of the Basic Law is met.

(2) The Federal Constitutional Court shall give the other entities having legal ability to file an application, the Bundestag and the Federal Government the opportunity to submit a statement within a period to be specified.

(3) Those entitled to submit statements pursuant to subsection (2) may join the proceedings at any stage.

Chapter 17

Procedure in the cases referred to in section 13 no. 3a

Section 96a

(1) Complaints may be lodged by associations and political parties which were refused recognition as political parties authorised to nominate candidates pursuant to section 18 (4) of the Federal Electoral Act.

- (2) Complaints are to be lodged and reasons stated within four days of the decision being announced in the session of the Federal Electoral Committee pursuant to section 18 (4), second sentence, of the Federal Electoral Act.
- (3) Section 32 shall not apply.

Section 96b

The Federal Electoral Committee shall be given the opportunity to submit a statement.

Section 96c

The Federal Constitutional Court may decide without an oral hearing.

Section 96d

The Federal Constitutional Court may communicate its decision without reasons. If this is the case, the reasons shall be communicated separately to the complainant and to the Federal Electoral Committee.

Part 4

Formal complaint against judicial delay (*Verzögerungsbeschwerde*)

Section 97a

- (1) A party to proceedings before the Federal Constitutional Court or to proceedings which were suspended in order to await a decision by the Federal Constitutional Court who suffers a disadvantage due to the excessive length of the proceedings before the Federal Constitutional Court shall receive adequate compensation. The reasonableness of the length of the proceedings shall be established on a case-by-case basis, taking into account the Federal Constitutional Court's tasks and position.
- (2) A non-pecuniary disadvantage shall be assumed to exist if a case before the Federal Constitutional Court has taken excessively long. Compensation for such a disadvantage may only be claimed if the circumstances of the individual case do not permit a different kind of redress, in particular a declaration that the length of the proceedings was excessive. Compensation pursuant to the second sentence shall be EUR 1,200 for each year of delay. If, in individual cases, the amount pursuant to the third sentence appears inequitable, the Federal Constitutional Court may set a higher or lower amount.

Section 97b

- (1) A decision on compensation and reparation shall require a formal complaint against judicial delay (*Verzögerungsbeschwerde*) being filed with the Federal Constitutional Court. The *Verzögerungsbeschwerde* shall only be admissible if the complainant has previously filed a formal objection to the judicial delay (*Verzögerungsrüge*) with the Federal Constitutional Court. The *Verzögerungsrüge* shall be submitted in writing, explaining why the proceedings are considered to be excessively long. It shall be admissible no earlier than twelve months after the initial proceedings were brought before the Federal Constitutional Court. A decision on the *Verzögerungsrüge* shall not be necessary for the *Verzögerungsbeschwerde* to be admissible.
- (2) The *Verzögerungsbeschwerde* may be lodged no earlier than six months after lodging a *Verzögerungsrüge*; if the Federal Constitutional Court has issued a decision or the proceedings have otherwise been concluded, the *Verzögerungsbeschwerde* shall be lodged within three months. It shall be submitted in writing and reasons stated at the same time. Pending a final decision on the *Verzögerungsbeschwerde*, the claim cannot be transferred.

Section 97c

- (1) A Complaints Chamber, to which the Plenary shall appoint two Justices from each Senate, shall decide on the *Verzögerungsbeschwerde*. The regular term of office shall be two years.

(2) Should the reporting Justice of the contested proceedings be a member of the Complaints Chamber, he or she shall be barred from involvement in the complaints proceedings.

(3) Further details, in particular with regard to the appointment of the presiding Justice, the continuous succession of members departing from the Chamber and rules on substitution within the Chamber, shall be set out in the Rules of Procedure.

Section 97d

(1) The reporting Justice of the contested proceedings shall submit his or her statement within one month of receiving the reasons for the *Verzögerungsbeschwerde*.

(2) The Complaints Chamber shall decide by majority. In the event of a tied vote, the *Verzögerungsbeschwerde* shall be deemed to be rejected. The Complaints Chamber shall decide without an oral hearing. The Complaints Chamber shall not be required to give reasons in its order on the *Verzögerungsbeschwerde*.

(3) The decision cannot be appealed.

Section 97e

Sections 97a to 97d shall also apply to proceedings which were already pending as at 3 December 2011, as well as to concluded proceedings whose duration is or could yet become the subject of a complaint with the European Court of Human Rights as at 3 December 2011. Section 97b (1), second to fifth sentences, shall not apply to concluded proceedings pursuant to the first sentence; section 97b (2) shall apply, with the difference that the *Verzögerungsbeschwerde* may be lodged immediately and that it must be lodged by 3 March 2012 at the latest.

Part 5

Final provisions

Section 98

(1) Justices of the Federal Constitutional Court shall retire upon expiry of their term of office (section 4 (1), (3) and (4)).

(2) Justices of the Federal Constitutional Court shall be retired in the event of permanent incapacity for office.

(3) Justices of the Federal Constitutional Court shall be retired upon request without proof of their incapacity for office if they have held the post of Justice of the Federal Constitutional Court for at least six years and they

1. have reached the age of sixty-five or
2. are severely disabled within the meaning of section 2 of the Ninth Book of the Social Code and have reached the age of sixty.

(4) In the cases referred to in subsection (3), section 4 (4) shall apply accordingly.

(5) Retired Justices shall receive a pension for civil servants. The pension shall be calculated on the basis of the last remuneration to which they were entitled under the Act on the Remuneration of Members of the Federal Constitutional Court. The same shall apply accordingly to surviving dependants.

(6) Section 70 of the Civil Servants' Benefits Act shall apply accordingly.

Section 99 (repealed)

Section 100

(1) If the term of office of a Justice of the Federal Constitutional Court ends pursuant to section 12, then provided he or she has held the position for at least two years the Justice shall receive a transitional allowance for one year in the amount of his or her remuneration pursuant to the Act on the Remuneration of Members of the Federal Constitutional Court. This shall not apply upon retirement pursuant to section 98.

(2) The surviving dependants of former Justices of the Federal Constitutional Court who were receiving a transitional allowance at the time of their death shall receive a funeral allowance, as well as, for the remainder of the period of eligibility for the transitional allowance, a bereavement allowance and orphan's pension; the funeral allowance, bereavement allowance and orphan's pension shall be calculated on the basis of the transitional allowance.

Section 101

(1) Subject to section 70 of the German Judiciary Act, both civil servants and judges who have been elected as Justices of the Federal Constitutional Court shall cease to exercise their previous office upon their appointment. The rights and obligations resulting from their status as civil servants or judges shall be suspended for the duration of their office as Justices of the Federal Constitutional Court. The right to curative treatment of civil servants or judges who were injured in an accident shall remain unaffected.

(2) When the office as Justice of the Federal Constitutional Court ends, civil servants or judges shall, if no other office is assigned to them, retire from their position as civil servant or judge and receive the pension they would have received in their former office calculated on the basis of a period of service including their time as Justices of the Federal Constitutional Court. In the case of civil servants or judges who are not federal civil servants or judges, the Federation shall reimburse their employer for the pension and surviving dependants' benefits.

(3) Subsections (1) and (2) shall not apply to professors of law at a German higher education institution having the status of civil servants. For the duration of their term of office as Justices of the Federal Constitutional Court the obligations resulting from their employment as professors shall in principle be suspended. Two thirds of the remuneration resulting from their employment as professors shall be credited against the remuneration to which they are entitled as Justices of the Federal Constitutional Court. The Federation shall reimburse the professors' employer for the actual expenditure arising from their replacement, up to the amount credited.

Section 102

(1) If former Justices of the Federal Constitutional Court are entitled to a pension pursuant to section 101, this entitlement shall be suspended for the period during which they are entitled to a pension or transitional allowance pursuant to section 98 or section 100, up to the amount of these pensions.

(2) If former Justices of the Federal Constitutional Court who are receiving a transitional allowance pursuant to section 100 are assigned another office in the civil service, the income from that office shall be credited against the transitional allowance.

(3) If former Justices of the Federal Constitutional Court are receiving remuneration, an emeritus pension or a pension from their employment as professor which began prior to or during their term of office as Justice of the Federal Constitutional Court, then, in addition to the remuneration, the pension or the transitional allowance from their office as Justice shall also be suspended in so far as their total exceeds the remuneration for the office plus the amount not to be credited pursuant to section 101 (3), third sentence; in addition to the emeritus pension or the pension resulting from their employment as professor, the retirement pension or transitional allowance from their office as Justice shall be granted up to the amount of the retirement pension calculated on the basis of their pensionable period of service and the remuneration, plus the amount not to be credited pursuant to section 101 (3), third sentence.

(4) Subsections (1) to (3) shall apply accordingly to surviving dependants. Section 54 (3) and (4), second sentence, of the Civil Servants' Pensions Act shall apply accordingly.

Section 103

Unless otherwise provided in sections 98 to 102, the legal provisions on pensions and healthcare benefits for federal judges shall apply to Justices of the Federal Constitutional

Court; periods of service which are beneficial to exercising the function of a Justice of the Federal Constitutional Court shall be deemed to be periods within the meaning of section 11 (1) no. 3 letter a) of the Civil Servants' Pensions Act. Decisions on pensions and benefits shall be taken by the President of the Federal Constitutional Court.

Section 104

- (1) If a lawyer is appointed as Justice of the Federal Constitutional Court, his or her rights arising from admission to practise as a lawyer shall be suspended for the duration of the period of office.
- (2) If a notary public is appointed as Justice of the Federal Constitutional Court, section 101 (1), second sentence, shall apply accordingly.

Section 105

- (1) The Federal Constitutional Court may authorise the Federal President to
 1. retire a Justice of the Federal Constitutional Court due to permanent incapacity for office;
 2. remove a Justice of the Federal Constitutional Court from office if the Justice, by final judgment, has been convicted for committing a dishonourable act or sentenced to more than six months' imprisonment, or if the Justice has committed such a grave breach of duty that his or her remaining in office is impossible.
- (2) The decision to initiate proceedings pursuant to subsection (1) shall be taken by the Plenary of the Federal Constitutional Court.
- (3) The general procedural rules, section 54 (1) and section 55 (1), (2), (4) to (6) shall apply accordingly.
- (4) An authorisation pursuant to subsection (1) shall require the consent of two thirds of the members of the Court.
- (5) Once proceedings have been initiated pursuant to subsection (2), the Plenary of the Federal Constitutional Court may temporarily suspend the Justice from office. The same shall apply if main proceedings in a criminal case have been opened against the Justice. Temporary removal from office shall require the consent of two thirds of the members of the Court.
- (6) Upon removal from office pursuant to subsection (1) no. 2, the Justice shall lose all rights arising from the office.

Section 106 (repealed)

Section 107 (repealed)