

ภาคผนวก

ภาคผนวก ก.

**THE BASIC LAW OF THE FEDERAL REPUBLIC OF GERMANY**

## **The Basic Law of the Federal Republic of Germany**

### **IX. The Judiciary**

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

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

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

(1) The Federal Constitutional Court shall rule:

1. on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of a supreme federal body or of other parties vested with rights of their own by this Basic Law or by the rules of procedure of a supreme federal body;

2. in the event of disagreements or doubts concerning the formal or substantive compatibility of federal law or Land law with this Basic Law, or the compatibility of Land law with other federal law, on application of the Federal Government, of a Land government, or of one fourth of the Members of the Bundestag;

2a. in the event of disagreements whether a law meets the requirements of paragraph

(2) of Article 72, on application of the Bundesrat or of the government or legislature of a Land;

3. in the event of disagreements concerning the rights and duties of the Federation and the Länder, especially in the execution of federal law by the Länder and in the exercise of federal oversight;

4. on other disputes involving public law between the Federation and the Länder, between different Länder, or within a Land, unless there is recourse to another court;

4a. on constitutional complaints, which may be filed by any person alleging that one of his basic rights or one of his rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been infringed by public authority;

4b. on constitutional complaints filed by municipalities or associations of municipalities on the ground that their right to self-government under Article 28 has been infringed

by a law; in the case of infringement by a Land law, however, only if the law cannot be challenged in the constitutional court of the Land;

4c. on constitutional complaints filed by associations concerning their non-recognition as political parties for an election to the Bundestag;

5. in the other instances provided for in this Basic Law.

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

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

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

(1) The Federal Constitutional Court shall consist of federal judges and other members. Half the members of the Federal Constitutional Court shall be elected by the Bundestag and half by the Bundesrat. They may not be members of the Bundestag, of the Bundesrat, of the Federal Government, or of any of the corresponding bodies of a Land. IX. The Judiciary 86

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

**Article 95 [Supreme federal courts]**

(1) The Federation shall establish the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court as supreme courts of ordinary, administrative, financial, labour and social jurisdiction.

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

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

**Article 96 [Other federal courts]**

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

(2) The Federation may establish federal military criminal courts for the Armed Forces. These courts may exercise criminal jurisdiction only during a state of defence or over members of the Armed Forces serving abroad or on board warships. Details shall be regulated by a federal law. These courts shall be under the aegis of the Federal Minister of Justice. Their full-time judges shall be persons qualified to hold judicial office. IX. The Judiciary 87

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

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

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

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

**Article 97 [Judicial independence]**

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

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

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

(1) The legal status of federal judges shall be regulated by a special federal law. IX. The Judiciary 88

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

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

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

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

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

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

**Article 100 [Concrete judicial review]**

(1) If a court concludes that a law on whose validity its decision depends is unconstitutional, the proceedings shall be stayed, and a decision shall be obtained from the Land

court with jurisdiction over constitutional disputes where the constitution of a Land is held to be violated, or from the Federal Constitutional Court where this Basic Law is held to be violated. This provision shall also apply where the Basic Law is held to be violated by Land law and where a Land law is held to be incompatible with a federal law. IX. The Judiciary 89

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

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

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

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

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

**ภาคผนวก ข.**

**THE CONSTITUTION OF FRANCE**

## **The Constitution of France**

### **PREAMBLE**

The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004.

By virtue of these principles and that of the self-determination of peoples, the Republic offers to the overseas territories that express the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived with a view to their democratic development

### **Article 3**

National sovereignty shall belong to the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof.

Suffrage may be direct or indirect as provided by the Constitution. It shall always be universal, equal and secret.

All French citizens of either sex who have reached their majority and are in possession of their civil and political rights may vote as provided by statute.

### **Article 7**

Should the Presidency of the Republic fall vacant for any reason whatsoever, or should the Constitutional Council on a reference from the Government rule by an absolute majority of its members that the President of the Republic is incapacitated, the duties of the President of the Republic, with the exception of those specified in articles 11 and 12, shall be temporarily exercised by the President of the Senate or, if the latter is in turn incapacitated, by the Governmen

In the case of a vacancy, or where the incapacity of the President is declared permanent by the Constitutional Council, the ballot for the election of the new President shall, except in the event of a finding by the Constitutional Council of force majeure, be held not less than twenty days

and not more than thirty-five days after the beginning of the vacancy or the declaration that the incapacity is permanent. If, in the seven days preceding the last day for lodging presentations of candidature, any of the persons who, less than thirty days prior to that day, have publicly announced their decision to be a candidate dies or becomes incapacitated, the Constitutional Council may decide to postpone the election.

If, before the first ballot, any of the candidates dies or becomes incapacitated, the Constitutional Council shall declare the election postponed.

All cases shall be referred to the Constitutional Council in the manner laid down in the second paragraph of article 61 or in that laid down for the presentation of candidates in the institutional Act provided for in article 6

The Constitutional Council may extend the time limits set in the third and fifth paragraphs, provided that polling takes place not later than thirty-five days after the decision of the Constitutional Council. If the implementation of the provisions of this paragraph results in the postponement of the election beyond the expiry of the term of the President in office, the latter shall remain in office until his successor is proclaimed

### **Article 37**

Matters other than those that fall within the ambit of statute shall be matters for regulation. Acts of Parliament passed concerning these matters may be amended by decree issued after consultation with the Conseil d'Etat. Any such Acts which are passed after this Constitution has entered into force shall be amended by decree only if the Constitutional Council has declared that they are matters for regulation as defined in the preceding paragraph.

### **Article 41**

Should it be found in the course of the legislative process that a Member's bill or amendment is not a matter for statute or is contrary to a delegation granted by virtue of article 38, the Government may object that it is inadmissible.

In the event of disagreement between the Government and the President of the assembly concerned, the Constitutional Council, at the request of one or the other, shall rule within eight day

Article 41

Institutional Acts shall not be promulgated until the Constitutional Council has declared their conformity with the Constitution.

#### **Article 54**

If the Constitutional Council, on a reference from the President of the Republic, from the Prime Minister, from the President of one or the other assembly, or from sixty deputies or sixty senators, has declared that an international commitment contains a clause contrary to the Constitution, authorization to ratify or approve the international commitment in question may be given only after amendment of the Constitution.

### **TITLE VII - the Constitutional Council**

#### **Article 56**

The Constitutional Council shall consist of nine members, whose term of office shall be nine years and shall not be renewable. One third of the membership of the Constitutional Council shall be renewed every three years. Three of its members shall be appointed by the President of the Republic, three by the President of the National Assembly and three by the President of the Senate.

In addition to the nine members provided for above, former Presidents of the Republic shall be ex officio life members of the Constitutional Council.

The President shall be appointed by the President of the Republic. He shall have a casting vote in the event of a tie.

#### **Article 57**

The office of member of the Constitutional Council shall be incompatible with that of minister or Member of Parliament. Other incompatibilities shall be determined by an institutional Act.

#### **Article 58**

The Constitutional Council shall ensure the proper conduct of the election of the President of the Republic.

**Article 59**

The Constitutional Council shall rule on the proper conduct of the election of deputies and senators in disputed cases

**Article 60**

The Constitutional Council shall ensure the proper conduct of referendum proceedings as provided for in articles 11 and 89 and in Title XV and shall declare the results of the referendum

**Article 61**

Institutional Acts, before their promulgation, and the rules of procedure of the parliamentary assemblies, before their entry into force, must be referred to the Constitutional Council, which shall rule on their conformity with the Constitution.

To the same end, Acts of Parliament may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, or sixty deputies or sixty senators.

In the cases provided for in the two preceding paragraphs, the Constitutional Council must rule within one month. However, at the request of the Government, if the matter is urgent, this period shall be reduced to eight days.

In these same cases, reference to the Constitutional Council shall suspend the time limit for promulgation.

**Article 62**

A provision declared unconstitutional shall be neither promulgated nor implemented.

No appeal shall lie from the decisions of the Constitutional Council. They shall be binding on public authorities and on all administrative authorities and all courts.

**Article 63**

An institutional Act shall determine the rules of organization and operation of the **Constitutional** Council, the procedure to be followed before it and, in particular, the time limits allowed for referring disputes to it

ภาคผนวก ค.

**THE CONSTITUTION OF THE UNITED STATES**

## **The Constitution of the United States**

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### **Article. I.**

#### **Section. 1.**

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

#### **Section. 2.**

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

### **Article III.**

#### **Section. 1.**

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and of inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

#### **Section. 2.**

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;-- between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.