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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

FINLAND

DRAFT MEMORANDUM OF THE WORKING GROUP ON CONSTITUTIONAL GUARANTEES FOR THE INDEPENDENCE OF THE JUDICIARY

MEMORANDUM

DRAFT as of 20 October 2025

Proposals of the Working Group on Constitutional Guarantees for the Independence of the Judiciary on safeguarding the independence of the judiciary

The Working Group on Constitutional Guarantees for the Independence of the Judiciary is required to prepare, in the form of a memorandum, a proposal on the legislative amendments required for judicial independence, in particular by ensuring the constitutional guarantees of the independence of the judiciary. This draft memorandum includes the draft proposals on regulatory changes concerning the independence of judges and court system as well as prosecution system and relevant rationale, prepared on the basis of the working group's assessment. The draft will be further specified and supplemented on the basis of the working group's outputs and the feedback received regarding the draft proposals. The final memorandum of the working group will be published at the end of the working group's term.

Contents

1 INTRODUCTION

1.1 Background and preparation

On 1 February 2023, the Ministry of Justice appointed a working group on the protection of the rule of law and the development of the judicial system (hereinafter referred to as the working group on the judiciary). One of the six tasks of the working group is to assess the needs to amend the Constitution of Finland and other legislation from the perspective of the independence of the judiciary and to propose the relevant legislative amendment projects. With its decision of 9 October 2023, the Ministry of Justice specified the mandate of the working group by extending the time limit for the legislative proposals set in section 5 of the mandate until 31 December 2026.

On 15 January 2024, the working group on the judiciary appointed a separate working group on constitutional guarantees for the independence of the judiciary to conduct the above assessment and prepare the proposals. The task of this working group is to examine and assess whether the independence of the judiciary is safeguarded by the current Constitution and other legislation directly affecting the independence of the judiciary and to make possible proposals for legislative amendments, inclusive of justifications, to accomplish this. The assessment must pay particular attention to the provisions of the Constitution in force concerning the number of judges in the highest courts and their right to remain in office, the procedure for appointing judges, and offences in office. The examination and assessment shall apply not only to the court system but also to the Prosecution Service, the National Enforcement Authority Finland, the Criminal Sanctions Agency, members of the Finnish Bar Association and other legal counsel. The working group shall prepare the legislative amendment proposals in the form of a memorandum. It shall consult the legal aid and guardianship districts as well as the Criminal Sanctions Agency. It may also consult further experts, actors and stakeholders as it deems fit.

The working group convened for six meetings in 2024 and seven meetings in 2025 so far. In support of its work, the working group held in September 2024 a consultation on the topic of ‘Rule of law safeguarded by an independent judiciary’. Four further targeted consultations on the draft proposals for amending the Constitution were held in spring 2025.

The working group’s appointment decision allows it to request an opinion from the Venice Commission on the independence of the judiciary and the legislation safeguarding such independence. During its preparatory efforts, the working group resolved to request an opinion on clarifying the Constitution as it concerns courts, judges and the prosecution service. The aim is for the working group to have access to the opinion of the Venice Commission in the further preparation of the proposals before the term of the working group expires.

This memorandum contains the proposals of the working group on safeguarding and reinforcing the constitutional independence of the courts and for reinforcing the constitutional independence of the prosecution service to be submitted to the Venice Commission for its opinion.

1.2 Rule of law, independent courts and need to reinforce the constitutional guarantees of an independent judiciary

There is no single universal definition for the concept of ‘rule of law’. The rule of law is essentially linked to democracy and human rights. Together, these have been described as a trinity. Section 2 of the Constitution of Finland as well as the government proposal concerning the Constitution provide a fairly narrow and formal definition for the rule of law: the rule of law finds its substance in the notions of foundation in law and legality, i.e. by means of section 2, subsection 2 (‘The exercise of public powers shall be based on an

Act. In all public activity, the law shall be strictly observed.') The government proposal states that 'provisions on the two essential components of the rule of law would be laid down in subsection 3 of the section.'[1]

The definition of rule of law adopted in the Constitution and its preparatory documents reflect, above all, the minimum substance to be assigned to the concept, which is deemed to be included in all of its definitions.[2] However, the detailed rationale of the government proposal concerning the Constitution additionally indicates that the definition of rule of law is not exhausted by the principles of foundation in law and legality; it is held that despite the narrow wording of the Constitution, the rule of law and fundamental rights are clearly intertwined[3]. The Legal Affairs Committee of Parliament, too, in addressing the reform of the Constitution, drew attention to the European debate on the rule of law as well as to understanding the independence of the judiciary in broader terms than merely formal foundation in law and legality (Legal Affairs Committee report LaVL 9/1998, p. 4).

Finland's membership of the European Union has had a significant impact on how the substance of the concept of rule of law has developed, and also on the relevance of compliance with the rule of law. Besides the constitutional premise, the question also involves the legal framework that is binding on Finland through the EU Treaties. The substance of the rule of law has gained considerably in accuracy and precision in the case law of the Court of Justice of the European Union and the European Court of Human Rights in a manner binding on Finland. In other words, the rule of law requirements of today are more comprehensive than may be deduced from the wording of the Constitution and its preparatory documents alone. 'In modern Finland, the rule of law is understood to be an element of the pan-European approach in which democracy as well as individuals' fundamental and human rights safeguarded by an independent judiciary are underscored.'[4]

The rule of law shall be understood as a part of the values on which the EU is based: the normative context for interpretation of the concept of rule of law is defined in Article 2 of the Treaty on European Union to make the rule of law a part of the value foundation of the EU. The said values include 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. The rule of law is not expressly defined in the EU Treaties despite it being expressly mentioned in the Treaty on European Union (Articles 2 and 21, specifically). The conceptual substance of the rule of law has been specified by means of EU legislation and the case law of the Court of Justice. The Court of Justice has held the rule of law to be an established concept, in addition to which the Court has jurisdiction to interpret the detailed substance of the principles of the rule of law within the framework of EU legislation.[5]

In terms of EU law, the rule of law also entails respect for the primacy of EU law.[6] The Court of Justice has held that a Member State cannot amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU[7].

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[1] HE 1/1998 p. 74.
[2] Leppävirta 2016, p. 1106.
[3] Leppävirta 2016, p. 1106 and government proposal HE 309/1993, p. 5.
[4] For more on the concept of rule of law, see e.g. Raitio, Juha – Rosas, Allan – Pohjankoski, Pekka: Oikeusvaltiollisuus Euroopan unionissa ja Suomessa [Rule of law in the European Union and Finland]. Publication series of the Government's analysis, assessment and research activities 2022:39. Raitio – Rosas – Pohjankoski 2022, p. 10.
[5] Raitio – Rosas – Pohjankoski 2022, p. 10.
https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164030/VNTEAS_2022_39.pdf?sequence=1&isAllowed=y
[6] Raitio – Rosas – Pohjankoski 2022, p. 10
[7] Judgment of 20 April 2021, Repubblika v. Il-Prim Ministru, C-896/19, ECLI:EU:C:2021:311, paras 63 and 65 (see correspondingly judgment of 2 March 2021, 1, A.B. et al., C-824/18, EU:C:2021:153, para 108).

With regard to the rule of law, it is particularly the trinity of rule of law, democracy and human rights that is a fundamental premise of EU law.[8] This trinity means that the said values are mutually interdependent in their realisation, which is why the concept of rule of law cannot be wholly disassociated from democracy and fundamental and human rights. That being said, democracy, fundamental and human rights and the rule of law are not synonymous despite having some degree of conceptual overlap. Instead, each has its own, particular meaning.[9]

One of the key documents clarifying the content of the concept of rule of law is the Venice Commission's Rule of Law Checklist from 2016.[10] The checklist proper consists of the rule of law criteria listed in the document. It addresses the various aspects of the rule of law identified in the Commission's 2011 report[11]: legality; legal certainty; prevention of abuse of powers; equality before the law and non-discrimination and access to justice. The checklist is not intended to be exhaustive and instead it aims to cover the core elements of the rule of law. At the same time, the Commission emphasises that full achievement of the rule of law remains an on-going task, even in the well-established democracies.[12]

The overall regulation of the administration of justice under the Constitution may be characterised as general in nature. Interference with judicial independence in certain European countries has demonstrated the risks involved when the constitutional guarantees of such independence are general or limited in nature. Poland and Hungary serve as international cautionary examples, as they have interfered with the independence of the judiciary by lowering the age of resignation for judges, changing the number of judges, intervening in judicial appointments, sacking presidents of courts, and making certain structural decisions. The Court of Justice and the European Court of Human Rights have both issued several judgments concerning violation of the independence of courts. Besides Hungary and Poland, these judgments have also concerned other countries, such as Portugal and Iceland.

In Finland, the discussion on strengthening the constitutional guarantees of the independence of the judiciary has been going on for several years. In his address to the annual meeting of administrative courts, President of the Supreme Administrative Court Kari Kuusiniemi highlighted the need to examine the constitutional guarantees of the courts, in the same manner as was done in Sweden, and linked the independence of the courts to their fundamental mission of protecting the rights of every individual.[13] Already in a submission issued in 2010, the Parliamentary Ombudsman held that more specific regulation at the constitutional level to underscore independence would be justified owing to the duties of legal protection and normative control that belong to the courts in the interests of defending the rule of law.[14]

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[8] Raitio – Rosas – Pohjankoski 2022, p. 15
[9] Raitio – Rosas – Pohjankoski 2022, p. 9
[10] European commission for democracy through law (Venice Commission) Rule of Law Checklist https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf
[11] In its Report on the Rule of Law of 2011 (4 April 2011, CDL-AD(2011)003rev), the Venice Commission examined the concept of the Rule of Law, following Resolution 1594(2007) of the Parliamentary Assembly which drew attention to the need to ensure a correct interpretation of the terms "Rule of Law", "Rechtsstaat" and "Etat de droit" or "prééminence du droit", encompassing the principles of legality and of due process.
[12] Rule of Law Checklist, 2016, p. 13
[13] Kuusiniemi, Kari 2021, https://www.kho.fi/fi/index/ajankohtaista/presidentinpuheita/xviiihallintotuomioistuinpaiva.html . See also the Memorandum of the working group of administration of justice preceding the current working group, Publications of the Ministry of Justice, Memorandums and statements 2022:39.
[14] Submission of Parliamentary Ombudsman Jääskeläinen, 8 March 2010 (reg.no 576/5/10). In the submission, the Parliamentary Ombudsman differed from the Committee for reviewing the Constitution, which in its report 9/2010 held that no action was required with regard to the constitutional regulation of courts of law.

There has been an awakening to the weakness of the guarantees of judicial independence in Finland's closest peer countries as well: the constitution of Norway was amended in 2024 with the incorporation of more specific provisions designed to strengthen the independence of courts and judges. In Sweden, the constitutional law committee appointed in 2020 issued in 2023 a report proposing several specifications to the country's constitution in the interests of strengthening the independence of courts and judges. Based on this report, the Government submitted a proposal on safeguarding the independence of courts in spring 2025[15]. In its Opinion to the Netherlands in 2023 (para 10), the Venice Commission stressed that informal norms should complement and support, and not substitute formal safeguards altogether, and for this reason the informal norms and practices that are particularly important for the independence of the judiciary should be formalised in statutory law. The organisational independence of the courts would also be better safeguarded if the decisions on matters essential to their independence were made by a parliament exercising democratic legislative powers.

At the same time, it is obvious that the independence of courts, judges and also the prosecution service are subject to an increasing number of obligations under both EU law and international law. EU law and in particular the European Convention on Human Rights and the related case law have re-shaped and continue to re-shape the framework of the rule of law and the substance of judicial independence from what was outlined in the constitutional reform in reliance on the earlier legal situation.

Even though democracy and the rule of law in Finland are free from threats for the time being, the working group was mandated to examine the kinds of constitutional guarantees that can ensure the realisation of the rule of law with regard to an independent judiciary in particular. Rather than seeking to address current problems, the mandate strives to strengthen the system and secure its long-term sustainability. It is vital that the provisions of the Constitution afford effective protection to an independent judiciary and every person's access to a fair trial in a world where the number of democracies is decreasing[16] and examples of interference with judicial independence can be found in several EU Member States.

1.3 Constitutional reform and earlier amendments to constitutional legislation

The Constitution of Finland was enacted on the basis of a government proposal submitted in spring 1998 (HE 1/1998) and a report of the Constitutional Law Committee of Parliament issued in January 1999 (PeVM 10/1998). The primary objective of the constitutional reform was to harmonise, integrate and update Finland's constitutional acts. The newly enacted Constitution did not bring about any material changes to Finland's constitutional history and it instead built on the continuity of constitutional tradition and the constitutional development relying on such continuity. The key substantive objective of the constitutional reform was to strengthen the parliamentary characteristics of the constitutional system of Finland. In the reform, the provisions on fundamental rights were incorporated into the new Constitution in substantively the same form as they had appeared in the Constitution Act (94-001/1919) of Finland pursuant to the fundamental rights reform that entered into force in 1995.

In the reform of 2000, the fundamental rights provisions were incorporated into the Constitution in substantively the same form as they had appeared in chapter II of the Constitution Act pursuant to the fundamental rights reform that entered into force on 1 August 1995. Section 9, subsection 3 of the Constitution governing the extradition and transfer of Finnish citizens to another country was amended by Act 802/2007. Sections 14 and 23 of the Constitution, governing electoral and participatory rights and exceptions to fundamental rights in emergency conditions, respectively, were amended by Act 1112/2011. In other respects, the provisions on fundamental rights have remained in force unchanged for more than

[15] Swedish government proposal Regeringens proposition 2024/25:165.

[16] See e.g. the World Justice Project and its Rule of Law index, which has been declining in most states for seven years in a row.

two decades. The examination of the functioning of the constitutional reform and any eventual needs for revision revealed that on the whole, the fundamental rights legislation in the Constitution functioned well[17].

The Constitutional Law Committee of Parliament outlined general principles involved in amending the Constitution when considering the first proposal to amend the Constitution issued after the overall reform. The Committee stated as follows: 'A reserved approach shall be adopted in amending the Constitution. Amendment projects must not be initiated based on the outlook in day-to-day politics nor in any other way that would render such projects capable of undermining the stability of constitutional fundamentals or the status of the Constitution as the foundation for the system of government and the legal system. On the other hand, it must be ensured that the Constitution gives the correct impression of the system of the exercise of governmental powers and the basis for the legal position of the individual. Any needs to amend the Constitution shall be carefully assessed and the amendments that are then deemed absolutely necessary must be made on the basis of thorough preparation and the related broad-based debate and mutual understanding.' (Constitutional Law Committee report PeVM 5/2005, p. 2.)

The Constitution has since been amended on four occasions. The amendments entering into force in 2007 concerned the extradition and transfer of Finnish citizens to another country and the appointment of a substitute for the Deputy Parliamentary Ombudsman (government proposal HE 102/2003, Constitutional Law Committee reports PeVM 5/2005 and PeVM 2/2007). The second set of amendments also entering into force in 2007 concerned the abolition of state auditors and establishment of an Audit Committee (government proposal HE 71/2006, Constitutional Law Committee reports PeVM 10/2006 and PeVM 1/2007). The amendments entering into force in 2012 (government proposal HE 60/2010, Constitutional Law Committee reports PeVM 9/2010 and PeVM 3/2011) were more extensive and reinforced the parliamentary features of the constitutional system and improved the participatory rights of citizens. Underlying these amendments was the assessment that based on the experiences gained in the time the Constitution had been in force, certain needs to amend and clarify the Constitution could be demonstrated even though in the main, the objectives of the constitutional reform had been achieved. A further reason for review came from the changes that had taken place in the state environment, the development of the European Union and the reflection of its impacts on the national level (government proposal HE 60/2010, Constitutional Law Committee report PeVM 9/2010). In 2018, a new provision limiting the secrecy of confidential communications was added to the Constitution as its section 10, subsection 4.

In addition, a working group was appointed by the Ministry of Justice on 23 December 2024 to prepare the necessary amendments to section 10 of the Constitution, taking into account the needs relating to criminal, civilian and military intelligence as well as EU law, new forms of serious crime and technological advances. The term of the working group expires on 28 November 2025.

Constitutional guarantees

Assessing the constitutional guarantees of judicial independence involves examination of the question of constitutional guarantees of independence: which matters should be regulated at the constitutional level and which at the level of ordinary legislation, and what criteria should apply in determining the difference. Constitutional guarantee refers to the fact that the procedure for constitutional enactment differs from the procedure for ordinary enactment, requiring a higher majority in Parliament (Constitution, section 73). The Constitution may lay down precise provisions to implement changes in norms directly via the Constitution, amendments may be enacted that require concrete expression to be given by an ordinary act, a topic may

[17] Memorandum of the working group Perustuslaki 2008 [Constitution 2008], Ministry of Justice, working group report 2008:8; Selvitys perustuslakiuudistuksen toimeenpanosta: Perustuslain seurantatyöryhmän mietintö [Review of the implementation of the constitutional reform: report of the working group for monitoring the Constitution], Ministry of Justice, working group report 2002:7.

be retained within the scope of an act with the transfer of legislative powers restricted, or the enactment by an ordinary act of provisions having a certain content may be enabled or prevented. The need for regulation shall be examined when assessing the manner of regulation.

One of the express objectives of the constitutional reform was given as achieving relative permanence for the Constitution. One of the premises underlying the reform was that following the reform, the Constitution would not be subject to any significant amendment pressures, at least not in the foreseeable future[18]. The Constitutional Law Committee has also repeatedly emphasised how 'the provisions of the Constitution are always ones that are long-standing and concern stable interpretational policy, applicable to varying situations and gaining interpretations in those situations'.[19] The Committee has stressed that a reserved approach shall be adopted to amending the Constitution[20].

The legalistic notion of the actual binding nature of the norms in the Constitution is very much a part of the Finnish tradition. Rather than concerning only certain issues of exercise of public powers and legal position of the individual, the Constitution basically covers all fundamental issues relating to these topics. This also means that as underscored by the Constitutional Law Committee, 'it must be ensured that the Constitution gives the correct impression of the system of the exercise of governmental powers and the basis for the legal position of the individual.'[21]

The government proposal concerning the Constitution also emphasises that the formulation of the Constitution differs from that of ordinary legislation, as hierarchically, the Constitution is legislation of the highest rank in the national system of laws and because it provides the foundation for all other laws. According to the proposal, the Constitution is also described as 'a central national symbol; something akin to a charter of the republic'. Therefore, the concepts used in the Constitution, 'shall be more solemn than in other acts' and 'the Constitution shall strive for a certain gravitas: the text of the Constitution shall have more permanence than other legislation.'[22] Due to the nature of the Constitution, its wording shall also be sufficiently generalised in nature, free from any provisions or details of a technical nature that would be susceptible to antiquation. An excess of detail may also unnecessarily hamper the interpretational development of the Constitution.[23] In the constitutional reform, the issue of the level of detail in regulation involved in particular the matters to be governed by the Standing Orders of Parliament.

As concerns the concepts used in the Constitution, it is also worthy of note that they are autonomous relative to other legislation. 'When assessing the relationship between the Constitution and ordinary acts, the premise shall be for the expressions and concepts used in the Constitution basically to be independent relative to the expressions and concepts used in other legislation. It is incompatible with the nature of the Constitution to incorporate into it direct references to any given ordinary acts.'[24]

When the topic of examination is strengthening the independence of the judiciary and the needs for it in other European countries as well, the Nordic countries in particular, it must be noted that the Constitution of Finland differs from the constitutions of many other countries. When assessing the guarantees of independence laid down in the Constitution, it must be noted that there are three possible ways of amending the Constitution: by changing the letter of the law (Constitution, section 73 on the procedure for

[18] Government proposal HE 1/1998 p. 3/I.
[19] Constitutional Law Committee report PeVM 4/2018, p. 4.
[20] Constitutional Law Committee report PeVM 5/2005, p. 2.
[21] Constitutional Law Committee report PeVM 5/2005.
[22] Government proposal HE 1/1998, p. 34
[23] Government proposal HE 1/1998, p. 34.
[24] Government proposal HE 1/1998, p. 34–35

constitutional enactment), by laying down a limited derogation from the Constitution (Constitution, section 73), or by changing how the Constitution is interpreted (Constitution, section 74).

When assessing the degree of precision at which the provisions of the Constitution concerning the key guarantees of the rule of law and the independence of the judiciary should be laid down, account must be taken of that stated above concerning amendment of the Constitution and in particular changing how it is interpreted. In order for the constitutional guarantees of judicial independence to function as guarantees of independence in particular and restraints against attempts of inappropriate influence by the governmental and legislative powers, the provisions concerning independence shall be formulated with a fair degree of precision and in such a way as to leave as little room as possible for discretion in their interpretation. This means that safeguarding the rule of the law and judicial independence requires procedural and quantitative criteria that are not open to interpretation and provide constitutional protection from inappropriate interference with the right to have one's case heard by an independent court.

In its Opinion concerning the Netherlands, the Venice Commission stressed that informal norms should complement and support, and not substitute formal safeguards altogether. The Commission held that certain well-entrenched informal norms and practices of the country's legal culture that are particularly important for the independence of the judiciary should be formalised in statutory law. The Commission found that experience from other countries has shown that in a polarised political context, informal norms sustaining the rule of law offer only little protection. Rule of law safeguards should be there precisely to step in when the political, societal and legal culture change and unwritten rules are not valid anymore. [25] In its Opinion, the Commission states that it provides the Dutch authorities with proposals and advice concerning rule of law safeguards which should be integrated in the legislation mostly as a preventive measure to protect it against possible political threats to the independence of the institutions examined in the opinion. Such threats may arise in the future if the current political, societal and legal culture happens to change.[26]

In its Opinion, the Venice Commission assigns less weight than before on political and legal culture in favour of an emphasis on safeguarding the independence of courts, judges and the prosecution service from executive powers by means of legislation. On the other hand, the Opinion has certain points in common with the premise adopted in the reform of the Constitution, to wit that the Constitution shall correspond with the reality of the constitutional system: the system of governmental exercise of powers emerging from the Constitution shall be consistent with the actual system of exercise of powers[27].

2 Current situation and its assessment

2.1 Independent judiciary

2.1.1 Independent judiciary and separation of powers

The provisions on the administration of justice appear in chapter 9 of the Constitution. Section 2 of the Constitution concerning the rule of law and its section 3 on the separation of powers are further provisions that are of particular relevance to judicial independence.

The provisions concerning administration of justice were copied virtually 'as is' from the earlier Constitution Act into the new Constitution. The relevant government proposal states, 'It is proposed that the provisions concerning administration of justice shall be kept largely unchanged with regard to content, but the wording

[25] Venice Commission opinion concerning The Netherlands, 11 October 2023, paras 10 and 71.https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)029-e.
[26] ibid para 84.
[27] Government proposal HE 1/1998, p. 6.

of the current provisions shall be updated.' Changes in content were proposed mainly only in the provisions concerning the High Court of Impeachment. A provision on the general structure of the judicial system was additionally included in the Constitution. The detailed provisions of the Constitution Act concerning the appointment of judges were also simplified (government proposal HE 1/1998, p. 155). The provisions concerning administration of justice have thus remained largely the same in terms of content for a long time, and the constitutional reform did not include a review of the provisions concerning the judiciary with an eye to scenarios that might pose a threat to independence.

Section 3 of the Constitution provides for the separation of powers into legislative, governmental and judicial powers. This general premise is supplemented in the other provisions of the Constitution (in particular chapter 9 with regard to administration of justice). It is the duty of the courts to provide the protection under the law laid down in section 21 of the Constitution. Under the section, 'everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.' Besides the traditional separation of powers, section 3 of the Constitution also lays down provisions on the principles of parliamentarism and the independence of the courts of law. Subsection 3 of the section also indicates that the Finnish judicial system is based on a division into general courts and administrative courts, further provisions on which are laid down in chapter 9 of the Constitution. The subsection reads, 'The judicial powers are exercised by independent courts of law, with the Supreme Court and the Supreme Administrative Court as the highest instances.' The provision underscores the independence of the courts, which according to the relevant government proposal refers to their independence from influence from other quarters in the application of the law as well as independence within the judiciary. The independence of the courts is integrally linked to the requirements of a fair trial that is safeguarded as a fundamental and human right.

External independence means that the activities of the courts must constitutionally be organised in such a manner that they are immune from external pressure that could impact the court members' decisions in their application of the law.

Independence is also guaranteed under section 21 of the Constitution and given concrete expression in several further sections, with the emphasis on chapter 9. Ultimately, the appropriate functioning of the courts ensures that everyone's rights and obligations are realised also in the real world and that everyone can rely on these being realised. An independent and impartial judiciary should be able to assess the constitutionality and legality of the exercise of legislative and executive powers. A well-functioning judiciary, whose decisions are effectively implemented, is of the highest importance for the maintenance and enhancement of the rule of law.[28] The administrative courts in particular also play a key role in ensuring the legality of government and the activities of the authorities. Independent courts are moreover necessary for democracy to function: on the one hand, the lack of independent court oversight could enable the manipulation of electoral systems and elections, for example, while on the other, courts also have a limited role in assuring the constitutionality of the legislation enacted by Parliament, through section 106 of the Constitution. That provision states that if, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution. In the enactment of the current Constitution, the focus in reviewing the constitutionality of legislation remained in the a priori review taking place at the enactment stage, while the provision on the primacy of the Constitution was incorporated into the Constitution as a tool of last resort to ensure the effective realisation of the Constitution and of fundamental rights in particular. However, section 106 of the

[28] Rule of Law Checklist, p. 16.

Constitution does not empower courts to declare an act to be invalid or to repeal any provision that is in conflict with the Constitution. The constitutionality of a specific provision in an act can only be assessed by the courts in individual and concrete situations of application of the law.[29] The application of provisions of lower level than an act that are in conflict with the Constitution is also limited by section 107 of the Constitution, which reads 'if a provision in a Decree or another statute of a lower level than an Act is in conflict with the Constitution or another Act, it shall not be applied by a court of law or by any other public authority.'

Sections 2 and 3 of the Constitution and the premises laid down in these are not assessed to be subject to any need for amendment. The premise under section 3 of the Constitution remains relevant and is the key factor underlying a democracy under the rule of law.[30] It is specified and its content clarified by the other provisions of the Constitution. The need to revise them is examined in the following.

2.1.2 Fundamental right of protection under the law and separation of courts from administrative authorities

Section 21, subsection 1 of the Constitution concerning legal protection provides for the right of everyone to have their case dealt with 'appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.' The independence of the courts is integrally linked to the requirements of a fair trial that is safeguarded as a fundamental and human right. The closest equivalents to the provision of the Constitution are the provisions on the right to a trial appearing in Article 14(1) of the International Covenant on Civil and Political Rights and in Article 6(1) of the European Convention on Human Rights. The objective of section 21, subsection 1 of the Constitution is to safeguard the right to a trial required under the said treaties in all situations referred to in the said treaty provisions (government proposal HE 309/1993, p. 72–73). In EU law, the closest equivalent to section 21 of the Constitution is Article 47 of the Charter of Fundamental Rights of the European Union, which provides for the right to an effective remedy and to a fair trial.

Section 21, subsection 1 of the Constitution replaced section 13 of the Constitution Act concerning the right to an impartial court. The provision is indeed indissociable from section 3, subsection 3 of the Constitution as well as its chapter 9 concerning administration of justice. The particular requirement of judicial independence is imposed in order to realise a fair trial and the fundamental right of protection under the law. Judicial independence derives its objective and rationale through the provisions concerning the fundamental right of protection under the law. In the provisions, the requirement of judicial independence is expressly linked to the right to protection under the law that is safeguarded for everyone as a fundamental right.

The formulation of the provision (which at the time was section 16 of the Constitution Act) drew attention also in the parliamentary deliberations, where the Legal Affairs Committee proposed a formulation that would have underscored the separation of court activities from administration and thus, perhaps, symbolically also the independence of the courts. During the deliberations on the fundamental rights reform (government proposal HE 209/1993), the Committee found the wording of section 16, subsection 1 of the Constitution Act to be problematic for reasons including that 'the proposed provision equates governmental administration and the administration of justice in a manner that makes them both appear

[29]Government proposal HE 1/1998, p. 163–164, Constitutional Law Committee report PeVM 10/1998, p. 30–31.
[30] A Swedish committee report from 2023 proposes that a provision equivalent with section 3, subsection 3 of the Constitution of Finland be added to the constitution of Sweden (see SOU 2023:12 Förstärkt skydd för demokratin och domstolarnas oberoende. Slutbetänkande av 2020 års grundlagskommitté)

part and parcel of the same exercise of public authority. However, the aim should be to underscore the independence of the administration of justice and its separation from governmental administration.' The Legal Affairs Committee also pointed out that courts are generally not referred to as public authorities (Committee report LaVL 5/1994, p. 5). The fact that the provision mentions the consideration of cases first by a court and then by another authority may also be considered somewhat incongruous. The provision was clarified in the Constitutional Law Committee by mentioning competent court and other public authority separately in its initial sentence. The rationale for the decision was given as the generally adopted policy of concise legislation aligned with the Constitution Act as a whole. (Constitutional Law Committee report PeVM 25/1994, p. 11 and Legal Affairs Committee report LaVL 5/1994, p. 5)

Besides in section 21, a formulation with courts and public authorities in parallel has also been used in section 17 concerning linguistic rights, section 107 concerning the primacy of the Constitution and other acts over lower-level statutes, section 108 concerning the Chancellor of Justice of the Government and section 109 concerning the Parliamentary Ombudsman. However, the parallels in these provisions cannot be seen to have the same relevance to the independence of the courts and protection under the law as section 21 and any changes to the formulation of these sections would necessitate a separate assessment taking into account in particular the fact that as a rule, judges, too, are subject to the Act on Public Officials in Central Government (hereinafter 'Public Officials Act').

Since section 21 concerning the fundamental right of protection under the law is integrally linked to section 3, subsection 3 of the Constitution, and because it couples the requirement of judicial independence with the fundamental right of protection under the law, the provision may be perceived as the core of judicial independence to which all other provisions concerning administration of justice are linked. Section 21 of the Constitution is linked to Article 6 of the European Convention on Human Rights and the relevant case law concerning an independent court drawing its competence from law as a part of the right to a fair trial. Therefore, it is justified for the formulation of the provision to emphasise the separation of independent courts from executive powers and to eliminate the parallel between courts and administrative authorities.

The provision in section 21 of the Constitution under which everyone has the right to have their case dealt with appropriately and without undue delay by a legally competent court is addressed in the following.

[Section 21 concerning the fundamental right to protection under the law will be addressed further as part of the assessment of constitutionally strengthening the independence of members of the Bar Association and other legal counsel.]

2.1.3 Providing for courts by law

Under section 98 of the Constitution, the general courts of law are the Supreme Court, the Courts of Appeal and the District Courts. The Supreme Administrative Court and the regional Administrative Courts are the general courts of administrative law. Special courts that exercise judicial powers in specific areas of competence are provided for by law. The establishment of provisional courts is prohibited. The High Court of Impeachment is governed by separate provisions laid down in section 101 of the Constitution.

Section 98 of the Constitution has been justified with the fact that since the fundamental policies concerning the exercise of public authority shall be centrally indicated in the Constitution, a provision on the general structure of the court system was proposed for incorporation into the Constitution (government proposal HE 1/1998, p. 156). The provision illustrates the division into general and administrative courts adopted in Finland as well as the two or three instances of these courts. The obligation to govern the general structure of the court system by an act may also be derived from section 21, subsection 1, which guarantees for everyone the right to have their case dealt with appropriately and without undue delay by a

legally competent court of law. Section 21, subsection 1 of the Constitution also precludes the establishment of provisional courts (government proposal HE 1/1998, p. 156).

In the enactment of the Courts Act, the general provisions concerning courts and judges were enshrined in that Act while most of the regulation at the level of decree concerning courts and judges was abandoned, which in the opinion of the Constitutional Law Committee was a justified regulatory approach with regard to the independence of the judiciary in particular (government proposal HE 7/23016, Constitutional Law Committee statement PeVL 14/2016, p. 2).

The independence and autonomy of the judiciary safeguarded under the Constitution and international human rights instruments binding on Finland, as well as the rule of law, require the provisions on courts of law to be laid down by an act. However, there is some uncertainty as to whether the Constitution as it currently stands can be held unequivocally to require this, or whether the law leaves room for interpretation. Although the Constitution lacks a requirement that general courts of law and administrative law be provided for by law, in practice this does not appear to have caused any issues with regard to judicial independence, as it is held that the requirement may be inferred from other provisions of the Constitution. However, in order to strengthen the independence of the judiciary, the potential ambiguity relating to the topic should be eliminated by means of specifying the Constitution.

Section 55 of the Constitution Act that preceded the current Constitution contained a provision that required general supreme courts and courts of first instance to be provided for by law but the said provision was not incorporated into the Constitution. At the time of the Constitution's enactment, the Legal Affairs Committee held that the requirement of courts being provided for by law could be deduced from more than one provision in the new Constitution and that practical policy was also strongly aligned with this approach. However, the Committee held that the lack of an express provision would make it possible to transfer considerable powers to issue regulation regarding the courts to a lower-level issuer of norms by means of an ordinary act. Hence, the Committee proposed that a provision equivalent with that of section 55 of the Constitution Act be added to the Constitution ('General supreme courts and courts of first instance shall be provided for by law') and the provision be supplemented with a mention of courts of administrative law. The Committee held the provision of section 55 of the Constitution Act requiring general supreme courts and courts of first instance to be provided for by law to mean that courts in general were to be provided for by law. (Legal Affairs Committee statement LaVL 9/1998, p. 6).

The Constitutional Law Committee, however, found that it followed from the nature of the matter that further provisions on general courts of law and administrative law be laid down by an act and that the regulation of the courts could not de facto slide to the level of decree by means of framework legislation, for example. The Constitutional Law Committee held that the independent status of the court system as well as protection under the law as a fundamental right included the requirements that further provisions on courts be laid down by an act. According to the Committee, section 98, subsection 3 also provided interpretative support for the requirement of laying down provisions by an act (Constitutional Law Committee of Parliament report PeVM 10/1998, p. 30). However, the requirement under section 98, subsection 3, that special courts shall be provided for by law, cannot be considered to indisputably indicate that the same would apply to general courts. In a decision concerning the reform of the district court network issued on 25 August 2009 (reg. no. 428/4/09), the Parliamentary Ombudsman states that no precise answer can be found as to precisely how the expressions 'further provisions on courts shall be laid down by an act', used by the Constitutional Law Committee in its report, or 'however, it would be appropriate for any significant central government arrangements to be provided for by law', used in the government proposal concerning the Constitution, are to be understood (HE 1/1998, p. 174).

The government proposal concerning the Constitution states, in the context of the rationale for section 98, subsection 3 (HE 1/1998, p. 156), that further provisions on the general principles of the court system are to be laid down by law. Even though this requirement is not directly evident from the sections of the Constitution, its substance is to be found in the Constitution's section 21, subsection 1, under which everyone has the right to have their case dealt with appropriately and without undue delay by *a legally competent court of law*. In the Constitution, section 98 concerning courts is indeed integrally linked to the fundamental right of protection under the law that is laid down in section 21. The government proposal concerning the Constitution Act states that the provision (section 16 of the Constitution Act, section 21 of the current Constitution) is to replace section 13 of the Constitution Act concerning lawful court, which reads, 'No citizens of Finland shall be judged by any other court except the one having jurisdiction over them under the law' (government proposal HE 309/1993, p. 72–73). The proposal does not define the term 'legally competent court of law', whereas the government proposal concerning the Constitution Act states that while the previous Constitution Act had no specific fundamental right provision on protection under the law, the closest equivalents to that provision were held to be the provisions on the right to a trial appearing in Article 14(1) of the International Covenant on Civil and Political Rights and in Article 6(1) of the European Convention on Human Rights. The objective of section 21, subsection 1 of the current Constitution was to safeguard the right to a trial required under these treaties in all situations referred to in the said treaty provisions (government proposal HE 309/1993, p. 73).

Under Article 6 of the European Convention on Human Rights, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal *established by law*. According to the practice in applying the European Convention on Human Rights, the legislator is responsible for determining the general structure of the court system. The expression 'tribunal established by law' has been held to cover not only the regulation of matters within the substantive competence of courts but also the establishment of individual courts and determination of their regional jurisdiction. However, Article 6 of the European Convention on Human Rights does not preclude the use of statutory powers to issue decrees based on law in deciding the organisation of courts when the general structure of the court system is provided by law. Under the practice of applying the European Convention on Human Rights, individual courts may thus be established and abolished also by means of statutory powers to issue decrees granted by law.[31] 'Established by law' covers not only the legal foundation for the court's existence but also the court's compliance with the specific rules that govern it as well as the composition of the court in each case[32]. Besides the Convention, also Article 47 of the EU Charter of Fundamental Rights requires everyone to be entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal *previously established by law*. The Court of Justice of the European Union has confirmed that the said requirement under Article 47 of the Charter corresponds to Article 6(1) of the ECHR and that under Article 52(3) their meaning and scope are to be the same[33]. Article 14(1) of the International Covenant on Civil and Political Rights also requires courts to be *established by law*.

The requirement put forward in the preparatory documents in the context of the rationale for section 98 of the Constitution, that further provisions on 'the general principles for the court system' be laid down by an act, appears to align with the requirement under Article 6(1) of the European Convention of Human Rights that the court be established by law. This being the case, in reliance on the practice in applying the European Convention on Human Rights, this requirement of foundation in law concerning the general principles for the court system may be derived from section 21, subsection 1 of the Constitution.

[31] ECHR, Zand v. Austria, 7360/76, paras 68–71. See also ECHR, Jorgic v. Germany, 74613/01, para 64.
[32] ECHR, Biagioli v. San Marino, 8162/13, paras 72–74.
[33] ECJ, DEB v. Germany, 22.12.2010, C-279/09, EU:C:2010:811, para 32.

International or EU regulation binding on Finland does not, however, directly preclude the establishment or abolition of individual courts by exercising the power to issue decrees included in the law.

It has also been suggested that the foundation for the requirement of foundation in law concerning courts could be found in section 119, subsection 2, placed in the Constitution's chapter 11 entitled 'Administration and self-government'. Under this provision, the general principles governing the bodies of State administration shall be laid down by an act, if their duties involve the exercise of public powers. The duties of courts in administering justice indisputably involve the exercise of public powers. Since the provision concerns the organisation of central government and the exercise of executive power, it nonetheless cannot be interpreted to require provisions on courts to be laid down by an act in the same way as the principles governing the bodies of State administration (see also the clearer separation between jurisdictional powers and executive powers noted in the discussion of section 21 of the Constitution).

Under the Constitution's section 3, subsection 3, the judicial powers are exercised by independent courts of law, under its section 21, subsection 2, the guarantees of a fair trial and shall be laid down by an act and under its section 80, subsection 1, matters that under the Constitution are of a legislative nature shall be governed by acts. It has been argued that due to the requirements appearing in these provisions, all powers and matters that might influence the independence of the judiciary or judges should be governed by an act of Parliament. However, the provisions leave too much room for interpretation in respect of the requirement of foundation in law to consider the organisational independence of the judiciary to be effectively guaranteed by them alone.

An express requirement of foundation in law would eliminate the ambiguous characteristics relating to the establishment and abolition of individual courts by decree alone. In its Opinion to the Netherlands issued on 11 October 2023 (para 10), the Venice Commission stressed that informal norms offer only little protection for the rule of law and for this reason, the informal norms and practices that are particularly important for the independence of the judiciary should be formalised in statutory law. The organisational independence of the courts would also be better safeguarded if the decisions on matters essential to their independence were made by a parliament exercising democratic legislative powers.

The regulation of foundation in law under the Constitution also cannot be considered fully consistent at present. Under the Constitution, provisions on special courts (section 98, subsection 3), the prosecution service (section 104) and the general principles governing the bodies of State administration if their duties involve the exercise of public powers (section 119, subsection 2) shall be laid down by an act. At the time of the constitutional reform, the Legal Affairs Committee considered the lack of an express constitutional norm concerning the foundation in law of courts to be unbalanced (statement LaVL 9/1998, p. 6).

On the grounds set forth above and in order to secure the organisational independence of the judiciary for the long term, it is warranted to re-assess the conclusion arrived at by the Committee to review the Constitution, that the regulation of the court system in the Constitution does not require revision. The Committee held that in the Constitution, the independent standing of the court system and the fundamental right of protection under the law, along with the other provisions of the Constitution concerning the judiciary, contain the requirement that courts shall be provided for by law. The Committee linked the requirement of foundation in law not only to the rationale put forward by the Constitutional Law Committee but also to the other provisions of chapter 9 concerning the administration of justice and to the fundamental right of protection under the law enshrined in section 21 of the Constitution.[34] However, the guarantees of judicial independence would be strengthened by an express reference to law, which would make the issue of level of regulation less open to interpretation.

[34]Report 9/2010 of the Committee for reviewing the Constitution, p. 125–126.

Section 98, subsection 3 concerning special courts is discussed in section 2.4.9.

2.1.4 Organising the administration of the court system

The Constitution is silent on the topic of organising the administration of the court system. The National Courts Administration, established in 2020, is governed by the provisions of chapter 19a of the Courts Act. Section 1 of the chapter states that 'The purpose of the National Courts Administration, which operates in the administrative branch of the Ministry of Justice, is to ensure a favourable operating environment for the courts and to develop, plan and support the activities of the courts. The National Courts Administration is an independent agency.' Its duties are laid down in section 2, under which it is responsible for ensuring that the courts are able to maintain a high level of quality in the exercise of their judicial powers and that the administration of the courts is organised in an efficient and appropriate manner. The section also specifies the duties of the National Courts Administration, which include making proposals to the Ministry of Justice on appropriations for the operating expenditure of the courts and deciding on the allocation of the appropriations to the courts in accordance with the approved budget, in so far as the appropriations have not been allocated directly to a specific court and deciding on matters related to the establishment, termination and transfer of positions and internal recruitment arrangements at the courts as well as dealing with matters related to the employment relationships of court personnel in so far as these matters do not fall within the competence of a court or some other authority. Being in charge of many support services central to the courts, such as the maintenance and development of information systems as well as the premises management of the courts, in so far as the power of decision in this regard does not lie with the Ministry of Justice, are also among the duties of the National Courts Administration. Under chapter 19a, section 3 of the Courts Act, the National Courts Administration, in its activities, shall take account of the independence of the courts and the position and statutory duties of the highest courts laid down in the Constitution.

Under chapter 19a, section 6 of the Courts Act, the highest decision-making body in the National Courts Administration is the board of directors. The board of directors makes the decisions on matters such as the allocation of appropriations to the courts in accordance with the approved budget in so far as the appropriations have not been allocated directly to a specific court; the establishment, termination and transfer of other positions of judge than those of the highest courts in accordance with the Act on Public Officials in Central Government (hereinafter Public Officials Act); and whether an application for the relieving of a judge from office as referred to in chapter 14, section 4, subsection 4 of the Courts Act is to be made.

The provisions on the appointment and composition of the board of directors are laid down in chapter 19a, section 7 of the Courts Act. The Government appoints the board of directors of the National Courts Administration for a term of five years at a time from among the candidates proposed to it in accordance with section 8. The board of directors consists of one judge of the Supreme Court and one judge of the Supreme Administrative Court as well as one judge from the courts of appeal, one judge from the district courts, one judge from the administrative courts, and one judge from the special courts. The board of directors also has one member representing the other personnel of the courts and one member with special expertise in the management of public administration. Each member has a personal deputy. One of the judge members shall be the head of court of a court of appeal or a district court and one of them shall be the head of court of an administrative court or a special court. A Member of Parliament or a member of the Parliament of Åland, the Government, the Government of Åland, a local council or a local executive may not be a member of the board of directors of the National Courts Administration.

Assessment

Justice cannot be effectively administered without smooth cooperation between the authorities and the bodies responsible for the administration and management of the courts. The working group of administration of justice stated in its memorandum (2022:39, p. 109) that the independence of the courts was less strong in administrative matters than in the administration of justice. Courts can be steered through administrative regulations, recommendations and guidelines when these do not directly concern the administration of justice. The manner in which the judiciary is organised and its administrative arrangements nonetheless have at least an indirect impact on the organisation of the administration of justice even though administrative decisions may not directly interfere in the adjudication of cases. Significant administrative arrangements include the resourcing of courts and the budget proposals for them, performance guidance, collective agreements for public officials and development projects concerning the activities of the courts. In terms of structural independence, it is vital that the courts have sufficient resources, for example, to perform their duties. In a submission to the Ministry of Justice on 25 May 2000 (reg.no. 6/20/00), the Chancellor of Justice states that performance guidance, for example, may not be used to preclude or diminish the legal or real opportunities of the court or any individual judge of the court to consider and decide in accordance with the legislation in force any cases that may be before the court, or to prepare an appropriate, substantively and legally justified decision.

The Constitution is silent on the National Courts Administration. During the preparations for the establishment of the National Courts Administration, it was noted that the provisions of the Constitution did not require the administrative tasks of the courts to be organised according to any specific model, and therefore they did not prevent the establishment of the agency, either. However, regulation under the Constitution – in particular the duty of the highest courts under section 99 of the Constitution to supervise the administration of justice in their fields of competence – was held to possibly exert a restrictive influence when designing the remit, powers and structure of the agency.[35]

The way in which the central administration of the courts is organised is relevant for their structural independence. For the smooth functioning of the courts, it is necessary that administrative duties are performed efficiently and effectively and that they are not permitted to influence the courts' administration of justice. The Constitutional Law Committee held that the establishment of the National Courts Administration would, in principle, strengthen the independence of the courts by reducing the potential for their political guidance when compared to the situation earlier, when the Ministry of Justice was responsible for the performance guidance of the courts. The Constitutional Law Committee considered that the earlier arrangement had been constitutionally questionable to some extent. However, in the view of the Committee, the performance guidance carried out by the National Courts Administration is also problematic with regard to the Constitution when it even indirectly constitutes guidance concerning the substance of the courts' operations and impacting on the administration of justice. The Committee stressed that the organisation of the administration and finances of the court system must not jeopardise either the external or internal dimensions of judicial independence. This means that the courts must be independent also in relation to the National Courts Administration (Constitutional Law Committee statement PeVL 49/2018, p. 3).

The government proposal concerning the establishment of the National Courts Administration states that removing the duties of central administration of the court system from the ministry under political guidance has to do with the requirement of organising the central administration of the court system in a manner

[35] Pekka Nurmi and Tatu Leppänen, Tuomioistuinten keskushallinnon uudistaminen –arviomuistio, oikeusministeriö 2/2015, s. 16 [Memorandum on the reform of central court administration, Ministry of Justice 2/2015, p. 16] and the report of Anni Tuomela, tuomioistuinlaitoksen keskushallinnon kehittämistä koskeva selvitys, oikeusministeriön julkaisusarja 2009:3 referred to therein [development of central court administration, Ministry of Justice publication series 2009:3]

that for its part underscores the structural independence of the courts, and also in a way that allows that independence to be clearly perceived from the outside. Criticism had been directed at the fact that a politically led ministry was directly responsible for the central administration and financing of the court system. Situated between the ministry and the courts, the National Courts Administration was considered to act as an intermediary providing distance that serves for its part to strengthen the structural independence of the court system (government proposal HE 136/2018, p. 21–22).

In Finland, the provisions concerning the National Courts Administration are laid down in the Courts Act and may thus be amended by ordinary legislative procedure. The constitutional support for the administration supporting judicial independence is therefore weak and indirectly derived from the general provisions concerning the independence of the judiciary. Unlike Norway, Finland has also not ensured that the administration of the courts could not be re-assigned from an independent agency to the executive powers without amending the Constitution.

At the time of the National Courts Administration's establishment, the Constitutional Law Committee held that in terms of judicial independence, it is significant that the highest decision-making body of the agency is its board of directors, on which judges hold a majority: six of the eight members of the board are required to be judges (chapter 19a, section 7). The Constitutional Law Committee held that this would allow the views of the judiciary to be strongly represented in the agency's decision-making and would also eliminate any potential for the indirect political guidance of the courts. Though the board of directors is appointed by the Government, the courts play a major role in its composition through the nomination of member candidates. The status of the highest courts under section 99 of the Constitution is taken into account in the proposal by means of including the special provision concerning consultation of these courts as well as the composition of the board of directors and the procedure for nominating candidates for membership. The Constitutional Law Committee considered the said provisions to be appropriate in terms of the Constitution (Constitutional Law Committee statement PeVL 49/2018, p. 3).

The working group of administration of justice in its memorandum (2022:39, p. 107–108) held that when assessing needs to amend the Constitution, it might be warranted to assess the extent to which the Constitution should provide for the National Courts Administration and in particular its board of directors, which exercises the highest decision-making authority in the agency. The Consultative Council of European Judges (CCJE) has also recommended that a council for the judiciary be provided at a constitutional level. Constitutional provisions should be made for the setting up and composition of such a body, for the definition of its functions and securing its members' term of office and also guaranteeing independence vis-à-vis the legislative and executive powers. Provisions should also be laid down regarding the sectors from which members may be drawn and for the establishment of criteria for membership and selection methods.[36]

The working group of the administration of justice (2022:39, p. 107–108) has also remarked on the fact that the Courts Act contains no provisions to govern the removal from office of a member of the board of directors of the National Courts Administration. This may be judged to be problematic in light of the practices of the Venice Commission. The Commission has held that the security of tenure of all judges appointed to the council for the judiciary is a crucial precondition for the independence of the council and that these judges should be protected with the same guarantees as those granted to judges exercising jurisdictional functions, including the conditions of service and tenure and the right to a fair hearing in case of discipline, suspension, and removal. Non-judicial members should have equivalent protection.

[36] Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, para 11, and CCJE Opinion No. 24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, para 10.

Procedures laid down by law should ensure that the appointment procedure caters for the adequate representation of the various courts and that the grounds for the suspension or removal from office of members should be precisely defined.[37] However, it must be noted that the term 'council for the judiciary' refers to different kinds of actors with different powers in the different countries and the opinion of the Venice Commission therefore cannot be directly understood to comprise the system in Finland. The absolute lack of provisions in the law concerning the removal from office of members of the board of directors of the National Courts Administration cannot be deemed a tenable position in terms of legal certainty, however.

Under section 119, subsection 2 of the Constitution, the general principles governing the bodies of State administration shall be laid down by an act, if their duties involve the exercise of public powers. According to the relevant government proposal (HE 1/1998, p. 174), general principles refer mainly to the name, sector and principal duties and powers of bodies. This requirement of being laid down by an act therefore already applies to the National Courts Administration. The Constitutional Law Committee has held that the general power of the National Courts Administration to decide on its administrative duties is limited by the requirement that the duties of the agency carrying out the administration of the courts be laid down by an act. It follows from the judicial independence guaranteed under the Constitution that powers in matters such as collective agreements for public officials and public office arrangements shall be expressly laid down by an act (Constitutional Law Committee statement PeVL 49/2018, p. 5).

As the agency's highest decision-making body, the board of directors of the National Courts Administration, which is currently responsible for the central administration of the court system, plays a key role with regard to the independence of administration. The status of the National Courts Administration's board of directors and matters relating to the appointment and right to remain in office of board members are relevant to organising administration in a way that safeguards the independence of the courts and judges. The proposed regulation would mean that the appointment and dismissal of members of the board of directors of the National Courts Administration, for example, would need to be governed by an act. The proposed provision would also affect the acceptable composition of the National Courts Administration's board of directors. The organisation of administration in a way that safeguards judicial independence would be supported by the board of directors dividing responsibilities among multiple members and the board comprising also tenured judges, for example. Judges holding the majority on the board of directors would align with the proposed regulation, as it ensures that the views of the judiciary are strongly represented in decision-making and it also reduces the potential for indirect political guidance of the courts. The Constitutional Law Committee has found the high majority of judges on the board of directors to be appropriate with regard to the Constitution (Constitutional Law Committee statement PeVL 49/2018, p. 3). The proposed provision would also ensure that going forward, too, member candidates are selected on the basis of their qualifications and experience, without any undue influence by the authorities or judicial hierarchies, and by using methods that guarantee a broad representation of the judiciary on the board. Even though the board of directors is appointed by the Government, the courts nominate the member candidates and therefore have a strong hand in the appointments.

The need to secure the independence of judicial administration in and for the long term and at the level of constitution has also been recognised in Finland's peer countries of Norway and Sweden. In 2024, the requirement that central government authorities shall ensure the independent administration of the courts was added to the constitution of Norway (section 91):

"*Dei statlege styresmaktene skal sikre ein uavhengig administrasjon av domstolane.*"

[37] Venice Commission's Opinion concerning the Netherlands, 2023, paras 52–55.

In Sweden, the Government in April 2025, on the basis of the proposal of the committee reviewing reform of the constitution (SOU 2023:12, p. 321, 368) proposed (Prop. 2024/25:165) incorporation into the constitution of regulation considerably more specific than that in Norway, providing for matters such as the composition of the board of directors of the authority in charge of administration and the head of that authority:

> *”För domstolarnas administration finns en särskild myndighet som leds av en styrelse, där en majoritet av ledamöterna är eller har varit ordinarie domare. Myndighetens chef anställs av styrelsen.*
> *Grundläggande bestämmelser om myndighetens uppdrag och ledning, i andra hänseenden än som berörs i denna regeringsform, meddelas i lag.”*

The provision in the Norwegian constitution leaves considerable room for interpretation as to the practical organisation of the administration of the courts. The regulation proposed in Sweden, meanwhile, with its degree of detail may be taken to differ from the formulation of chapter 9 of the Constitution of Finland concerning the administration of justice, which is fairly general in nature.

2.1.5 Composition of highest courts

2.1.5.1 Number of members of highest courts

Under section 100 of the Constitution, the Supreme Court and the Supreme Administrative Court are composed of the President of the Court and the requisite number of Justices. The Supreme Court and the Supreme Administrative Court have a competent quorum when five members are present, unless a different quorum has been laid down by an act. Section 100 of the Constitution corresponds to sections 54 and 57 of the Constitution Act. No specific rationale for the provision is put forward in the preparatory documents of the constitutional reform. The section 100, subsection 1 currently in force was, at the time, formulated very broadly. Based on the preparatory documents, a situation where legislative or executive powers would attempt to influence the actions of the supreme courts is not addressed.

The number of members of the highest courts is provided for in the Act on the Supreme Court (665/2005) and the Act on the Supreme Administrative Court (1265/2006). Under section 10 of the Act on the Supreme Court, the Supreme Court shall consist of the President and not less than 15 Justices as members. Under section 10 of the Act on the Supreme Administrative Court, the Supreme Administrative Court shall consist of the President and not less than 15 Justices as members. At present, in addition to the President, the Supreme Court has 18 members (no. of posts 19) and the Supreme Administrative Court 22 members. The Supreme Court currently has no fixed-term members. In the Supreme Administrative Court, the number of members has varied from 19 to 25 in the years 2004–2025, giving an average of 20.9. The number of fixed-term members in the Supreme Administrative Court under the same time period has varied between 0 and 9, giving an average of 3.92. Between 2016 and 2019, the number of fixed-term members has varied from 7 to 9. The Supreme Administrative Court currently has one fixed-term member.[38]

Since the number of members of the highest courts is governed at the level of ordinary act, that number can be changed by amending the said acts with a simple majority in Parliament. The current regulation could, per se, allow an ordinary act to be amended in such a way as to increase or decrease the number of members of the highest courts. Combined with the powers to appoint and make initiatives held by parties outside the court system, it would be possible to inflate the number of members of the highest courts by amending the ordinary acts governing that number. This would jeopardise judicial independence, while a decrease in the number of Justices could also impact on the ability of the highest courts to perform their

[38] As at 18 August 2025.

duties. More precise regulation, at the level of the Constitution, of the number of members of the highest courts is intended to fundamentally secure their external independence from governmental power.

The task of the highest courts is integral to a democracy under the rule of law. The importance of the independence of the highest courts is underscored especially in situations where the fundamental values of the rule of law come under pressure. At the same time, the independence of the highest courts from the ruling powers creates the possibility that the legislative or executive powers may come to consider the courts a threat to their own position or political aims. Developments in Europe in recent years have shown that increasing the number of judges in the highest courts has been seen as an effective way of interfering with such courts' administration of justice (European Commission v. Poland C-791/19, EU:C:2021:596; Reczkowicz v. Poland, judgment 22.7.2021, no. 43447/19; and Dolińska-Ficek and Ozimek v. Poland, judgment 8.11.2021, nos. 49868/19 and 57511/19). Current legislation in Finland permits such increases to be implemented fairly rapidly, as the Constitution does not provide for the number of judges on the highest courts. More precise regulation of their number at the level of the Constitution combined with regulation on the topic of appointment would efficiently protect the ability of the highest courts to perform their duties with independence and autonomy. Regulation of the appointment procedure would complement the regulation on the range of variation in such a way that any proposal for an appointment would have to be preceded by an initiative from the court concerned. This would also codify existing established practices into the legal order.

No significant increase or decrease in the number of members of the highest courts has been pursued. It should be noted, however, that the working group is tasked with strengthening the independence of judges and courts in and for the long term. The task of the highest courts in a state under the rule of law and their constitutional status require specific provisions to protect their independence. The need to specify, at the level of the constitution, the number of members of the highest courts has been recognised in Finland's closest peer countries as well (Sweden, Norway) and also in earlier national debate.

Regulation under the Constitution must withstand the test of time and account for various situations in society so that the regulation of the number of members does not, in practice, become a hindrance to the courts' performance of their duties also in unforeseeable circumstances. Trust in the courts might be eroded if they had difficulties in performing their duties expeditiously due to case backlogs and regulation of the number of their members. Therefore, regulation that lays out in the Constitution the maximum and minimum number of court members shall be considered superior to any regulation specifying a fixed number. The Supreme Court and the Supreme Administrative Court are not identical in terms of duties and changes in society may therefore be reflected differently on them. The case numbers of the Supreme Court have remained fairly steady and any changes have been slow, whereas the Supreme Administrative Court has seen considerable changes in its case load: the number of cases received by the Supreme Administrative Court in 2017–2019 was nearly twice that in 2022–2024, for example. Going forward, the Supreme Administrative Court could again face a need to augment its resources, for example in situations where a high number of official decisions eligible for judicial review are made in cases concerning aliens, for example. However, it is not considered justified to lay down different provisions at the level of the Constitution on the number of members of the two highest courts.

Some European countries have set a fixed number in their legislation for the composition of their constitutional court. In this respect, it should be noted that constitutional courts serve a different purpose. The approach is not entirely alien to the Constitution in Finland, either; section 101, for example, concerning the High Court of Impeachment, provides for a specific number of court members.

Laying down provisions on the number of members of the highest courts would strengthen the independence of these courts when taken together with, for example, the proposals concerning

appointment procedure. The range of variation used should be sufficiently narrow so as to make the number of members less susceptible to significant fluctuation or unwarranted increases. This would guarantee effective protection also in cases where the courts only had the minimum number of members provided for in the Constitution. An excessively narrow range, however, could unnecessarily restrict flexibility. In the interests of balancing these aims, other amendments to restrict the ability of governments to increase the number of court members are also proposed. These would allow for a somewhat wider range of variation to cater for the need for flexibility.

A key consideration in safeguarding independence, when a certain range of variation in the number of members of the highest courts is provided for, is that the initiative to appoint a new member must come from the relevant court itself and not, for example, from the party responsible for the appointment. The range of variation in the number of court members shall moreover be applied – i.e. new members appointed or not – on the initiative of the court only out of a need relating to the functioning of the court. The relevant provisions are proposed to be laid down in section 102, subsection 1. Section 102 concerning appointment procedure thus complements section 100 concerning the numerical limits of the court composition. This way, the external independence of the highest courts would be safeguarded jointly by the range of variation laid down in section 100 and linking appointments to proposals put forward by the courts on their own initiative pursuant to section 102.

2.1.5.2 Fixed-term members in the highest courts

The question of fixed-term members requires assessment simultaneously with efforts to specify the number of members of the highest courts in order to prevent both inflating or decreasing the number of court members. Changes in the numbers of not only permanent members but also fixed-term members may jeopardise the independence of the courts. If fixed-term members continued to be allowed while at the same time laying down more specific provisions on the number of permanent members in the Constitution, this would undermine what the regulation of numbers at the level of the Constitution expressly sought to safeguard. The current wording of section 100 of the Constitution concerning 'the requisite number' does not differentiate between permanent and fixed-term members. The relevant government proposal states, 'The supreme courts may also comprise additional members who may be appointed when this is necessary in light of the number of pending cases or for another reason.' (government proposal HE 1/1998, p. 157/II). Additional members have since come to be referred to as fixed-term members in legislation concerning the supreme courts (Administration Committee report 7/2001, p. 3). Since safeguarding independence is assessed to require more specific regulation of the number of members of the highest courts, the provision should be specified to restrict its application expressly to permanent members in order to reach the objective of the regulation. The appointment of fixed-term members in a way that would negate the aims of the proposed regulation concerning the range of variation in the number of members must not be allowed.

According to the premises of chapter 9 of the Constitution itself, the basic principle with regard to the court system shall be the permanence of judicial offices and the appointment of judges to permanent positions. Section 103 of the Constitution provides for the right of judges to remain in office. The basic principle with regard to the court system is the permanence of judicial offices. However, there is no absolute barrier to appointing judges for a fixed term of office or on a part-time basis (government proposal HE 1/1998, p. 159/II, Constitutional Law Committee statements PeVL 35/2001, p. 2/II and PeVL 14/2016, p. 5). Even in cases where judges are appointed for a fixed term, the right to remain in office applies to them for the duration of their term (government proposal HE 1/1998, p. 160/I, Constitutional Law Committee statements PeVL 2/2006, PeVL 14/2016, p. 5). Fixed-term offices may be assessed to entail lesser internal independence. For more on fixed-term judicial offices, see Constitutional Law Committee statement PeVL 26/2009 (see also PeVL 2/2006).

The case law of the European Court of Human Rights has also not found the fixed-term appointments of judges to be problematic with regard to the independence or impartiality of the court when judges are irremovable from office during their term (see Ettl and others, 23.4.1987, para 41). However, it has been considered possible in legal literature that an appointment for a fixed term that is very short could, in respect of some courts, call their independence into question in the sense referred to in Article 6 of the European Convention on Human Rights. (Matti Pellonpää, Euroopan ihmisoikeussopimus [European Convention on Human Rights], Helsinki 2005, p. 352, footnote 371). (Constitutional Law Committee statement PeVL 2/2006)

Both the Supreme Court and the Supreme Administrative Court have had fixed-term members due to reasons such as leaves of absence, medical leave or case backlogs. Neither the Constitution nor any ordinary act restricts the number of fixed-term members. Provisions on the fixed-term members of the highest courts are laid down in the Courts Act (Act on the Supreme Court, section 10, subsection 2, and Act on the Supreme Administrative Court, section 10, subsection 2). Provisions on the situations where a judge may be appointed to a fixed-term public-service employment relationship are laid down in chapter 12, section 1 of the Courts Act and provisions on the appointment of members of the judiciary to a fixed-term public-service employment relationship in chapter 12, section 3 of the same Act.

Judges may take leaves of absence for a number of reasons during their public-service employment relationship, for example family leave, extended medical leave or fixed-term appointment to other public-service employment. If fixed-term members could not be appointed under any circumstances, the ability of the highest courts to function might be undermined at least in situations where more than one member of the court was on a leave of absence. The functioning of the courts must be ensured under all conditions. The working group has assessed the question of whether ensuring the appropriate functioning of the highest courts in the event of leaves of absence or exceptional case loads, which per se are ordinary matters, requires increasing the number of court members on a fixed-term basis, or whether this issue might be managed by other means. The goal is also not to appoint a higher number of members to the courts of highest instance than is necessary in ordinary conditions with an eye to situations such as the ones above.

Several options have been examined as alternative ways of arranging the duties of the members of the highest courts in the situations described above. The first area of examination was whether further provisions should be laid down to govern the situations where fixed-term members could be appointed. Determining the party responsible for assessing whether the request of a court of highest instance to have a fixed-term member appointed and whether such assessment might unduly constrict the court's opportunities to organise its activities might prove challenging with regard to independence in particular, however. Secondly, the possibility of limiting the number of fixed-term members by determining their number as a certain percentage of permanent members, for example, was examined.

The possibility of extending the proposed regulation of the variation in number of court members to apply equally to fixed-term and permanent members was also examined. When resources remained untapped within the permitted range of variation, they could be used to appoint either a permanent or a fixed-term member. On the other hand, this might lead to a need to provide for a wider range of variation in number of court members than examined in the foregoing, which in might unduly undermine the effectiveness of the regulation. The regulation should moreover take into account the limitation of the number of court of highest instance members permitted to be fixed-term members. Furthermore, the regulation would not sufficiently guarantee that the members of the highest courts must be appointed to a permanent office. A further option examined was to limit the number of fixed-term members relative to all members. It would be possible to formulate such a provision with unequivocal wording and it would underscore the exceptional nature of the arrangement and strive to ensure a high degree of independence. The possibility

of a pool of judges from among whom fixed-term members could be appointed in the event of exceptional circumstances was also examined.

This assessment concluded that, to accomplish the goals of the proposed regulation of number of members and to strengthen independence, it could only be possible to appoint fixed-term members to the highest courts when a public-service position is vacant. Furthermore, it should only be possible to appoint fixed-term members on the initiative of the court. This would safeguard the ability of the courts to perform their duties appropriately in situations where a permanent member is on a leave of absence, for example, or the public-service post is vacant for some other reason, while at the same time keeping the combined number of permanent and fixed-term members within the range of variation laid down in the Constitution. In addition, the provision proposed for section 102 of the Constitution, giving the highest courts the right of initiative in the appointment of members, would safeguard external independence and, as with tenured judges, prevent the appointment of fixed-term members on the initiative of an actor external to the court. The idea in the proposed regulation is that Justices could be appointed for a fixed-term only as acting Justices and only on the initiative of the court itself.

2.1.5.3 Expert members in the highest courts

Expert members in the highest courts are governed by the Courts Act, the Act on the Supreme Administrative Court and the Military Court Procedure Act, among others. Under the Military Court Procedure Act, when hearing a military case, the Supreme Court shall have two military members in addition to the ordinary court composition, however not when the case is heard by a panel consisting of fewer than five members. Under the Act on the Supreme Administrative Court, two environmental experts shall take part in hearing certain cases involving environmental protection and water matters and two senior engineering experts in hearing cases involving certain intellectual property rights.

Expert members are independent in the exercise of judicial powers in the same manner as judges. While the Constitutional Law Committee has not held the interest-based composition of a given decision-making body to be problematic per se with regard to the independence required under section 21, subsection 1 of the Constitution (Constitutional Law Committee reports PeVL 35/2001, PeVL 22/1997), it has consistently held that interest-based members being in the majority in the body is not compatible with the requirement of independence (reports PeVL 22/2005, PeVL 25/2004, PeVL 55/2002). PeVL 14/2016, p. 7-8).

Expert members are not provided for at the level of the Constitution. Amendment of an ordinary act would therefore make it possible to change the number of expert members in the composition of the court also regardless of any restrictions on the number of members who are permanent (tenured) judges. This could pose a threat to independence if an attempt was made to influence the composition of the court by means such as increasing the number of expert members, for example. However, the risk of the court's composition being influenced through permanent or fixed-term members may be seen to be of greater relevance to judicial independence than the number of expert members. At present, expert members are involved in the consideration of a certain limited range of cases in the highest courts. The risks to independence related to the legal situation concerning expert members appear to be limited. The proposed regulation is not intended to change the role of category-specific expert members in the composition of the highest courts. In other words, expert members and military members would be excluded from the range of variation determined in section 100.

2.1.5.4 Quorum of the highest courts

Section 100, subsection 2 of the Constitution expresses multiple membership and collegial decision-making as the basic premise for the activities of the highest courts. The highest courts work in panels and therefore the quorum requirement concerns above all the number of panel members (government proposal HE 1/1998, p. 157/II).

The provision contributes to the strengthening of judicial independence by providing guidance to the legislator and maintaining the multi-member administration of justice of the highest courts. Concentrating the power to administer justice in a single member would be likely to jeopardise the independence of the highest courts.

The second sentence of the provision concerning quorum provides for the possibility of laying down provisions by an act to make the highest courts quorate also in panels other than those comprising five members. At present, the quorum of the court is governed by the Act on the Supreme Court, the Code of Judicial Procedure and the Act on the Supreme Administrative Court, among others. The regulation in force recognises several different compositions, from the single-member composition to the full assembly. A characteristic of the regulation of court composition is that it must allow flexibility. At present, the regulation is fairly detailed and comprehensive in places, and it is difficult to adopt at the level of the Constitution.

The second sentence of the section provides for the possibility of laying down provisions by an act to make the highest courts quorate also in panels other than five-member ones. Although other legislation contains regulation on court composition that differs from that laid down in the Constitution, the provision of the Constitution guides the legislator when laying down by an ordinary act provisions governing court composition. The requirement of foundation in law remains warranted due to the significance of quorum. The provision concerning quorum is not assessed to be subject to any amendment needs.

2.1.6 Appointment of judges

2.1.6.1 Legislation and practice

Under section 102 of the Constitution, tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an act. Provisions on the appointment of other judges are laid down by an act. Under section 58, subsection 1, the President of the Republic makes decisions in Government on the basis of motions proposed by the Government. If the President does not decide in accordance with the draft government decision, the matter is returned to the Government for further preparation. The report submission procedure under subsection 2 of the section does not apply to appointments. When discussing the appointment procedure, account shall also be taken of section 125 of the Constitution laying down provisions on the qualifications for public office and other grounds for appointment. Under subsection 2 of section 125, the general qualifications for public office shall be skill, ability and proven civic merit.

Provisions on the appointment of heads of courts and permanent (tenured) judges are laid down in chapter 11 of the Courts Act and the appointment of fixed-term judges in the Act's chapter 12. The President of the Republic appoints the presidents of the highest courts without a proposal from the relevant court or board. The Supreme Court and Supreme Administrative Court prepare reasoned proposals for the appointment of their respective members and the proposals are submitted to the Government for presentation to the President of the Republic. The appointments of judges other than those mentioned above are within the remit of the independent Judicial Appointments Board, which is tasked with preparing appointments to judicial offices and drawing up reasoned proposals for appointments. The proposals are submitted to the Government for presentation to the President of the Republic. The Judicial Appointments Board's appointment proposals are presented to the Government by the Ministry of Justice.

The authority to appoint fixed-term judges depends on the position concerned and the duration of the term. Fixed-term members of the Supreme Court and Supreme Administrative Court are appointed by the President of the Republic at the proposal of the relevant court. Other fixed-term judges are appointed by the Supreme Court, the Supreme Administrative Court, the presidents of courts of appeal, courts of appeal,

chief judges of district courts, chief judges of administrative courts, administrative courts or the court concerned (Courts Act, chapter 12).

In Finland, neither the President of the Republic nor the Government are formally bound to approve the proposals for appointment submitted by the Judicial Appointments Board or the highest courts, yet in practice these are seldom rejected. The decision proposed by the Government is also not formally bound to comply with the proposals for appointment submitted by the Judicial Appointments Board or the highest courts.

Even though no European norm or standard prevents the parliament from appointing the justices to the supreme court, and parliamentary involvement provides the supreme court with democratic legitimacy, the Venice Commission has been wary of the dangers of politicisation when the final deciding power in judicial appointments is given to a political body whose involvement is more than a formality. Article 6 of the European Convention on Human Rights requires not only the independence of individual judges but also a system for judicial appointments that precludes arbitrary appointments. In the case in the European Court of Human Rights concerning Iceland, an appointment procedure that was formally compliant with the law was not found to meet the requirements under Article 6 ECHR. In this case, the minister of justice included in the proposal for appointment four candidates who had not been chosen by the evaluation committee preparing the proposal but who had been accepted by parliament and appointed by the president in accordance with the proposal for forward by the minister of justice.

In its Opinion concerning the Netherlands, the Venice Commission stressed that informal norms and practices that are particularly important for the independence of the judiciary should be formalised in statutory law. Considering the particular role played by the appointment procedure in safeguarding independence and the fact that independence is related expressly to attempts of undue influence on the part of the executive powers, it may be assessed that provisions on appointment procedure that strengthen independence should be broadly laid down in the Constitution. In its earlier Opinion concerning Finland, the Venice Commission found that since the appointment of judges is of vital importance for guaranteeing their independence and impartiality, it is recommended to regulate the procedure of appointment in more detail in the Constitution. Special care has to be taken that appointment by the Government – and the possible involvement of Parliament – is always based on a nomination procedure in the hands of an independent and apolitical body. Under the Constitution, the procedure for the appointment of all except tenured judges shall be laid down by an ordinary act. The provisions concerning the procedure for appointing tenured judges are very loosely worded.

‘Safeguarding the independence of judges and adjudication imposes requirements on the system for appointing judges that differ from those concerning other public officials and the former cannot be equated with the latter. The requirement of independence is integrally linked to the separation of powers and in particular to the requirement that executive powers may not influence the exercise of judicial powers. According to Western constitutional principles, courts must be able to render their decisions without regard to the views of the government, and it is not appropriate for the government to pursue opportunities to influence the adjudication of cases. The issues of independence and separation of powers are not issues limited to individual cases. They are issues that concern the entire system, its functioning and its effects. International debate on the topic of adjudication is increasingly focused on the principle of the European Convention on Human Rights, according to which it is not just the strictly proven facts that are important, but also the outward appearance of things. This viewpoint is also relevant when evaluating the system of judicial appointments relative to the independence of the exercise of judicial power and the requirements concerning separation of powers.’ (Legal Affairs Committee report LaVM 1/2000).

Even though, in practice, the potential for executive powers to interfere in the appointment of judges has not become problematic with regard to the independence of the courts and judges, the constitutional regulation of the procedure for judicial appointments must be specified in order to guarantee independence under all circumstances.

2.1.6.2 *Power of appointment*

The provisions of the Constitution concerning the appointment of judges are worded rather briefly and loosely. This is partly explained by the fact that at the time of the Constitution's enactment, the reform of the judicial appointments procedure was still ongoing. In its report, the Constitutional Law Committee raised the point that the Ministry of Justice had on 22 September 1998 appointed a working group to prepare a government proposal for legislation concerning the judicial appointments procedure. According to its mandate, the working group was to prepare its judicial appointments proposal so as to replace the earlier nomination procedure with a procedure based on a reasoned proposal for appointment. The working group was to base its work on the view held by the majority of the Committee of Judges (KM 1998:1) that an appointment proposals board whose members are appointed by the Government shall be established for judicial appointments. The view of the majority of the Committee, that most of the board members were to represent the judiciary, was also to be adopted as the basic premise for the board's composition. For this reason, the Constitutional Law Committee did not 'at this stage consider it warranted to further address the appointment procedure'. (See also Constitutional Law Committee statement PeVL 13/1999). In its statement, the Legal Affairs Committee stated that since there is no consensus as to how to reform the appointment procedure, owing to the dissent recorded in the report of the Committee of Judges, the feedback received upon public consultation and the recommendations of the Council of Europe, the provision could not be formulated as a specific one and instead, the wording of the new Constitution Act must suffice (Legal Affairs Committee statement LaVL 9/1998, p. 7, see Venice Commission).

In the constitutional reform, it was proposed that the power to appoint judges be provided such that judges were to be appointed by the President of the Republic without a motion from the Government (section 58, subsection 3). Earlier, in the context of the reform of presidential decision-making, assigning sole appointment power to the President was justified by stating that 'One of the duties of the court system is to provide individuals with legal protection against the government apparatus and it is therefore not justified to entrust the power to appoint judges to the government.' (Government proposal HE 285/1994). The government proposal concerning the Constitution (HE 1/1998, p. 108–109) stated that 'For reasons related to safeguarding judicial independence it has been considered justified that in these appointment matters, the Government as a politically assembled body should not propose the decision to be made and that the appointment procedure should instead be organised separately by law in a way that underscores the independence of the courts.' The Constitutional Law Committee removed the said section from the proposed act, because decision-making in accordance with the main rule was considered justified expressly for those reasons that generally speak in favour of the requirement of parliamentary accountability in presidential decision-making. The Committee further stated that the lack of parliamentary accountability might, under some conditions, adversely increase the influence of the judiciary. (Constitutional Law Committee report PeVM 10/1998, pp. 18–19). In the Constitutional Law Committee report, the power to appoint was assigned to the President on the motion of the Government. In the view of the Committee, the focus in the power to appoint judges was not determined on the basis of whether these appointments were decided by the President on the motion of the Government, especially taking into account the substance of subsection 2 in respect of the parts impacting on this. What is instead vital is the nature of the stage of the appointment procedure preceding consideration by the Government, at which stage the candidates that may be considered for the judicial office to be filled are de facto identified. (Constitutional Law Committee

report PeVM 10/1998, pp. 18–19)[39]. The Committee also emphasised that 'appointments shall be prepared with sufficient transparency and the procedure on the whole must serve to ensure that the pluralism of society is reflected in the composition of a judiciary of high professional standard and to prevent appointments that excessively rely on the judiciary's internal self-supplementation' (Constitutional Law Committee report PeVM 10/1998).

The working group has examined in particular the question of parliamentary accountability in judicial appointments, the binding nature of proposals concerning appointment to the highest courts and the Judicial Appointments Board, and the initiative of the highest courts to propose the appointment of a member.

2.1.6.3 *Decision-making procedure*

The working group considered the question of whether the independence of the courts and judges necessitated review of section 58, subsection 3 of the Constitution and its amendment so that judges would be appointed by the President of the Republic without a motion from the Government. The main rule adopted in section 58, subsection 1 of the Constitution, that the President of the Republic makes decisions in Government on the basis of motions proposed by the Government, signifies that parliamentary accountability is indirectly extended to presidential decision-making through the actions of the Government. This main rule for its part expands upon section 3, subsection 2 of the Constitution concerning the separation of powers and parliamentarism, according to which the governmental powers are exercised by the President of the Republic and the Government, the members of which shall have the confidence of the Parliament. Presidential duties are carried out in cooperation with the Government. This cooperation finds concrete expression especially in the President's decision-making on the motion of the Government.

The constitutional reform strengthened the role of the Government, which answers to Parliament and functions with its confidence, in presidential decision-making. The aim was to extend parliamentary accountability to presidential decision-making as broadly as possible. The reform increased the contribution of the Government by linking presidential decision-making to the motion of the Government submitted in plenary session in a higher number of matters than before, and by reinforcing the significance of the Government's motion so that the President cannot deviate from the Government's position upon the first presentation of the matter. (Government proposal HE 1/1998 , p. 44) Parliamentary accountability in presidential decision-making refers to the accountability of the Government to Parliament for all of the President's decisions made with the contribution of the Government. Parliamentary accountability is extended to the President's actions by having the President, in the exercise of presidential powers, being legally bound to the Government's contribution (e.g. sections 58 and 93). The President of the Republic makes decisions on the motion of the Government and ministers are politically and legally responsible for those decisions. Parliamentary accountability in practice manifests through motions of censure and statements of the Government as well as votes of no confidence and the filing of charges against ministers (Constitution, section 60, subsection 2: The Ministers are responsible before the Parliament for their actions in office. The provision applies to both political and legal responsibility.). The President of the Republic is also a political actor elected to office, even though the President is subject to parliamentary accountability only indirectly, through the participation of the Government.

[39] Constitutional Law Committee report PeVM 10/1998, p. 18–19: 'The subsection differs from the proposal of the Constitution 2000 Committee in that based on paragraph 4, the President would decide on appointments of judges also without the motion of the Government. This paragraph was added mainly in consequence of the opinion of the Supreme Court, which considered it problematic for judicial independence and for the constitutional principles concerning the separation of powers if the balance of authority in judicial appointments shifted from the courts to the Government.'

The key issue is, on the one hand, whether parliamentary accountability is relevant to the appointment of judges and, on the other, whether guaranteeing judicial independence requires derogation from this primary decision-making procedure that emphasises parliamentary accountability. With regard to the judicial appointment proposals board, the Legal Affairs Committee has stated that because the government proposal states that the board is to be established by the Government, the proposal would give the Government two opportunities to influence the appointment procedure (first, when presenting appointments, and again when appointing the members of the board) (Legal Affairs Committee report LaVM 1/2000, p. 4). At present, the members of the Judicial Appointments Board are appointed by the Government (Courts Act, chapter 20, section 1).

If the binding nature of the appointment proposal of the Judicial Appointments Board was increased with the specific aim of curtailing the potential of actors external to the judiciary to influence the appointment, the role of the Government in the appointment procedure as guarantor of parliamentary accountability (political and legal) may become fraught with some tension relative to the objectives of the amendment of legislation. On the other hand, binding proposals centrally curtail the discretionary powers of the Government and the President of the Republic. Therefore derogation is not proposed from the main rule in decision-making expressed in section 58, subsection 1 of the Constitution that underscores parliamentary accountability.

2.1.6.4 *Binding nature of appointment proposal*

In its Opinion concerning the Netherlands, the Venice Commission stressed that informal norms and practices that are particularly important for the independence of the judiciary should be formalised in statutory law. Considering the particular role played by the appointment procedure in securing independence and the fact that independence is related expressly to attempts of undue influence on the part of the executive powers, it may be assessed that provisions on appointment procedure that strengthen independence should be broadly necessary in the Constitution. The non-interference of the Government and the President of the Republic in the judicial appointment proposals of the Judicial Appointments Board and the highest courts may be seen as precisely a factor of this kind.

To underscore judicial independence in the appointment procedure, the alternatives examined included whether the proposals of the Supreme Court, Supreme Administrative Court or an independent body with judges making up the majority of the membership should be non-binding but strongly guiding. However, if the proposal was non-binding, the need for and effectiveness of the proposed provision would be questionable to some extent. There would be no formal strong guarantees at the level of the Constitution that the proposal would be accepted, which would make it possible to appoint some other person who also holds the required qualifications. It would be highly problematic in terms of judicial independence if regulation allowed all but unlimited potential to depart from proposals. On the other hand, when the term ‘proposal’ or ‘motion’ is used, it may be considered to be more binding in nature than the expression ‘at the recommendation of’ adopted in Norway.

A further alternative examined was to limit the binding nature of the appointment proposal. Such a provision could provide for not only the proposal of a body on which judges make up the majority of the membership but also, for example, for factors limiting the President’s discretion in making the appointment, in the same way as the constitution of Sweden does. While the regulation would limit the powers of the President and the Government in judicial appointments, it would still allow departure from the proposal of the Judicial Appointments Board. Provisions on qualifications are already laid down in section 125 of the Constitution.

An alternative where the current Judicial Appointments Board put forward two candidates in each appointment proposal was also examined. However, an approach such as this would likely have an opposite

effect; it would further emphasise the President's powers to select the judge to be appointed and transfer power from the Judicial Appointments Board to the President. When proposals are not binding on the Government and/or the President, this may be deemed to heighten the issue of examining parliamentary accountability. It should also be stressed that the European Convention on Human Rights and its interpretive practice emphasise that courts must not only be independent but also appear to be independent. The manner in which the power to appoint is organised plays a key role in this respect.

For the reasons explained above and discussed in more detail in the provision-specific rationale, the discretionary powers of the Government and the President of the Republic in judicial appointments are proposed to be limited by providing that the President of the Republic decides on judicial appointments at the proposal of the highest courts and the Judicial Appointments Board. Situations where the President of the Republic does not appoint the person put forward in the proposal must additionally be addressed. This would be accomplished by adding to section 102 a provision, under which the proposal would be referred back to the court or body that submitted it for further preparation. The matter would then have to be decided in accordance with the proposal. This regulation would prevent situations where a decision was waived more than once.

Specification of section 100 of the Constitution is proposed by introducing a range of variation applicable to the number of members of the highest courts (15–25 permanent members). In order to emphasise the independence and undue supplementation of the highest courts, a provision is proposed to section 102 to the effect that appointments of members to the highest courts shall take place only on the initiative of the Supreme Court or the Supreme Administrative Court. This provision seeks to restrict the potential of the Government to appoint new members to the highest courts on their own initiative. The provision would complement section 100.

If the appointment procedure was specified so that the discretionary power of the President of the Republic in judicial appointments was narrowed, this may be estimated to further boost the requirement of the appropriateness of the appointment proposal. The provisions on the composition and independence of the Judicial Appointments Board are laid down in the Act on Judicial Appointments. The Judicial Appointments Board is appointed by the Government on the basis of proposals put forward by the entities represented on the Board. The established view for a long time, pursuant to national as well as European recommendations, has been that the focus in preparing the appointment matter and giving the rationale for the proposal shall be on the courts in order to guarantee their independence and autonomy (e.g. government proposal HE 109/1999).

It has been suggested that the status of the independent Judicial Appointments Board should be defined at the level of the Constitution to ensure that no undue influence can be exerted on the composition of the Board by amending an ordinary act. In Sweden, it has been proposed that provisions be laid down in the constitution to the effect that the Government appoints tenured judges on the proposal of a separate body where the majority of members are or have been tenured judges, and that the appointment of tenured judges to the highest courts be preceded by a request from the court concerned (Prop. 2024/25:165).

Due to the significance of the independence of the appointment procedure and the binding nature of the appointment proposal, it is proposed for the Constitution to specify that the proposal for the appointment of other permanent judges shall be made by an independent body in which judges make up the majority of the membership. Due to the permanence required of the Constitution, the body should not be expressly named in the provision and instead, provisions should be laid down on the key guarantees of independence.

2.1.6.5 Nomination of candidates for judges and members of international courts and the Court of Justice of the European Union

The procedure for Finland nominating one or more national candidates for vacant positions of judges and members of international courts and the Court of Justice of the European Union is laid down in a specific act on this topic (677/2016). Upon the proposal of the Prime Minister's Office, the Government appoints, for six years at a time, a panel of experts to prepare the nomination of candidates. Provisions are laid down in the act on the composition of the panel of experts, which differs from the composition of the Judicial Appointments Board. Under the act, the panel submits to the presenting ministry its non-binding opinion as to the one or more persons who have registered their interest who should be put forward as Finland's candidate for the position of judge or member. Finland's national candidates for the positions referred to in this act are nominated by the Government, unless they are nominated in accordance with the procedure laid down in the Statute of the International Court of Justice.

The act applies to the nomination of candidates for judges and members of international court and the Court of Justice of the European Union. According to the relevant government proposal (HE 51/2010, p. 16), the position of member refers to offices such as Advocate General in the Court of Justice of the European Union. Nominations concerning the Court of Justice of the European Union are within the remit of the Prime Minister's Office while the Ministry for Foreign Affairs is responsible for preparing nominations for international courts.

Provisions on the judges and the Advocates General of the Court of Justice of the European Union are laid down in the Treaty on European Union and the Treaty on the Functioning of the European Union. Though the Treaties provides for issues such as the qualifications of judges, they are silent on the topic of the manner in which the procedure for nominating candidates is to be organised nationally. The Statute of the International Court of Justice provides for matters such as the required composition, in which judges are not in the majority. The Judicial Appointments Board was not considered the appropriate body for preparing nominations, as the preparations for putting forward candidates for judges and members of international courts and the Court of Justice of the European Union entail particulars, due to which the Judicial Appointments Board, consisting mainly of judges, would not be suited to carry out such preparations because of aspects such as the international renown of candidates (for more on this topic, see government proposal HE 51/2010, p. 13–14).

Due to the significance of the supranational courts, it would be justified for the chapter of the Constitution concerning the administration of justice to cater for the nomination of judges or members to these courts. A law proviso would emphasise the significance of the candidate nomination procedure and the importance of keeping this at the level of an act. Owing to the requirement of judicial independence, an appropriate judicial representation should be taken into account in the nomination procedure as well.

2.1.7 The right of judges to remain in office

2.1.7.1 Removal of judges from office

Section 103 of the Constitution reads, 'A judge shall not be suspended from office, except by a judgment of a court of law. In addition, a judge shall not be transferred to another office without his or her consent, except where the transfer is a result of a reorganisation of the judiciary. Provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are laid down by an act. More detailed provisions on the other terms of service of a judge are laid down by an Act.' [Translator's note: the translation of the Constitution reads as above; however, the term 'suspended from office' is in fact intended to mean removal from office, as indicated in the provision of the Criminal Code referred to below. In the text below, the term 'removal from office' will be used when referring to section 103 of the Constitution.] The provision expresses the particular right of judges to remain in office, which does not apply to other

public officials. The provision concerning the exceptional right of judges to remain in office is intended to contribute to safeguarding judicial independence.

The right of judges to remain in office also applies for the duration of their term to judges appointed for a fixed term. The same right further applies to the expert members of the various courts. They, too, are independent in the performance of their duties and in this respect, their standing is the same as that of a judge. The referendaries of the Supreme Courts are moreover covered by the right to remain in office.

Under the relevant government proposal (HE 1/1998, p. 160/I), section 103, subsection 1 of the Constitution that reads, 'a judge shall not be removed from office, except by a judgment of a court of law', means that judges may be removed from office only by a judgment of a court of law issued in the context of criminal proceedings. The same provisions on removal from office apply to judges and to other public officials. Under chapter 2, section 10 of the Criminal Code, 'A public official, a person holding a public position of trust or a person exercising public authority who is sentenced to life imprisonment shall also be sentenced to be removed from office. A person shall also be sentenced to be removed from office if he or she is sentenced to imprisonment for a fixed term of at least two years, unless the court deems that the offence does not demonstrate that the sentenced person is unsuitable to serve as a public official or attend to a public function. If a person referred to in subsection 1 is sentenced for an intentional offence to imprisonment for a term of less than two years, he or she may, at the same time, be sentenced to be removed from office, if the offence demonstrates that he or she is manifestly unsuitable to serve as a public official or attend to a public function.'

In its statement PeVL 36/2008, the Constitutional Law Committee addressed the proposed amendment of the Criminal Code to the effect that at the request of the prosecution, courts could also order judges to be removed from office not only in the event of the currently mentioned sentences but also for an intentional offence for which a sentence of not less than 60 day-fines was imposed when the nature or recurrence of the criminal offence or another factor relating to the offence demonstrated that they were manifestly unsuitable to serve as a judge. The Committee held that the proposed limit of 60 day-fines lacked justification and meant that judges could be more easily removed from office than other public officials. In the Committee's opinion, undermining the right of judges to remain in office required particularly compelling societal reasons. The proposal did not bring up any practical negatives to justify extending removal from office to judges in general for offences punishable by a fine. The Committee held that the legislative proposal was to be considered in the procedure for constitutional enactment. The proposal was rejected.

The essential aspect is that removal from office takes place by judgment of a court of law and within the judiciary. At the same time, the Constitution prohibits the establishment of provisional courts (section 98, subsection 4), which serves for its part to ensure that the removal of a judge from office is handled in an independent manner.

In its Opinion concerning Finland, the Venice Commission held that for the reason of independence and impartiality, the grounds for suspension, dismissal or resignation should be laid down in the Constitution, and the competent court should be set out, as well as the right of appeal of the judge concerned. The current provision concerning removal from office of judges covers the forum in which such cases are to be heard but it is silent on the conditions to or grounds for removal from office.

Since the Constitution does not specify the situations where interference in the particular right of judges to remain in office is possible, the guarantees for the right to remain in office are somewhat weak. Even though the Constitution requires a judgment by a court of law, it would per se be possible to ease the conditions for removal from office by amending an ordinary act. On the other hand, the Constitutional Law Committee statement referred to above states that section 103, subsection 1 of the Constitution as it now

stands already barred adding removal from office as an ancillary sanction for an intentional offence punished by only 60 day-fines. The significance of the matter nonetheless requires more specific regulation that limits the discretion of both interpreters of the Constitution and the legislator.

The regulation concerning suspension from office applies to judges and also to members of the highest courts. A suspension may also be imposed for an indefinite period. This decision is made by the court in which the judge concerned is employed, except in respect of certain heads of court. Review of such a decision may be requested. Suspension from office prevents judges from performing their duties and interferes with the right of the judge to remain in office. What is essential is that the power to suspend from office is retained within the judiciary. The particular right of judges to remain in office and section 103, subsection 1 of the Constitution also mean that despite there being no express provision in the Constitution, the power to suspend judges shall also be assigned to the courts. The relevant provisions are laid down in chapter 15 of the Courts Act and chapter 9 of the Public Officials Act. Correspondingly, the path of legal remedies concerning a warning issued to a judge shall be assigned within the judiciary (as in Constitutional Law Committee statement PeVL 36/2008, p. 2).

Under chapter 16, section 2 of the Courts Act, judges shall resign from their position if they have lost their ability to work due to an illness, impairment or injury. When a judge who has lost his or her ability to work does not resign on his or her own motion, the court that is competent to hear the matter under the Courts Act decides on the relieving of the judge from office. Under chapter 16, section 2 of the Courts Act, the court that is competent to decide on suspension from office makes the application for the relieving of a judge from office. Since section 103, subsection 1 of the Constitution and the specification proposed for it above only apply to situations where a judge is sentenced to be removed from office in the context of criminal proceedings, the power to decide on relieving a judge from office due to lack of ability to work is not retained within the judiciary at the constitutional level. Due to the particular right of judges to remain in office and in order to guarantee independence, section 103, subsection 1 should be supplemented accordingly.

2.1.7.2 Transfers of judges

Section 103, subsection 1 of the Constitution allows the transfer of judges without their consent only where the transfer is a result of a reorganisation of the judiciary. Under all other circumstances, transfer is conditional upon the judge's consent. The provision safeguards and strengthens the right of judges to remain in office. The Rule of Law Checklist of the Venice Commission states that though the non-consensual transfer of judges to another court may in some cases be lawfully applied as a sanction, it could also be used as a kind of a politically-motivated tool under the disguise of a sanction. Such transfer is however justified in principle in cases of legitimate institutional reorganisation.[40]

The relevant government proposal (HE 1/1998, p. 160/II) expressly states, 'However, it does not follow from the provision that in cases of reorganisation of the judiciary, a judge could be transferred only to another judicial office or an office which is covered by the right to remain in office that characterises judicial offices. Under section 47 of the Public Officials Act (750/1994), a judge may only be transferred to an office for which the judge meets the qualification requirements and which may be considered suitable for him or her'. The Constitutional Law Committee statement referred to in the rationale states how 'this provision in the Constitution is designed to safeguard the right of judges to remain in office against any attempts on the part of the governmental powers to circumvent the irremovability of judges.' The Committee states that 'The Constitution does not intend for judges, in cases of reorganisation of the judiciary, to always hold the right to remain in an office which is covered by the right to remain in office that characterises judicial offices.'

[40]Venice Commission Rule of Law Checklist, 18 March 2016
https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf, s. 35.

(Constitutional Law Committee statement PeVL 3/1994). In the same context, however, the Committee also stated that in connection with abolishing the business tax court, it should again be considered whether to provide by law which specific judges of the said court were to be transferred to a new office.' When evaluating the suitability of the offices for the judges to be transferred, in the opinion of the Committee, the offices should primarily be judicial offices, secondarily other offices withing the judicial system and lastly other kinds of offices.' (Constitutional Law Committee statement PeVL 3/1994, p. 1/II).

In the interests of safeguarding the right of judges to remain in office and their independence, it is assessed to be justified to specify the provision to the effect that without consent, judges could only be transferred to another judicial office. The provision would stave off situations where, for example, the judiciary is reorganised in a manner that threatens the independence of courts and judges. In situations such as these, judges could only be transferred to another judicial office. The Constitutional Law Committee also gave primacy to transfers of judges to other judicial offices (See above, statement PeVL 3/1994, p. 1/II).

The possibility of transferring judges from one division to another is discussed below in section 2.4.2.

2.1.7.3 Law proviso for duty to resign at attainment of given age or loss of capability to work

Under section 103, subsection 2 of the Constitution, provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are laid down by an act. At present, provisions on judges' age of resignation and their duty to resign when no longer able to work are laid down in the Public Officials Act and the Courts Act.

Provisions on the general age of resignation for public officials and on the termination of a public-service employment relationship applicable to judges are laid down in section 35 of the Public Officials Act. Under that Act, the age of resignation depends on year of birth (68, 69 or 70 years, the last applicable to persons born in 1962 or later). Judges cannot be authorised to remain in their office after the age of resignation (Public Officials Act, section 3a, subsection 3). The resignation of a judge is, upon application, accepted by the court in which the judge serves (Courts Act, chapter 16, section 1).

When a public official is granted full disability pension for an indefinite period on the basis of their public-service employment relationship, the public-service employment relationship ends without notice or other measure to signify the termination of the relationship at the end of the calendar month in which the official's right to sick pay ended or, when the employer only later learns of the disability pension decision, at the end of the month in which this took place. The provision also applies to judges (Public Officials Act, section 3; Courts Act, chapter 16, section 1). Under chapter 16, section 2 of the Courts Act, judges shall resign from their position if they have lost their ability to work due to an illness, impairment or injury. When a judge who has lost his or her ability to work does not resign on his or her own motion, the court that is competent to hear the matter under the Courts Act decides on the relieving of the judge from office. Under chapter 16, section 2 of the Courts Act, the court that is competent to decide on suspension from office makes the application for the relieving of a judge from office.

The law proviso in section 2, subsection 2 should be specified to correspond to the established legal situation that no provisions are laid down to obligate a judge to resign after attaining a given age. In cases of disability, too, resignation is ultimately decided by a court and not the person concerned.

A law proviso concerning resignation at a given age would make it possible, for example, to obligate a majority of the Justices on the highest courts to resign by amending an ordinary act, should it be decided to considerably lower the age of retirement. On the other hand, the composition of the court could also be influenced by considerably raising the age of retirement. Such conduct would infringe on judicial independence by infringing upon the right to remain in office.

The Court of Justice of the European Union has issued several judgments finding that regulation lowering the age of retirement for judges was contrary to the requirement of judicial independence. In 2012, Hungary lowered the retirement age of judges from 70 to 62, which was also made the compulsory age of resignation. This meant that approximately 10% of the nation's judges and roughly one quarter of the members of its court of highest instance were forced to retire. The Court of Justice held that while the rationale put forward by Hungary (ensuring the sustainability of the pension system, improving the quality and efficiency of the courts and facilitating access for young layers to the profession of judge) might constitute justified objectives, the measures in question were disproportionate. Correspondingly, in 2018 Poland lowered the age of retirement to 65 to apply also to serving judges, who were nonetheless given the option of remaining in office for no more than two additional three-year terms. In its decision, the Court of Justice held that there can be no exceptions to the principle of irremovability of judges unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. The fact that the lowered retirement age applied also to judges already serving on the court was such, in the Court's opinion, as to raise reasonable concerns as regards compliance with the principle of the irremovability of judges. The combination of lowering the age of resignation and the president's discretion to extend the term of office of judges was such as to raise doubts about whether the reform genuinely seeks to standardise the retirement age or rather to remove a certain group of judges from office. The Court of Justice additionally found that the reform immediately affected nearly one third of the members of the supreme court. A change of this magnitude in the composition of the supreme court could raise doubts as to the true nature of the reform and its actual objectives. (Commission v. Poland C-619/18, EU:C:2019:531., also Commission v. Poland C-192/18, EU:C:2019:924.) The key factor influencing the outcome of the Court of Justice's decision concerning Poland was the fact that the legislative amendments applied to existing public-service employment relationships. The Venice Commission, too, has levelled strong criticism against the lowering of retirement age, when it applies also to serving judges, but in principle the Commission does not object to raising the retirement age when serving judges are allowed to take retirement in accordance with the rules in force at the time of the change.

In Norway, the constitution has only recently been amended to set an age of resignation for judges. In Sweden, it is proposed that the constitution contain a provision under which any provision by which the age of resignation is lowered may not apply to existing public-service employment relationships.

There are clearly grounds for regulating the age of retirement more specifically in the Constitution in order to guarantee the right of judges to remain in office and to safeguard judicial independence from undue interference from governmental powers. Specifying the regulation concerning age of retirement would substantially strengthen the guarantees of independence. On the other hand, the permanence of the Constitution should also be taken into account in enacting regulation of this kind (e.g. retirement age). In its Opinion concerning Finland, the Venice Commission also held that for the reason of independence and impartiality, the grounds for suspension, dismissal or resignation should be laid down in the Constitution, and the competent court should be set out, as well as the right of appeal of the judge concerned.

The age of retirement has been changed and there may be further changes in years to come due to changes in society and its development. For this reason, it may be untenable for the retirement age of judges to differ considerably from that of other public officials. Likewise, it might be untenable for pension reform to necessitate amendment of the Constitution. On the other hand, setting a precise age of retirement would leave no room for interpretation. Laying down provisions on a precise age of resignation and the prohibition of retroactive regulation were the subject of particular examination during preparation.

The European Union and the Venice Commission have considered regulation that permits the retirement age of serving judges to be lowered to be particularly problematic. Preparation therefore led to proposing a law proviso concerning the age of retirement in force in such a way that a provision to lower the age of

resignation of judges could not apply to existing public-service employment relationships. Likewise, there may be a need to raise the age of retirement as for other public officials, and case law does not deem this to entail equally serious threats to independence as the lowering of the age of retirement. Due to this, the prohibition of retroactive regulation would be extended to lowering the retirement age.

2.1.7.4 Law proviso concerning terms of service

Under the current section 103, subsection 3, more detailed provisions on the other terms of service of a judge are laid down by an act. Terms of service refer to matters such as the remuneration of judges and other key aspects of the public-service employment relationship (Constitutional Law Committee statement PEVL 19/2001, p. 2). The basic premise has been for the financial and social benefits of judges to be determined on the same grounds as those for other public officials. Special provisions applying to judges that differ from those applied to other public officials mainly appear only in respect of those issues having to do with judicial independence. (Government proposal HE 1/1998 , p. 160) Apart from the Justices of the highest courts, judges are currently covered by the system of collective agreements for public officials. The key provisions with regard to the law proviso are also section 80, subsection 1 of the Constitution and its section 125 concerning general qualifications for public office and other grounds for appointment. The Courts Act lays down provisions on the duties and responsibility of judges as well as the qualifications of judges. The law proviso in section 103 of the Constitution when read together with section 80 of the Constitution may be deemed to ensure that matters such as the qualifications of judges cannot be interfered with by means any subordinate statute.

The provision is not assessed to be subject to any amendment needs.

2.1.8 Other legislation

The Courts Act (673/2016) entered into force at the start of 2017. It is a general statute governing courts and their work. The provisions on the powers and duties of the courts, their organisation and administration and their members and other personnel that earlier appeared in a number of separate acts and decrees were compiled into this single Act. The Act contains general provisions on the status and duties of judges in their exercise of judicial powers. The Courts Act also contains specific provisions concerning the appointment of judges and the status of judges under public service law. In addition, it lays down provisions on the Judicial Appointments Board and the Judicial Training Board as well as the National Courts Administration, which was launched at the start of 2020 and serves as the central administrative authority for the court system. The Supreme Court and the Supreme Administrative Court are furthermore governed by specific Acts concerning them (Act on the Supreme Court, 665/2005, and Act on the Supreme Administrative Court, 1265/2006). The Courts Act also applies to the highest courts to the extent that the said Acts do not provide differently. A separate act also exists to govern the administrative court of Åland (547/1994). Provisions on court proceedings are laid down in acts concerning court procedure, such as the Code of Judicial Procedure (4(1734), the Criminal Procedure Act (689/1997) and the Administrative Judicial Procedure Act (808/2019), as well as in several specific acts such as the Act on the Labour Court (646/1974), the Act on Proceedings in the Insurance Court (677/2016) and the Market Court Proceedings Act (100/2013). Provisions on the composition of administrative courts are furthermore laid down in the Administrative Courts Act (430/1999).

Prosecutors and prosecution are governed by the Act on the National Prosecution Authority (32/2019), under section 2 of which the National Prosecution Authority is, independently and autonomously, responsible for organising the prosecutorial activities in Finland. As of 1 October 2019, the National Prosecution Authority has been organised nationwide such that the Office of the Prosecutor General serves as its central administrative unit. For the purposes of organising the operations of the National Prosecution Authority, the country is divided into prosecution districts. The Prosecutor General serves as the supreme

prosecutor and the supervisor of prosecutors. Members of the Finnish Bar Association are governed by the Attorneys Act (496/1958). Lawyers licensed in the procedure under the Licenced Legal Counsel Act (715/2011) may also serve as legal counsel before the courts. Provisions on public legal aid attorneys are laid down in the Legal Aid Act (257/2002). The Public Officials Act (750/1994) is a general act that applies to all officials in central government. The Act is supplemented by the Decree on Public Officials in Central Government issued pursuant to it (971/1994, hereinafter the Public Officials Decree). The constitutional status of judges is the reason why not all provisions of the Public Officials Act apply to judges and judicial offices. The same goes for prosecutors. The Public Officials Act and Decree also apply to the other personnel of the court system and the National Prosecution Authority who are under a public-service employment contract. They also apply to public legal aid attorneys and other staff of legal aid and guardianship offices.

2.2 Independence of the prosecution service and prosecutors

2.2.1 Regulation concerning the independence of the prosecution service and prosecutors

In the Constitution, section 104 concerning the prosecution service appears in chapter 9 concerning administration of justice and is closely tied to the provisions of section 21 on the guarantees of a fair trial. Section 104 reads, 'The prosecution service is headed by the highest prosecutor, the Prosecutor-General, who is appointed by the President of the Republic. More detailed provisions on the prosecution service are laid down by an Act.' Legislation central to the duties of prosecutors includes the Criminal Procedure Act (689/1997) and the Act on the National Prosecution Authority. 'The duty shall be carried out in an equal, prompt and economical manner as required to ensure the legal protection of the parties concerned and to serve the public interest' (Act on the National Prosecution Authority, section 9).

The constitutional provision concerning the prosecution service is, for the most part, substantively equivalent with the regulation introduced in the Constitution Act in 1997. The objective of the provision incorporated into the Constitution Act at the time was to establish the office of an independent, separate highest prosecutor and to transfer the leadership of the prosecution service from the Chancellor of Justice to this Prosecutor General (see also Constitutional Law Committee statement PeVL 32/1996, p. 1/II). The rationale of the government proposal that resulted in the amendment of the Constitution Act drew attention to the fact that the constitutional status of the highest prosecutor was relevant to judicial independence, as prosecutors play an active part in instigating and handling criminal cases (government proposal HE 131/1996, p. 14/II). (Constitutional Law Committee statement PeVL 25/2018, p. 2).

As of 1 October 2019[41] , the prosecution service in Finland, referred to as the National Prosecution Authority, has been organised nationwide such that the Office of the Prosecutor General serves as its central administrative unit. For the purposes of organising the operations of the National Prosecution Authority, the country is divided into prosecution districts. The Prosecutor General serves as the highest prosecutor and the supervisor of prosecutors. The National Prosecution Authority is organised as an agency under the Ministry of Justice. The key duty of prosecutors is to ensure that criminal liability is realised in

[41] The reorganisation of the prosecution service in Finland taking place in the 1990s had the objective of strengthening its autonomy and independence. This was seen to hold relevance with regard to both legal protection and the functioning of the criminal justice system (government proposals HE 83/1995, p. 5/I and HE 131/1996, p. 17/II). A central aim of the prosecution service reform was to sever the connection between the duties of prosecutors and the police at both the local and regional level (government proposal HE 131/1996, p. 26/II). The reform sought to establish an autonomous and independent prosecution service.

cases being handled by them in the manner required to ensure the legal protection of the parties concerned. The duty shall be carried out in an equal, prompt and economical manner as required to ensure the legal protection of the parties concerned and to serve the public interest. (Act on the National Prosecution Authority, section 9). Prosecutors exercise public authority in the performance of their duty. Their duty is one of administration of justice. (Government proposal HE 17/2018, p. 25)

Section 10 of the Act on the National Prosecution Authority reads, 'Prosecutors shall consider charges independently and autonomously. Prosecutors make decisions in criminal matters being handled by them, falling within the prosecutors' power of decision and concerning the realisation of criminal liability, independently and autonomously. Prosecutors are competent to perform prosecutorial duties in the entire country.' The National Prosecution Authority is, independently and autonomously, responsible for organising the prosecutorial activities in Finland (Act on the National Prosecution Authority, section 2). The Constitutional Law Committee also considered it relevant, in order to emphasise the independence of prosecutors, that section 10 of the Act on the National Prosecution Authority be supplemented with an express mention stating that prosecutors make the decisions within their power of decision independently and autonomously, and that section 2 be supplemented with the requirement of the autonomy and independence of the National Prosecution Authority. (Constitutional Law Committee statement PeVL 25/2018, p. 2–3). The autonomy and independence of the individual prosecutor is the cornerstone of prosecutorial activities. Internal independence means that while a superior prosecutor may order a charge to be brought, they may not tell a subordinate prosecutor not to prosecute it. In such a case, the superior prosecutor must take over the case.[42] No authority or public official can give a prosecutor binding instructions on how to decide a case being handled by the prosecutor, either. Even the highest prosecutor cannot give such instructions in individual cases.[43]

There are no express provisions at the level of the Constitution on the independence of the prosecution service or prosecutors. However, the requirement of independence is indirectly indicated by section 27, subsection 3, under which the Prosecutor General cannot serve as a member of Parliament. The provision was included in the Constitution for the express purpose of safeguarding the independence of the prosecution service. The government proposal on the Constitution (HE 1/1998 , p. 155) also emphasises the independence of the prosecution service and prosecutorial actions, reading, 'The regulation of the prosecution service is included in the Constitution's chapter 9 concerning administration of justice and is therefore closely tied to the provisions of section 21 on the guarantees of a fair trial. The administration of justice is subject to a general requirement of independence, which when the courts are concerned is specifically expressed in the Constitution's section 3 requiring judicial powers to be independent. A similar requirement of independence may be deemed to apply to the prosecution service, which is a part of the judiciary, and the performance of prosecutorial duties by prosecutors.´(Government proposal HE 1/1998, p. 83/II) According to the preparatory documents of the Constitution, the requirement of independence may be inferred not only from the Constitution's section 27, subsection 2 and section 104, but also from its section 21 and section 3, subsection 3.

In its consideration of the proposal concerning the Act on the National Prosecution Authority, the Constitutional Law Committee emphasised that the independence of the prosecution service is important especially because it is a guarantee of a fair trial. The Committee underscored the significance of independence not only in deciding on charges but also with regard to the duties of the prosecutor in matters such as issuing penal orders (statement PeVL 7/2010) and proposals for judgment (statement PeVL 7/2014). [44]A duly organised prosecution service ensures the equal treatment of criminal suspects, especially

[42] Government proposal HE 131/1996, p. 20.
[43] Government proposal HE 131/1996, p. 36.
[44] Constitutional Law Committee statement PeVL 25/2018, p. 2

when assessing whether or not to bring charges, and the realisation of the legal protection of defendants in the criminal justice process. The independence of the prosecution service also has wider importance with regard to the separation of powers and the supervision of the highest state bodies and the realisation of official liability.

2.2.2 Nature of prosecution service's independence

The internal organisation of the prosecution service and the duties of prosecutors differ from those of the courts. The prosecution service is intended to be led by the Prosecutor General, and its internal independence therefore differs from that of the court system. The independence of prosecutors is not the same as that of courts and judges. Prosecutors and judges have different duties and positions in the criminal justice process. For example, the prosecutor acts as the opposing party to the defendant whereas the judge is impartial and independent in relation to the parties in the case.[45] The Constitution does not put prosecutors on the same footing as judges; instead, from a constitutional perspective, they are equated with other public officials, which is not the case for judges. The specific independence of judicial powers under section 3, subsection 3 of the Constitution only applies to the courts.

The Venice Commission accepts a certain degree of relativity in the internal independence of the prosecution service as a basic premise for the organisation of prosecutorial activities[46]. The focus must be on safeguarding the external independence of prosecutorial activities. The prosecution service must in particular be externally independent from the legislative and executive powers.

The Venice Commission has stated that the independence of the prosecution service on the whole must be distinguished from the internal independence of prosecutors when speaking of prosecutors other than the Prosecutor General. Even if the prosecution service as an institution were independent, the decisions and actions of prosecutors other than the Prosecutor General may become subject to hierarchical supervision. In a hierarchically subordinate system, prosecutors are obliged to comply with the instructions and orders of their superiors. However, prosecutors are often guaranteed non-interference by their superiors. The Venice Commission has clarified that guarantee of non-interference 'means ensuring that the prosecutor's activities in trial procedures are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system. Such guarantees should cover appointment, discipline / removal but also specific rules for the management of cases and the decision-making process.[47]'

The Venice Commission notes that a clear distinction has to be made between the possible independence of the prosecutor's office or the Prosecutor General as opposed to the status of prosecutors other than the prosecutor general who are rather 'autonomous' than 'independent'. The prosecutor's offices are often referred to as 'autonomous' and individual prosecutors would be referred to as 'independent'[48] A mode of regulation where the independence of the prosecution service was secured under the Constitution might be taken under assessment.

In its case law, the Court of Justice of the European Union has examined only the guarantees of prosecutors' independence from external influence, in particular from the executive, whereas internal hierarchy and the internal instructions of higher prosecutors have not been considered a barrier to independence. While it is true that public prosecutors are required to comply with instructions from their hierarchical superiors, it is

[45] The prosecution service was reorganised by the Act on the National Prosecution Authority enacted in 2018 with the contribution of the Constitutional Law Committee. At the time, no amendment needs were identified in either the Act's preparatory documents or its consideration in Parliament concerning the fundamental structure of the service, the status of the Prosecutor General or the autonomy and independence of prosecutors.
[46] Venice Commission, Report on the Prosecution Service 2010, paras 28 and 30–32.
[47] Opinion concerning France, p. 12
[48] Venice Commission, Report on the Prosecution Service 2010, para 29.

clear from the Court's case-law, in particular the judgments of 27.5.2019, OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau) (C-508/18 and C--82/19 PPU, EU:C:2019:456), and PF (Prosecutor General of Lithuania) (C-509/18, EU:C:2019:457), that the requirement of independence, which means that the decision-making powers of public prosecutors cannot be subject to instructions from outside the judiciary, in particular those issued by the executive, does not prohibit any internal instructions which may be given to public prosecutors by their hierarchical superiors, who are themselves public prosecutors, on the basis of the hierarchical relationship underpinning the functioning of the Public Prosecutor's Office.[49]

It is essential to the independence of prosecutors that any chance of external influence, particularly from the executive, on the actions of prosecutors in individual cases is prevented. An independently managed prosecution service is also vital for the supervision of those exercising executive powers in a state under the rule of law (regulation of offences in office), see also sections 113 and 114 of the Constitution and the Act on the High Court of Impeachment). The Venice Commission has noted that in totalitarian states or in modern dictatorships, criminal prosecution has been and continues to be used as a tool of repression and corruption. The existence of systems of democratic control does not give a complete answer to the problem of politically inspired prosecutions. The prosecution service may be abused by the bringing of prosecutions which ought not to be brought, either because there is no evidence or because a case is based on corrupt or false testimony, or not bringing a prosecution which ought to be brought. [50]

In Finland, existing legislation does not allow the Minister of Justice or the Government to give instructions on bringing or not bringing charges. The autonomy and independence of the prosecution service in organising prosecutorial activities and the autonomous and independent right of prosecutors to consider charges are safeguarded under the Act on the National Prosecution Authority. The independence of prosecutors and the prosecution service also derives from the Constitution's sections 104 and 21[51] and its section 27, subsection 3[52]. The key issue would seem to be to assess whether this regulation is sufficient or whether constitutional restraints should be provided against amending ordinary legislation in a manner that jeopardises the independence of prosecutors.[53] The key role of the prosecution service in the realisation of legal protection and criminal liability can be seen as emphasising a more thorough constitutional-law assessment of the matter than before. [54]

The external independence of prosecutors is an essential condition linked to the rule of law and fair trials as well as the supervision of the exercise of power. It must be safeguarded under all circumstances. Securing the independence of the prosecution service at the level of the Constitution may be estimated to contribute to and support stronger trust in the independence of the exercise of judicial powers. It may also be

[49] Joined cases C-566/19 PPU and C-626/19 PPU, para 56
[50] Venice Commission, Report on the Prosecution Service 2010, p. 5
[51] Constitutional Law Committee statement PeVL 25/2018, p. 3
[52] Government proposal HE 1/1998, p. 83.
[53] The Constitutional Law Committee considered it problematic, with regard to the independent performance of prosecutorial functions, that the Government could lay down provisions by decree on the content or handling of the prosecutors' duties of administration of justice. Such an amendment was the condition for considering the legislative proposal in the enactment procedure for ordinary acts. (Constitutional Law Committee statement PeVL 25/2018, p. 4). However, in its reasoning, the Committee did not link the requirement of prosecutors' independence to section 104 of the Constitution, from which the requirement can only indirectly be understood when read together with section 21 and section 27, subsection 3.
[54] The government proposal for the Act on the National Prosecution Authority does not address in any detail the issues or independence or assess the proposed provisions in light of sections 21 and 104 of the Constitution. Neither did the Constitutional Law Committee in its statement address more widely the content of and need for regulation on the autonomous and independent status of the prosecution service or the provision emphasising the independence of prosecutors. The Committee's key justification for both amendments was the clarity of regulation. (Constitutional Law Committee statement PeVL 25/2018. p. 2–3)

estimated that a general provision in the Constitution to secure the independence of the prosecution service could also safeguard issues discussed below relating to topics such as the appointment and dismissal of prosecutors.

The independence requirement for the prosecution service in the Constitution would also extend to the Prosecutor General and Deputy Prosecutor General.

2.2.3 Prosecutor General and Deputy Prosecutor General

The Prosecutor General is tasked with leading and developing prosecutorial activities and supervising prosecutors. The Prosecutor General has autonomous and independent power to consider charges and may take up the prosecution of a case as he or she decides.[55] The Prosecutor General serves as the supreme prosecutor and the supervisor of prosecutors (Act on the National Prosecution Authority, section 3). Under section 11, subsection 2 of the Act on the National Prosecution Authority, the Prosecutor General may take over a case from a subordinate prosecutor or designate a subordinate prosecutor to prosecute a case in which the Prosecutor General has decided that a charge is to be brought. The preparatory documents of the Act on the National Prosecution Authority state that the Prosecutor General traditionally has the right to intervene in the decisions taken by subordinate prosecutors despite their autonomy and independence.[56] The Prosecutor General shall monitor the legal quality and national uniformity of prosecutorial activities in the entire country and take measures to improve them. For this purpose, the Prosecutor General may issue general national guidelines on matters such as pre-trial investigations and the consideration of charges and sanctions.[57]

Under section 104 of the Constitution, the Prosecutor General is appointed by the President of the Republic. This provision was incorporated into the Constitution by means of government proposal HE 1/1998 and the rationale given for it read, 'since the office is one specifically mentioned in the Constitution Act, it is consistent that appointment, too, be governed by the Constitution (Constitutional Law Committee statement PeVL 32/1996.)'[58] Provisions on the duties of the Prosecutor General are laid down both in the Constitution and in sections 11 and 12 of the Act on the National Prosecution Authority. The Deputy Prosecutor General assists the Prosecutor General and serves as his or her deputy. The Deputy Prosecutor General also has the same power of decision as the Prosecutor General in matters to be dealt with by him or her.

The Public Officials Act containing provisions on matters including application procedure, warning, termination and suspension apply to the positions of Prosecutor General and Deputy Prosecutor General correspondingly as to other public officials. The said positions are not covered by a specific right to remain in office like that applicable to judges. Unlike for most highest positions, the Prosecutor General is appointed to a permanent office (Public Officials Act, section 9).

In earlier debate, there was no particular pressure to change the procedure for appointing the Prosecutor General and Deputy Prosecutor General. When the duties of the highest prosecutor were reorganised in the context of the constitutional reform, the preparatory documents stated, 'The position of the highest prosecutor should be made as independent as possible. The fact that the Office of the Prosecutor General led by the highest prosecutor would, at the same time, be the leading central administration authority in its field is not in conflict with that aim. Prosecutorial activities would be subjected to parliamentary control via

[55] Government proposal HE 1/1998, p. 26–27.
[56] Government proposal HE 17/2018, p. 26.
[57] Government proposal HE 17/2018, p. 26.
[58] Government proposal HE 1/1998, p. 161.

the Ministry of Justice.' [59] The question of the parliamentary control of prosecutorial activities has not been examined in more detail at the national level. At the same time, the reasoning underscores the aim of making the highest prosecutor's position as independent as possible.

The Venice Commission has stated that the method of appointment of the Public Prosecutor General should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession. When assessing different models of appointment of chief prosecutors, the Commission has always been concerned with finding an appropriate balance between the requirement of democratic legitimacy of such appointments, on the one hand, and the requirement of depoliticisation, on the other. Thus, an appointment process which involves the executive and/or legislative branch has the advantage of giving democratic legitimacy to the appointment of the head of the prosecution service. However, in this case, supplementary safeguards (e.g. council of prosecutors) are necessary in order to diminish the risk of politicisation of the prosecution office. The Commission moreover emphasises that appointments should be based on qualifications and experience. No single, categorical principle can be formulated as to who – the President or Parliament – should appoint the Prosecutor General in a situation when he is not subordinated to the Government.[60]

The Venice Commission has emphasised that a Prosecutor General should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period. The period of office should not coincide with Parliament's term in office. That would ensure the greater stability of the prosecutor and make him or her independent of current political change. The grounds for dismissal should be clearly laid out in the legislation on the prosecution service.[61]

In light of the Venice Commission's position, a system where it is provided at the level of the Constitution that the Prosecutor General is appointed by the President of the Republic may still be considered justified. The Prosecutor General has considerable authority and a key role in the entire National Prosecution Authority, both in terms of substance and organisation. Taking into account the duties and authority of the Prosecutor General, it should be examined if the additional safeguard mentioned by the Commission should be adopted as part of the appointment procedure to reduce the risk of politicisation of the prosecution service (cf. decision by President of the Republic on the motion of the Government). It should also be examined if the permanent status of the position of Prosecutor General could be strengthened, and whether the Prosecutor General could only be dismissed by the decision of a court (at present, this decision is made by the Government). Per se, it might be possible, by simply amending an ordinary act, to make the position of Prosecutor General a fixed-term one and, when necessary, to appoint a new Prosecutor General following formation of a new Government. However, the requirement of independence that is proposed for addition to section 104 of the Constitution would establish guarantees of the prosecution service's independence, which would also cover the leadership and organisation of the service and thus impose restraints on any legislation derogating from the permanence of the position.

The Prosecutor General may submit any decisions on dismissal and other sanctions under public-service law on which a review may be requested to an independent and impartial court for consideration, which may be estimated to reduce the potential for inappropriate interference in the Prosecutor General remaining in

[59] Government proposal HE 131/1996, p. 25.
When assessing judicial appointments, the working group examined whether the power to appoint permanent judges should be changed for the express reason of eliminating parliamentary accountability so that the decision to appoint would be made by the President of the Republic without a proposal from the Government.
[60] Venice Commission Compilation, p. 34
[61] Venice Commission, Report on the Prosecution Service 2010, para 37.

office. The specific right to remain in office that concerns judges nevertheless, with reason, only covers judges.

Since the Deputy Prosecutor General assists the Prosecutor General and serves as his or her deputy, and also has the same power of decision as the Prosecutor General in matters to be dealt with by him or her, and since the Prosecutor General has a specific constitutional status, the argument may be made that provisions should be laid down in section 104 of the Constitution on the appointment of the Deputy Prosecutor General, too. The Deputy Prosecutor General has the same power of decision as the Prosecutor General in matters to be dealt with by him or her, which may also be used to justify – as is the case in sections 36 and 69 of the Constitution – providing for the appointment of the Deputy Prosecutor General in the Constitution.

[Any eventual specifications to section 104, particularly in respect of strengthening the right of the Prosecutor General and Deputy Prosecutor General to remain in office, remain under consideration (with reference to the question on this topic addressed to the Venice Commission)]

2.3 Independent supervision of courts and judges

The Chancellor of Justice and the Parliamentary Ombudsman shall ensure that the courts obey the law and fulfil their obligations (Constitution, sections 108, 109). The decision on bringing charges of unlawful conduct in office against a judge is made by the Chancellor of Justice or the Parliamentary Ombudsman (Constitution, section 110).

The Chancellor of Justice and the Deputy Chancellor of Justice work in connection with the Government and they are appointed by the President of the Republic. (Constitution, section 69). The Parliamentary Ombudsman and two Deputy Ombudsmen are appointed by Parliament for a term of four years (Constitution, section 38). Parliament may, only for extremely weighty reasons, dismiss the Ombudsman before the end of his or her term by a decision supported by at least two thirds of the votes cast (Constitution, section 38, subsection 2). The Chancellor of Justice may be dismissed by the President of the Republic pursuant to the provisions of public-service law, provided there is an acceptable and justified reason for this, taking into account the nature of the position (Public Officials Act, section 36).

The right of access to information of the supreme overseers of legality is secured under section 111 of the Constitution. The right has been considered to mean a general right of access to information that is not dependent on matters such as the secrecy of information or documents but only on what is required to perform the duty of legality oversight (Constitutional Law Committee report PeVM 6/2000, p. 2). At present, information subject to the secrecy of deliberations in court has not been expressly excluded from the right of access of the Chancellor of Justice and the Parliamentary Ombudsman (Act on the Chancellor of Justice, section 9; Act on the Parliamentary Ombudsman, section 11c).

Under section 3, subsection 1 of the Act on the Chancellor of Justice, when supervising the activities of the courts, the Chancellor of Justice handles written complaints and reports from authorities addressed to the Chancellor. The Chancellor of Justice may also take up a matter on his or her own initiative. Under subsection 2 of the same section, the Chancellor of Justice is entitled to carry out inspections of the authorities, facilities and other operating units subject to the Chancellor's oversight. Subsection 3 further provides that the Chancellor of Justice reviews the penal sanctions on which reports are submitted to the Office of the Chancellor of Justice in the ways on which separate provisions are laid down. The decrees in which such provisions are laid down have since been repealed, however, and it has been many years since penal sanctions were submitted to the Chancellor of Justice for review. Pursuant to section 111 of the Constitution, the Chancellor of Justice has extensive rights of access to information. Provisions on these rights are also laid down in section 23 of the Public Information Management Act. On these grounds, the

Legal Register Centre has opened viewing access to the information pool for the Office of the Chancellor of Justice which the Chancellor of Justice currently uses in the performance of the oversight of the imposition and enforcement of penal sanctions under section 3, subsection 3 of the Act on the Chancellor of Justice.

The Chancellor of Justice ensures the legal accuracy and appropriateness of the proposals originating from the Judicial Appointments Board or the courts of law as well as the presentation by the Ministry as the Ministry of Justice presents its opinion to the Government. The Chancellor of Justice inspects in advance the documents concerning the appointments to be processed at the government plenary session and at the presidential sessions. In connection with the appointment of judges, the Chancellor of Justice also ensures that the Government or the President of the Republic do not misuse their powers

Complaints about the actions of courts and judges may be submitted to the Parliamentary Ombudsman. The Ombudsman may also, on his or her own initiative, take up a matter within the Ombudsman's remit of legality oversight and may perform audits and inspections as necessary (Act on the Parliamentary Ombudsman, sections 1, 2 4, 5).

The act on the division of duties between the Chancellor of Justice and the Parliamentary Ombudsman (330/2022) governs the division of duties between the two supreme overseers of legality. However, neither official's powers of legality oversight based on the Constitution can be curtailed by an ordinary act. The Constitutional Law Committee has emphasised that although the various sectors of legality oversight have a long tradition that is to be respected, the oversight of legality, too, must move with the times and its development should be considered with an open mind (report PeVM 5/2018). In its report on the proposed act on division of duties, the Committee stated the following with regard to the need for scrutiny (Constitutional Law Committee report PeVM 3/2022, p. 22), 'The system of two supreme overseers of legality, which both consider complaints and have largely parallel powers, is a rarity in the international setting. The Committee considers scrutiny of the need for an overhaul of supreme legality oversight to be justified. Such an examination should also cover the constitutional regulation of the matter. Topics which the examination should cover include questions regarding the dual duties of the Chancellor of Justice as legal adviser to the President of the Republic and the Government and as overseer of legality, the oversight of the legality of the courts' functioning relative to judicial independence, and the substance and guarantees of the independence of the supreme overseers of legality.'

It is internationally exceptional for the supreme overseers of legality to be tasked with controlling the lawfulness of the official actions of courts and judges. Apparently Finland and Sweden are the only two countries in their regular peer group to have an arrangement of this kind (likewise, Prop. 2024/24:165, p. 93). The tensions arising from this arrangement to independence and the principles of separation of powers have been quite widely recognised and the Constitutional Law Committee has deemed it justified to more closely examine the issue of the oversight of the legality of the courts' functioning relative to judicial independence (report PeVM 3/2022, p. 19). In connection with the drafting of the act on the division of duties, both the Supreme Court and the Supreme Administrative Court emphasised in their statements that judicial independence places limits on the substance of legality oversight and the way it is arranged. In that context, the Supreme Court stressed that oversight should be clearly separate from the executive and judicial powers.

In Sweden, the Government has proposed withdrawal of the powers of the chancellor of justice to oversee the courts' administration of justice ((Prop 2024/25:165). The Government's proposal is based on a proposal of the committee assessing judicial independence (SOU 2023:12). The rationale given was that the chancellor of justice is the Government's highest overseer of legality/ombudsman. The oversight duties of the chancellor of justice may be perceived as governmental control over the administration of justice by the courts and individual judges. According to the committee, the oversight by the parliamentary ombudsman

appointed by the parliament may be deemed to more clearly represent the public interest, and therefore the committee did not propose any changes to the oversight duties of the parliamentary ombudsman relative to the courts and judges. The committee proposed that the chancellor of justice should no longer hold the power to bring charges against permanent judges for criminal offences committed in office and to initiate proceedings to remove permanent judges from office or to impose disciplinary sanctions. Additionally, provisions were proposed to also remove from the chancellor of justice the power to oversee the authorities crucial to the independence of the court system (Domstolsstyrelsen, Domarnämnden and the possible future Domaransvarsnämnd).[62]

The proposal would mean that the courts' administration of justice in Sweden would only be overseen by the parliamentary ombudsman and the national audit office (Riksrevisionen).

In Finland, oversight of the courts is currently within the remit of both the Chancellor of Justice and the Parliamentary Ombudsman. Their oversight duties in this respect are uniformly provided for in the Constitution. Both have the right to take the action they deem warranted in consequence of complaints and to order a police investigation or pre-trial investigation to be carried out. They both may also order that charges be brought. Both may also take up matters on their own initiative. The oversight of courts, judges and counsel, however, is currently more emphasised in the Chancellor of Justice's duties which also include the review of penal sanctions (Act on the Chancellor of Justice, section 3, subsection 3 and Act on the national information system for the administration of justice 372/2010, section 17); the oversight of the supervision of courts (Courts Act 673/2016, chapter 3, section 2); the supervision of members of the Finnish Bar Association and Public Legal Aid Attorneys (Attorneys Act 496/1958); and the supervision of licensed legal counsel (Licenced Legal Counsel Act 715/2011). Similar oversight of penal sanctions is not separately provided for among the duties of the Parliamentary Ombudsman, even though such a duty, and the oversight of courts and judges in particular, is not excluded from the Ombudsman's constitutional duties.

[To be supplemented in further work based on the working group's eventual proposals]

2.4 Questions examined where amendment is not proposed

2.4.1 Judicial districts

The current Courts Act (673/2016) contains provisions on general courts of law and administrative law. However, under the Act, provisions on the judicial districts of the courts are laid down by decree (chapter 2, section 5; chapter 3, section 7; chapter 4, section 4). The legislation on district courts expressly allows the establishment of district courts by merging judicial districts (chapter 2, section 6, subsection 3). The Parliamentary Ombudsman has previously held that the legislative history of the lower courts reform, the enactment of the Act on District Courts, the fundamental rights reform, the Constitution and the 2005 revision of the Act on District Courts as a whole demonstrates that the Government has generally been considered to have the power to set the judicial districts of district courts by means of decree (previously decision). This power has also included the de facto possibility to merge, establish and disestablish district courts.[63] Therefore the Constitution was not held to obligate these matters to be governed by an act.

The level of statute to set the judicial districts of district courts was indirectly discussed in Constitutional Law Committee statement PeVL 42/2006 concerning the Enforcement Code. When assessing if provisions on enforcement districts should be laid down by ministerial or government decree, the Committee made reference to the fact that by virtue of a legislative proposal, provisions on the judicial districts of district courts that hear enforcement appeals were laid down by government decree. In other words, in this context

[62] SOU 2023:12, p. 34–35
[63] Decision of the Parliamentary Ombudsman, 25 August 2000, reg.no. 428/4/09, p. 26.

the Constitutional Law Committee did not consider problematic the Government's power to issue decrees on the judicial districts of district courts that heard enforcement appeals. The Parliamentary Ombudsman has held that not even this statement expresses the direct position of the Constitutional Law Committee on the appropriate constitutional level of statute in general when establishing or disestablishing district courts, since the statement only related to a single group of matters subject to specific regulation, i.e. the judicial district arrangements of district courts that heard enforcement appeals.[64]

When laying down provisions on the judicial districts of courts, attention shall be paid to the particular requirements of the independence of courts when compared to authorities. Provisions on judicial districts shall see to the regional availability of legal protection as well as the realisation of linguistic rights safeguarded under section 17 of the Constitution, and ensure that the regulation concerning judicial districts does not undermine the independence of the courts. Another relevant consideration in the regulation of judicial districts is section 103, subsection 1 of the Constitution stating that a judge shall not be transferred to another office without his or her consent, except where the transfer is a result of a reorganisation of the judiciary. However, the provision imposes no conditions as to the manner in which a reorganisation of the judiciary is to be provided for.

In its Rule of Law report's chapter on Estonia, for example, the Commission voices concerns about legislative amendments to make departments encompass several courthouses, which could mean that judges would have to travel on daily basis between several locations. This could result in de facto transfers of judges.[65] The Court of Justice of the European Union has held that transfers without consent of a judge to another court or the transfer without consent of a judge between two divisions of the same court are capable of undermining the principles of the irremovability of judges and judicial independence.[66] Likewise, the European Court of Human Rights has also held transfers of judges to be problematic vis-à-vis judicial independence[67]. Similar problems may be estimated to arise in situations where, for example, by significantly changing judicial districts, judges are de facto transferred to work far away from their place of residence or in several courthouses in a way that would hamper the proper handling of the cases assigned to the judge. The regulation of judicial districts is therefore relevant to the independence of the courts and judges.

Although further provisions on judicial districts could still be laid down by government decree, the exercise of the power to issue decrees would be limited not only by judicial independence but also by the provision proposed as a new subsection 3 to section 98, which would require provisions on courts to be laid down by an act, thereby preventing the establishment of a court by means of any subordinate statute, for example by merging judicial districts. (See also specification proposed to section 103, subsection 1 of the constitution concerning transfer of judge without consent).

2.4.2 Status of heads of court

Provisions on heads of court and their qualifications, duties and appointment are laid down in the Courts Act. In the courts of appeal and Labour Court, the head of court is the president and in administrative courts, district courts, the Market Courts and the Insurance Court, the chief judge. Under the Courts Act, heads of court are appointed for a fixed term of seven years at a time. The term of a head of court may not extend beyond the statutory retirement age of judges, however. The provisions governing the appointment

[64] Decision of the Parliamentary Ombudsman, 25 August 2000, reg.no. 428/4/09, p. 28.
[65] 2023 Rule of Law Report Country Chapter on the rule of law situation in Estonia, p. 5–6.
[66] C-487/19, W.Z., judgment 6.10.2021, ECLI:EU:C:2021:798, paras 114–118.
[67] See e.g. Bilgen v. Turkey, 9.3.2021, paras 96 and 97.

of tenured judges apply to the appointment of heads of court. As a rule, heads of court are appointed by the President of the Republic on the basis of a proposal for decision presented by the Government.

Under chapter 8 of the Courts Act, the head of court is responsible for developing the court and ensuring its operational capacity The head of court determines the performance targets for the court and sees to it that these are achieved. The head of court shall supervise the uniformity of the application of legal principles and the interpretation of the law in the decisions of the court. The head of court participates in the administration of justice to the extent that his or her other duties allow. Among other things, the head of court assigns judges to serve as directors of department, decides on the reallocation of cases and approves the court's rules of procedure. A written warning referred to in section 24 of the Public Officials Act may be issued to a judge by the head of the court in which the judge serves. In other words, heads of court perform many duties that are relevant to internal judicial independence.

It follows from the European Convention on Human Rights that the main rule in judicial appointments is the permanence of the office. The Courts Act safeguards judicial independence through the permanence of offices and the right to remain in office. Derogation from the main rule concerning appointment to permanent positions is only permitted for a good reason. Even then, the independence of the judge and the court shall be safeguarded. In the case law of the European Court of Human Rights, attention has been paid to the procedure for appointing members of the court, the length of their term, guarantees against external pressures and the court's appearance of independence. In the case *Ettl and Others*, for example (23.4.1987), the Court found that the fixed-term nature of a judicial appointment (five years, in that case) was not in conflict with the requirement of judicial independence when the said judge was de facto irremovable during the fixed term (para 41). In the *Langborger* case (22.6.1989), the Court did not pay attention in its assessment to the fact that the members of a Swedish housing court were appointed for fixed terms of three years, from which it may be inferred that the Court did not consider such fixed-term appointments problematic with regard to judicial independence. A term of three years was also considered sufficient with regard to judicial independence in the cases of *Campbell and Fell* (28.6.1984) and *Sramek* (22.10.1984). At the time of enactment of the Courts Act, the independence of the head of court was sought to be safeguarded by the length of the term of service and the fact that judges appointed as head of court could retain their tenured judge position throughout their term as head of court and return to that position at the expiry of the term (government proposal HE 7/2016, p. 44) In many other European countries, too, heads of court are appointed for fixed terms.

The working group of administration of justice found in its memorandum (p. 103) that fixed terms provided political leaders who acted inappropriately with the practical power to change heads of court within no more than seven years, depending on the timing of the terms. The working group proposed that even though such changes would, in practice, also necessitate influencing the Judicial Appointments Board, the matter needed to be taken into account when assessing independence.

In the working group's assessment, no need to specify the Constitution was associated with the fixed-term nature of appointments as head of court as far as judicial independence was concerned. It may be assessed that the regulation of section 102 proposed by the working group and concerning the appointment of judges would for its part also serve to safeguard the appropriateness of head of court appointments as far as judicial independence was concerned.

Judicial independence also requires individual judges to be independent when serving as a member of the court. An aspect that particularly relates to this is the fact that the head of court may not influence the outcome of individual judicial matters being considered by the other judges of the court. Upon enactment of the Courts Act, the Constitutional Law Committee with regard to the duties of heads of court assessed that the proposed regulation did not very clearly indicate the separation of judicial matters on the one hand

and administrative and financial matters on the other when it came to the competence and duties of heads of court. Nonetheless, the Committee considered it to be clear that neither the duties of a head of court in general nor the competence assigned to a head of court to supervise the consistency of the application of legal principles and interpretation of the law in the decisions of the court could be construed as influencing the court or the decision made by a particular court composition in individual cases, and therefore did not find the regulation to pose any constitutional issues.

The Parliamentary Ombudsman has held that independence from a superior in individual judicial matters decided by a judge is an important principle relating to the exercise of judicial powers. Nonetheless, heads of court hold power over their subordinate judges, and such power may of course also be abused. Under section 18, subsection 2, paragraph 2 of the Act on Judicial Appointments (205/2000), the chief judge of a district court may, for example, appoint a judge to the district court for a fixed term of less than one year. When fixed terms in office are 'daisychained', a district judge may serve as a higher district judge for years solely on the orders of the chief judge. Such dependence on the head of court with regard to judicial office is naturally emphasised in the case of acting judges without a permanent position. The Ombudsman held that the possibility of this kind of exercise of power is capable of undermining the guarantees of the court's internal independence (Parliamentary Ombudsman's decision EOA 1595/2000).

It should be possible to organise the practical operations of courts flexibly and appropriately, which is why issues of the inner workings of the courts have been left to be determined in the court's rules of procedure. The issue here is first and foremost the internal independence of the courts. The internal matters of the court relating to the organisation of the court's work are hard to regulate at the level of an act due to the nature of these matters. Under the Courts Act, such matters are governed by the court's rules of procedure. In its statement concerning the Courts Act (PeVL 14/2016, p. 5), the Constitutional Law Committee held that in its opinion, regulation of the rules of procedure expresses the premise that courts shall organise their own judicial work within the framework laid down by law. According to the Committee, the regulation could therefore be taken to strengthen the independence of the judiciary from the executive, especially when regulation of the courts at the level of decree is simultaneously reduced. The Committee did not find the regulation to be problematic vis-à-vis the Constitution, taking into account the fact that the content of the rules of procedure was limited to apply to the internal workings of the court.

Administrative procedures relating to the allocation of cases may also hold significance with regard to judicial independence. In its judgment C-16/24 *Sinalov* (para 57), the Court of Justice of the European Union held that the lawfulness of an allocation made by the head of court management must be subject to judicial review in accordance with the rules of national law. However, the Court of Justice did not find any issue with the power of the head of court management in allocating cases or the opportunity to verify the lawfulness of the original case allocation and possibly to reallocate the case. In its judgment in joined cases C-647/21 and C-648/21 *D.K., M.C. and M.F.* (para 86), the Court of Justice held that EU law precluded national legislation under which a body of a national court, such as the college of that court, may withdraw from a judge of that court some or all of the cases assigned to him or her, where that legislation does not lay down criteria which must guide that body when it takes such a decision to withdraw cases or require that reasons for that decision be stated. The Court of Justice attached importance to the internal independence of courts and emphasised that the performance of adjudicating must be protected not only from any direct influence, in the form of instructions, but also from types of influence which are more indirect and which are liable to have an effect on the court decisions (C-647/21 and C-648/21 *D.K., M.C. and M.F.,* paras 68 and 69). The working group identified no needs to revise the Constitution in respect of case allocation.

Chapter 14 of the Courts Act lays down provisions on the assignment of a qualified judge, service in another court with the judge's consent, the obligation of a technically qualified land court judge to serve in another district court and the transfer of judges in connection with reorganisation of the court system. Heads of

court may furthermore transfer judges from one division to another in the same court, which might mean a transfer to other duties or, especially in the case of large courts, to another town. Provisions on the duties of heads of court and the organisation of work at courts are laid down in chapter 8 of the Courts Act. Under the Courts Act, the court's division into departments is governed by its rules of procedure (chapter 8, section 4), which shall be dealt with by the management group (chapter 8, section 1) or, when there is no management group, the permanent judges shall be consulted before the head of court approves the rules of procedure (chapter 8, section 9).

According to the Court of Justice of the European Union, independence may be compromised not only by the express dismissal of a judge but also by measures indirectly leading to the same outcome (joined cases C-748/19 to C-745/19, para 69). In particular, the transfer of a judge without consent to another court or between divisions of the same court is also potentially capable of infringing on the judge's independence (case C-487/19, W.Ż, para 114). The Court of Justice has held that such a transfer order may only be issued when the risk of the transfer being used as a means of exerting political control over the content of the judge's judicial decisions can fully be prevented on the basis of the rules applicable to the transfer (joined cases C-748/19 to C-754/19, para 73). In addition, such a transfer may only be ordered on legitimate grounds, in particular relating to distribution of available resources to ensure the proper administration of justice, and such decisions must be legally challengeable (case C-487/19, W.Ż, para 118). The European Court of Human Rights, too, has held that the judge subject to a transfer order shall have access to legal remedies and the possibility of submitting the lawfulness of the order for judicial review (Bilgen v Turkey, judgment 9.3.2021, no. 1571/07, paras 96 and 97). In its Rule of Law report's chapter on Estonia, the Commission voiced concerns about legislative amendments to make departments encompass several courthouses, which could mean that judges would have to travel on daily basis between several locations. This could result in de facto transfers of judges.[68]

Under section 57, subsection 3 of the Public Officials Act, the decision concerning a public official on the placement of a shared office of the agency within the agency is non-appealable. Review of the decision may nonetheless be requested when the location of the office changes to another town as a result of the decision (subsection 4). The working group estimates that going forward, it will be necessary to examine the needs to amend regulation at the level of an act as it concerns the transfer of judges within a court and the sufficiency of legal remedies. This should also include an assessment of whether the grounds for transfers should be provided for by an act instead of only being governed by the court's rules of procedure. This assessment should take into account not only the independence of judges but also the fact that legislation must allow flexibility in the internal organisation of work in the courts in various situations. The matter is not judged to entail any need to specify the Constitution, however. Transfers taking place without the judge's consent in cases of reorganisation of the court system are discussed in the context of section 103.

2.4.3 Qualification as representative and member of parliament

Provisions on the high offices that are incompatible with the position of Member of Parliament ['Representative' in the current English translation] are laid down in section 27, subsection 3 of the Constitution. The provision states that 'the Chancellor of Justice of the Government, the Parliamentary Ombudsman, a Justice of the Supreme Court or the Supreme Administrative Court, and the Prosecutor-General cannot serve as representatives.' Further under the provision, 'if a Representative is elected President of the Republic or appointed or elected to one of the aforesaid offices, he or she shall cease to be a Representative from the date of appointment or election.' According to the preparatory documents on the provision, the provision does not extend to eligibility to stand as a candidate in elections and 'instead, the holders of the said offices could stand as candidates in the parliamentary elections but, should they be

[68] 2023 Rule of Law Report Country Chapter on the rule of law situation in Estonia, p. 5–6.

elected to Parliament, they would need to resign from their office.' (government proposal HE 1/1998, p. 83). This also means that a Member of Parliament appointed to one of the positions mentioned could not continue to serve as a Member of Parliament by applying for a leave of absence. In light of the government proposal, the provision is limited to apply specifically to the high offices that are expressly incompatible with the office of Member of Parliament (government proposal HE 1/1998, p. 83). The provision is equivalent with section 9 of the Parliament Act of 1928 which was in force before the current Constitution.

With regard to persons subject to the Act on Public Officials in Central Government (hereinafter 'Public Officials Act') other than those mentioned in section 27, subsection 3 of the Constitution, section 23, subsection 2 of the former Act lays down provisions to the effect that a public official shall be on a leave of absence for the time during which the official serves as a Member of Parliament, a minister or a Member of the European Parliament elected from Finland, and also during their compulsory military service. The provision applies to judicial offices, judges and prosecutors (Public Officials Act, section 3, subsection 1). Since judges are covered by a specific right to remain in office secured by the Constitution, the statement in the government proposal concerning resignation cannot constitute an effective derogation from this right. Taking into account the provisions of the Public Officials Act and the specific right of judges to remain in office, there are no grounds to require the members of the Supreme Court or Supreme Administrative Court mentioned in the said subsection of the Constitution to resign from their position as laid out in the government proposal concerning the Constitution. The Prosecutor-General mentioned in the provision is also subject to section 23, subsection 2 of the Public Officials Act. Neither the preparatory documents nor the parliamentary materials concerning section 27, subsection 3 of the Constitution address the topic of European Parliament membership.

In its Opinion concerning the Constitution of Finland, the Venice Commission found that although the possibility under section 27 subsection 3 of the Constitution, making members of courts other than the two highest courts eligible as members of Parliament, does not violate any express rule of European or international law, it would lead to a combination of legislative and judicial power in one and the same person and might create doubt as to the objective impartiality of the judge concerned. This might create doubt as to the objective impartiality of the judge concerned, especially in cases where he or she has to interpret and apply laws, in the adoption or amendment of which he or she has participated, putting even at stake the principle of the rule of law.[69] In its Opinion concerning the Netherlands, the Commission recommended introducing an obligation of judges to take special leave for the duration of their term as a member of the national or European parliament.[70]

The working group assessed the option of adding a mention of membership in the European Parliament to section 27, subsection 3 in such a way that the positions referred to in the provision would, by law, be made incompatible with service as a Member not only of the Finnish Parliament but also of the European Parliament. In this case, the limitation regarding European Parliament membership would apply the members of the courts of highest instance as well as to the Chancellor of Justice, the Parliamentary Ombudsman, the Prosecutor-General and the President of the Republic. The proposed amendment to section 104 would extend the limitation to cover the Deputy Prosecutor-General as well. The working group correspondingly assessed the option of including a mention of membership in the European Parliament in the second sentence of the subsection as well. Under the provision when amended, if a Representative [Member of the Finnish Parliament] or a Member of the European Parliament is elected President of the

[69] Venice Commission's Opinion on the Constitution of Finland, 2008, para 107 and the 'Procola' judgment of the ECHR referred to therein which is addressed below.
[70] Venice Commission's Opinion concerning the Netherlands, 2023, paras 77–78.

Republic or appointed or elected to one of the aforesaid offices, he or she shall cease to be a Representative from the date of appointment or election.

The working group assessed the limitation concerning European Parliament membership with regard to the objective impartiality of the members of the courts of highest instance as well as the judiciary in general, and also with regard to the separation of powers laid down in section 3 of the Constitution. The working group also took note of the role of the European Parliament as the EU legislator, which for reasons of consistency would speak in favour of including membership therein in the provision of section 27. With regard to European Parliament membership, such a provision would be equivalent with the provisions laid down in section 164 of the Election Act regarding positions and offices that impede such membership. The working group also took into account the fact that the Constitution lays down the provisions on the state institutions of Finland and that chapter 3 of the Constitution concerns the Parliament of Finland and its Members.

The European Parliament and the eligibility, qualifications and term of office of its members are within EU jurisdiction. EU legislation safeguards the independence of the members of the European Parliament. The provisions on the European Parliament are laid down in Article 14 of the Treaty on European Union and Article 223 of the Treaty on the Functioning of the European Union. The provisions on the offices that are incompatible with the office of member of the European Parliament are laid down in Article 7 of the EU Act concerning the election of the members of the European Parliament by direct universal suffrage (Rules on EU Elections) and the provisions on termination of office of members of the European Parliament in the Rules of Procedure of the European Parliament. Under Article 7(3) of the Rules on EU Elections, each Member State may, in the circumstances provided for in Article 8, extend rules at national level relating to incompatibility, and in Finland, the provisions on the offices and positions impeding membership in the European Parliament are laid down in section 164 of the Election Act. In its assessment, the working group came to the conclusion that although a combination of judicial power and the legislative power held by members of the European Parliament in one and the same person must be considered to present a problem in terms of independence and impartiality, the national constitution is not the appropriate instrument to govern this, as the independence of members of the European Parliament is safeguarded in EU legislation and the termination of the office of members of the European Parliament is within the jurisdiction of the EU. No amendment of section 27 of the Constitution is therefore proposed.

2.4.4 Duties of the highest courts

Provisions on the duties of the highest courts are laid down in section 99 of the Constitution: under its subsection 1, justice in civil, commercial and criminal matters is in the final instance administered by the Supreme Court and justice in administrative matters is in the final instance administered by the Supreme Administrative Court. The provision complements section 3, subsection 3 of the Constitution which states the nature of the Supreme Court and the Supreme Administrative Court as the courts of highest instance (government proposal HE 1/1998, p. 156/II). The provision expresses the dual-track nature of Finland's court system.

Under subsection 2 of section 99, the highest courts supervise the administration of justice in their own fields of competence. They can issue proposals to the Government on taking legislative action. In its Opinion on the Constitution of Finland, the Venice Commission drew attention to the fact that the word 'supervise' used in the second subsection of that section may give the wrong impression that the highest courts may also intervene *proprio motu*, without an appeal having been lodged, in the administration of justice by the lower courts. In its statement on the government proposal concerning enactment of the Constitution, the Legal Affairs Committee stated that experts had drawn attention to the verb 'supervise' used in the proposed section 99, subsection 2, which by international standards is suspect, as it may be

construed to undermine judicial independence (Legal Affairs Committee statement LaVL 9/1998, p. 9). However, the Committee found that the equivalent provision in section 53 of the Constitution Act had not been seen to undermine judicial independence. Since the intention was to retain the same substance of the word as before and no better expression had been found, the Committee held that there was no need to alter the wording of the proposed provision.

Previously (government proposal HE 106/1978, p. 5) it had been held that the performance of the duty of supervision by the Supreme Court would be accomplished in the context of deciding appeal applications, by modifying or setting aside incorrect decisions, and by hearing cases of offences in office. This may indeed still be considered an element of the duty of supervision in its broad sense. In the preparatory documents of the Constitution, however, the duty of supervision is largely separated from the judicial duties of the highest courts. According to the relevant government proposal, the duty of supervision does not entail the right to intervene in the hearing of an individual court case. Instead, the duty of supervision covers the consistency of the application of law, overseeing the time taken to hear cases and the adequacy of the courts' resources, as well as organising meetings within the judiciary and seeing to the training of personnel (government proposal HE 1/1998, p. 157/II). The independence of the individual courts and the court instance shall be respected in the performance of the duty of supervision. In practice, supervision takes place by means such as maintaining and enhancing contacts with other courts and the National Courts Administration and monitoring the uniformity, quality and expediency of judicial procedure in connection with deciding matters[71]. Inter-court dialogue is relevant also in terms of promoting protection under the law and the uniformity of judicial procedure. The precedents issued by the highest courts mainly have a guiding impact on courts to safeguard the uniformity of case law but they have no immediate binding effect in the resolution of individual court cases (government proposal HE 1/1998, p. 76 HE 109/2005 p. 76/I).

Even though the term 'duty of supervision' used in the Constitution may also be misconstrued, the meaning described above has become established and it meets the requirements of judicial independence. No amendments are therefore proposed for the provision. However, its meaning described above and in the preparatory documents of the Constitution should be emphasised.

The provision is not assessed to be subject to any amendment needs.

2.4.5 Remuneration of judges

Under section 103, subsection 3, more detailed provisions on the other terms of service of a judge are also laid down by an Act. Terms of service refer to matters such as the remuneration of judges and other key aspects of the public-service employment relationship (Constitutional Law Committee statement PEVL 19/2001, p. 2). The basic premise has been for the financial and social benefits of judges to be determined on the same grounds as those for other public officials, i.e. by means of collective agreements for public officials. Special provisions applying to judges that differ from those applied to other public officials mainly appear only in respect of those issues related to judicial independence. (Government proposal HE 1/1998, p. 160). Judges are currently covered by the system of collective agreements for public officials except for the Justices of the highest courts, whose remuneration is governed by the Act on the terms of service of the presidents and members of the Supreme Court and the Supreme Administrative Court.

Council of Europe Recommendation CM/Rec(2010)12 states that judges' remuneration should be sufficient to ensure their independence. The Venice Commission, too, has remarked in some of its Opinions on the significance of the remuneration of judges with regard to judicial independence. Sufficient remuneration shields judges from financial inducements and thus serves for its part to safeguard judicial independence. The report of the working group for developing the remuneration system of court judges and lawyers

[71] Rules of Procedure of the Supreme Administrative Court 2024, section 30.

(Ministry of Justice publications 2020:16, p. 35–37) states that one of the key requirements under international treaties is that the remuneration of judges be provided for by law. Remuneration based on collective agreements for public officials concluded pursuant to the Act on Collective Agreements for Public Officials in Central Government has been held to meet the requirements of international treaties and other instruments concerning foundation in law for the remuneration of judges, for example in the government proposal concerning the remuneration of the members of the highest courts (HE 33/2001). A second key requirement is that the remuneration shall be sufficient. Moreover, international instruments recommend avoidance of remuneration schemes where remuneration is influenced by assessment of individual performance. The Venice Commission, for example, holds that judges shall by law be guaranteed remuneration consistent with the dignity of their office and the scope of their duties. Bonuses which include an element of discretion should be excluded. The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge.[72]

The Court of Justice of the European Union, too, has held that the receipt by judges of remuneration at a level commensurate with the importance of the functions they carry out constitutes a guarantee essential to their independence. In its 2025 judgment in joined cases C-146/23, *Sąd Rejonowy w Białymstoku* and C-374/23, *Adoreikė(i)* (paras 51–57), the Court made reference to the recommendations of the UN and the Committee of Ministers of the Council of Europe requiring that adequate remuneration of judges be secured or laid down by law. Furthermore, the principle of judicial independence, read in conjunction with the principle of legal certainty, requires that the detailed rules for determining judges' remuneration be objective, foreseeable, stable and transparent, so as to exclude any arbitrary intervention by the legislature and the executive of the Member State concerned. According to the judgment of the Court of Justice, the mere fact that the legislature and the executive of a Member State are involved in determining judges' remuneration is not, in itself, such as to create a dependence of those judges on the legislature or executive or to give rise to doubts as to the independence or impartiality of the judges. Member States enjoy broad discretion when drawing up their budgets, also in determining the method of calculating the judges' remuneration. The national rules on judges' remuneration must nonetheless not give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them (see, by analogy, judgment of 20 April 2021, Repubblika, C-896/19, EU:C:2021:311, paragraphs 56 and 57).

In the same judgment, the Court of Justice held that the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU, must be interpreted as meaning that the principle of judicial independence does not preclude, on the one hand, the legislature and the executive of a Member State from determining the remuneration of judges in so far as that determination does not involve the exercise of an arbitrary power but is based on detailed rules which are provided for by law; are objective, foreseeable, stable and transparent; ensure that judges receive a level of remuneration commensurate with the importance of the functions they carry out, having regard to the economic, social and financial situation of the Member State concerned and the average salary in that Member State, and may be subject to effective judicial review in accordance with the procedural rules laid down by the law of that Member State;

The Court of Justice also found that EU law did not preclude, on the other hand, the legislature and the executive of a Member State from derogating from national legislation, which defines objectively the detailed rules for determining judges' remuneration, by deciding to increase that remuneration by less than is provided for by that legislation or even to freeze or reduce the amount of that remuneration, in so far as

[72] Venice Commission, Report on the independence of the judicial system, Part I: the independence of judges, CDL-AD(2010)004.

such a derogating measure does not involve the exercise of an arbitrary power but is provided for by law; sets detailed rules for remuneration that are objective, foreseeable and transparent; is justified by an objective of general interest pursued in the context of measures which, subject to duly justified exceptional circumstances, are not specifically aimed at judges but affect, more generally, the remuneration of other categories of officials or public servants; is necessary and strictly proportionate to the attainment of that objective, which presupposes that the derogating measure remains exceptional and temporary and does not undermine the commensurate nature of judges' remuneration with the importance of the functions they carry out, and may be subject to effective judicial review in accordance with the procedural rules laid down by the law of the Member State concerned.

In Finland, it has not been deemed possible to determine for judges a personal remuneration component based on assessment of performance owing to the independent standing of judges. Instead, the remuneration of judges includes an experience component that accrues over the judge's career with more regularity than for other groups of personnel. Collective agreements for public officials moreover contain provisions on allowances, for example for language requirement and language skills. The public-service employment relationships of court personnel, including matters of remuneration, are managed by the National Courts Administration insofar as these are not the responsibility of the court or another authority. The agency is also the negotiating authority for the branch of government in respect of the intra-agency collective agreements for process servers and judges.

Provisions on the terms of service of the presidents and members of the highest courts are laid down in a separate act (196/1991). The justification for this has included reasons of independence and the constitutional status of the highest courts (government proposal HE 85/1990, p. 4; Constitutional Law Committee statement PeVL 19/2021). The salaries of judges are adjusted in accordance with the adjustment criteria decided by the Government. The arrangement is not wholly without issue, for example with regard to the fact that the presidents of the highest courts serve as chair and deputy chair of the High Court of Impeachment. No change is proposed to this. However, judicial independence requires non-interference in salary for inappropriate reasons.

The working group emphasised the significance of the sufficient and fair remuneration of judges from the perspective of safeguarding independence and also discussed the possibility of providing for the terms of service of judges besides those of the highest courts in a specific act instead of the system of collective agreements for public officials. The commission on development trends in the court system has held that the requirements of independence are in conflict with the fact that judges have to negotiate their salaries within the system of collective agreements for public officials and has considered it appropriate for the criteria for the remuneration of judges to be determined by law rather than by collective agreement.[73] The Parliamentary Ombudsman, too, has put forward arguments in favour of a system of remuneration based on law.[74] There is a case to be made for both the system of collective agreements and the legislation of remuneration.

In the working group's assessment, although the remuneration of judges is linked to judicial independence, no need to specify the Constitution is associated with such remuneration as far as judicial independence is concerned. In any case, it may be estimated that the regulation under section 98 of the Constitution proposed by the working group, regarding the organisation of the administration of the court system in a manner that safeguards the independence of the courts and judges, would also serve to safeguard the basis for the financial independence of judges.

[73] Report of the commission on development trends in the court system 2003:3, p. 79.
[74] Parliamentary Ombudsman decisions under reg.nos 1223/4/89 and 1595/2000

2.4.6 Proposals for the initiation of legislative action and statements on legislation

Under section 99, subsection 2, the highest courts may submit proposals to the Government for the initiation of legislative action. Pursuant to this provision, the highest courts may submit proposals in order to address deficiencies in legislation that they have observed in the context of their administration of justice (government proposal HE 1/1998, p. 157/II). For example, on 21 June 2023 the Supreme Court submitted a proposal for legislative action on supplementing the provisions concerning appeal to the Supreme Court, and this proposal subsequently resulted in the issuance of a government proposal (HE 152/2024, parliamentary reply EV 7/2025). On 19 May 2021, the Supreme Administrative Court submitted a proposal for legislative action on amending the provisions concerning the compositions in which certain administrative courts make decisions. On 7 November 2024, the Ministry of Justice appointed a working group to prepare a revision of the regulation of composition.

The proposals for the initiation of legislative action have concerned, in particular, the courts' own operations and in recent years they have been mainly procedural and technical in nature. The opportunity to submit proposals for the initiation of legislative action under section 99, subsection 2 of the Constitution is, by nature, mainly intended for situations such as these.

Under section 77, subsection 1, the President may obtain a statement on an act from the Supreme Court or the Supreme Administrative Court. The President has requested such a statement only once while the current Constitution has been in force (Supreme Court decision KKO 2001:79). The Committee for reviewing the Constitution examined this provision in its report (9/2010). It assessed that issues of principle could be seen in reconciling the duty to provide a statement at the stage of confirming an act and the exercise of judicial power and section 3 of the Constitution. The statement of the highest courts on an act passed by Parliament represents an exception from the principle of separation of powers. However, the Committee did not propose amendment of the said provision. [75]

Under section 10 of the Act on the Autonomy of Åland, the President of the Republic may, after having obtained an opinion from the Supreme Court, order an Act of Åland annulled in full or in part, if he considers that the Åland Parliament has exceeded its legislative powers or that the Act of Åland relates to the internal or external security of the State.

In its Opinion on the Constitution of Finland, the Venice Commission held with regard to the final sentence of section 99 of the Constitution that if the highest courts participate in the drafting of law, this may raise doubts as to their objective impartiality when they are called upon to interpret and apply that law in a case before them (Procola).[76] The same also applies to the duty of the highest courts laid down in section 77, subsection 1 of the Constitution.

The Committee for reviewing the Constitution in its conclusions assessed that several factors spoke in favour of removing or revising the procedure for approving bills, the key one being the fact that interference with the content of an act passed by Parliament or the order of its consideration at the approval stage is inconsistent with the status of Parliament under section 3, subsection 1 of the Constitution. The Committee proposed that the procedure be wholly eliminated. The Committee did not propose any amendment to the approval procedure in force for the purpose of monitoring compliance with the Act on the Autonomy of Åland. (9/2010 p. 123–124).

[75] Report 9/2010 of the Committee for reviewing the Constitution, p. 120–121.
[76] Venice Commission 2008, paras 109–110. [to be specified]

The highest courts' duty to provide statements or their opportunity to submit proposals for the initiation of legislative action laid down in the Constitution is not assessed to be subject to any amendment needs in terms of strengthening the independence of the judiciary.

2.4.7 Pardon as an institution

Under section 105 of the Constitution, the President of the Republic may, in individual cases and after obtaining a statement from the Supreme Court, grant full or partial pardon from a penalty or other criminal sanction imposed by a court of law. According to the preparatory documents of the Constitution, pardons 'do not involve the administration of justice per se but rather the ex post release from serving a sentence or commutation of sentence done on grounds other than legal ones'. The purpose of the pardon was described as 'creating essential flexibility in the legal order that proves excessively rigid in an individual case'. Prior to issuing a pardon, the President of the Republic must obtain a statement from the Supreme Court. However, the President is not bound by the Supreme Court's statement and may choose to pardon a person despite the Supreme Court's unfavourable statement or not a pardon a person despite the Supreme Court's favourable statement. Under section 58, subsection 3, paragraph 3 of the Constitution, the President decides on pardons on the presentation of the Minister of Justice and without consideration in a plenary meeting of the Government (government proposal HE 1/1998, p. 161).

Section 105 of the Constitution does not define the conditions for pardon and the pardon decisions of the President include no justification. During his two terms in office, President Niinistö pardoned 22 persons. Petitions for pardon are typically related to facts coming to light only after the offence and the judgment. Petitions may be based on factors including the serious illness of the offender, in which case service of the sentence imposed may be perceived not to serve the intended purpose, or social reasons, for which service of the sentence may have unexpected and unusual consequences on third parties, for example. Historically, pardons have also been issued for societal reasons, for example after Finland's civil war, when tens of thousands of persons convicted in 'treason courts' were pardoned in 1918–1927.

Pardons may only concern legally final judgments imposing a sentence that is yet to be served in full (Supreme Court Judgment KKO 1979 II 65). Imputation cannot be addressed by pardon; the pardon may only concern the sentence or another penal sanction imposed, such as seizure, prohibition on pursuing a business (KKO 2022:78) or removal from office (KKO 1979-II-65**)**. It has been consistently held that exercise of the right of pardon cannot take place in parallel with the exercise of judicial power and must instead follow it in terms of time.

A sentence may be withdrawn or commuted by a pardon. A pardon therefore does not eliminate the reproachment inherent in the judgment. No type of criminal offence or judgment of the High Court of Impeachment is excluded from the pardon procedure. Prior to the current Constitution, section 2, subsection 2 of the Act on the High Court of Impeachment stated that a judgment issued by the High Court of Impeachment could not be the subject of pardon other than on the motion of the Court itself. However, no equivalent exception from the right to pardon was included in the Constitution or the Act on the High Court of Impeachment and the System of Ministerial Responsibility. There are, nonetheless, certain exceptions to the pardon procedure concerning sentences imposed by international courts but served under Finland's jurisdiction.[77]

Most Western countries have some kind of institution of pardon in place. It is included in the constitutions of Sweden, Norway and Denmark, for example, but in these countries it is organised somewhat differently than in Finland, for example within the powers of the Government.

[77] See e.g. Constitutional Law Committee statement PeVL 22/2009.

The institution of pardon has been criticised in legal literature from the perspective of the doctrine of separation of powers. It is indeed susceptible to abuse, as experiences abroad have demonstrated. The institution may be considered to constitute a highly historic and even somewhat symbolic element of Finland's constitution. Changing or eliminating the right to pardon is, however, a question broader than judicial independence and it involves an examination of the evolution of presidential powers as well.

Section 105 of the Constitution may be approached by drawing attention to the fact that the need for an institution of pardon can, per se, be challenged to a certain extent. However, it may be stated that the provision does not appear to constitute a threat to judicial independence, as it may be used only to pardon persons from a sentence or penal sanction imposed by a legally final judgment. Pardons, therefore, do not constitute the exercise of or express interference with judicial powers. However, failure to enforce sentences or intervention in such enforcement may be considered a risk to the relevance and outcome of the courts' independent exercise of judicial powers. Ex post intervention in a sanction imposed by a court by a legally final judgment may give rise to suspicion that the courts' assessment in determining the extent of the sentence or the type of sanction is subject to external examination and intervention by the President. Such a thing is capable of challenging the separation of powers. Moreover, the parties concerned also have access to extraordinary requests for review. Pardons are more flexible than extraordinary requests for a review as an instrument both in terms of grounds and possible outcomes, however. In addition, extraordinary requests for review as a rule does not take into account factors coming to light subsequent to the judgment, while petitions for pardon are typically based on such factors. The European Court of Human rights has not considered a right of pardon based on broad discretionary powers to give rise to an issue under Article 14 of the European Convention on Human Rights, which lays down a prohibition of discrimination.[78]

In its Opinion on the Constitution of Finland, the Venice Commission held that the court that has imposed the sanction should be consulted in the pardon procedure, either instead of the Supreme Court or by the Supreme Court before it gives its opinion. The Supreme Court is already entitled to request a statement from the court that issued the judgment. A recurring question in the statements of the Supreme Court has been whether the sanction which the petition concerns is such in nature that pardon on the basis of the Constitution is possible in the first place. Review cannot be requested on these statements. For the uniformity of practice in the issuance of statements and questions of a precedent nature which the case may involve, it is justified for the statement to be issued by the Supreme Court.

The possibility has also been raised that presidential pardons would be conditional on the Supreme Court's favourable statement, which would promote ensuring the appropriate grounds for pardon, even though the President could even in these cases withhold pardon.

The working group has assessed that even though the right of pardon under section 105 of the Constitution has points of interface with judicial independence, it does not pose a threat to that independence. The President's right of pardon is a broader issue than safeguarding judicial independence.

2.4.8 Appointment of prosecutors other than Prosecutor General and Deputy Prosecutor General and termination of their public-service employment

Provisions on the appointment of prosecutors other than the Prosecutor General and the Deputy Prosecutor General are laid down in section 17, subsections 2–4 of the Act on the National Prosecution Authority. A State Prosecutor is appointed by the Government on the proposal of the Office of the Prosecutor General. A Chief District Prosecutor, a Senior Specialised Prosecutor and a District Prosecutor is

[78] Kafkaris v. Cyprus, 12.2.2008, 164.

appointed by the Office of the Prosecutor General. A Chief District Prosecutor is appointed for a fixed term of five years, unless there are special reasons for appointing him or her for a shorter term. A Junior Prosecutor is appointed to a fixed-term public-service position by the prosecution district.

The Public Officials Act (e.g. warning, termination of public-service employment relationship, legal remedies) applies to prosecutors, who are equated with other public officials. As per the recommendations of the Venice Commission, prosecutors are, as a rule, appointed to a permanent public-service position. During the parliamentary consideration of the Act on the National Prosecution Authority, the Constitutional Law Committee stated that there were clearly differences in the constitutional assessment of the independence of judges and prosecutors. However, the Committee emphasised that the permanence of the public-service employment relationships of prosecutors is significant with regard to sections 104 and 21 of the Constitution concerning prosecutors and protection under the law, respectively. The Constitutional Law Committee's assessment had to do with the chief district prosecutor's retention of previous office (statement PeVL 25/2018, p. 3–4). In its report on the same matter, the Legal Affairs Committee states, 'The Legal Affairs Committee attaches great importance to the independence of prosecutors and the significance of such independence in terms of matters such as protection under the law. Having assessed the contents of the proposal and the information obtained, the Committee nonetheless finds, in alignment with the views of the Constitutional Law Committee, that there are differences in assessing the independence of judges and of prosecutors. Due to the provisions of the Constitution alone, judges are in a different position when it comes to the right to remain in office. The appointment procedure for judges is exceptional within central government administration, and with good reason. The Constitution does not equate prosecutors with judges. Based on the foregoing, the Legal Affairs Committee also does not consider it justified to equate prosecutors with judges such that the office of chief district prosecutor would be governed by provisions on the retention of previous office in a manner equivalent to that in the Courts Act.' (Legal Affairs Committee report LaVM 5/2018, p. 6).

The Office of the Prosecutor General appoints a significant number of prosecutors: its remit covers the appointment of the entire body of district prosecutors, roughly 400 strong, as well as the issuance of assignments to management and special duties in the National Prosecution Authority and the submission of proposals to the Government on the appointment of state prosecutors. The Prosecutor General decides administrative matters concerning the entire National Prosecution Authority, unless otherwise provided or ordered. The Prosecutor General may also reserve himself or herself the right to decide a matter that another public official of the Office of the Prosecutor General would otherwise have the right to decide (Act on the National Prosecution Authority, section 19). The government proposal on the Act on the National Prosecution Authority justified the Prosecutor General's broad powers of appointment by stating that since the Prosecutor General was responsible for the operations of the entire National Prosecution Authority, they should have the right to appoint its personnel.[79]

The Venice Commission has stated that no specific requirements apply to the procedure for appointing prosecutors and there are several different models for this in the various European countries. Nonetheless, the Commission finds that in view of the special qualities required for prosecutors, it seems inadvisable to leave the process of their appointment entirely to the prosecutorial hierarchy itself and it would be better to rely on a body of experts, for example. The Commission is of the opinion that prosecutors should be appointed until retirement. Appointments for limited periods with the possibility of re-appointment bear the risk that the prosecutor will make his or her decisions not on the basis of the law but with the idea to please those who will re-appoint him or her.[80] The Commission further holds that prosecutors should not benefit from a general immunity, which could even lead to corruption, but from functional immunity for

[79] Government proposal HE 131/1996, p. 43.
[80] Venice Commission, Report on the Prosecution Service 2010, paras 48–50.

actions carried out in good faith in pursuance of their duties.[81] The Commission holds that the independence of judges shall not be equated with that of prosecutors and that key issues concerning prosecutors include independence from external influence and internal guidance in individual cases.[82]

The basic premise emerging from the Constitution, too, is that the independence of judges shall not be equated with that of prosecutors, as stated above. Taking into account the aforementioned recent and clear positions of the Constitutional Law Committee and the Legal Affairs Committee on the matter as well as the consistent statements of the Venice Commission, the regulation of the right to remain in office of prosecutors other than the Prosecutor General and the Deputy Prosecutor General has not been found to be subject to any constitutional amendment needs. The legislation on public officials in central government has previously been judged to be sufficient with regard to the standing of prosecutors. However, the requirement that prosecutors should, as a rule, be appointed to a permanent positions, merits emphasis. The proposed requirement of the National Prosecution Authority's independence to be added to section 104 of the Constitution would also strengthen the rule of prosecutors' permanent positions. However, it is justified to keep the specific right to remain in office and appointment procedure laid down in the Constitution applicable only to judges due to the different duties of prosecutors and judges. The Venice Commission has also cautioned that the principle of independence can lead to the creation of an all-powerful prosecutor's office if given a broad scope of authority and exemption from all supervision.[83]

The Venice Commission has preferred an appointment procedure that is not wholly internal to the prosecution service. At present, a significant share of all prosecutors is appointed by the Office of the Prosecutor General. From this perspective as well, it may be considered justified that the Prosecutor General, Deputy Prosecutor General and the state prosecutors continue to be appointed by a party external to the National Prosecution Authority.

Under section 17, subsection 2 of the Act on the National Prosecution Authority, State Prosecutors are appointed by the Government on the proposal of the Office of the Prosecutor General. The government proposals on the current Act (HE 17/2018) or the repealed Act on the Prosecution Service (HE 286/2010) contain no rationale for this particular provision. The preparatory documents of the Act on Public Prosecutors justifies the power of appointment as follows: 'Under subsection 2, state prosecutors would be appointed by the Government on the proposal of the Prosecutor General, which would be relevant to the standing and independence of state prosecutors'.[84]However, the current Act on the National Prosecution Authority no longer provides for the duties of state prosecutors and instead, under its section 13, State Prosecutors serve at the Office of the Prosecutor General and prosecute cases assigned to them. In the proposal, the change was justified by stating that 'The competence of the state prosecutor would no longer be tied only to the criminal cases of the greatest significance to society. Such cases have been difficult to define. Going forward, the state prosecutors would prosecute the cases assigned to them.'[85]

The power to appoint state prosecutors was originally assigned to the plenary session of the Government because the state prosecutor was tasked with 'primarily attending to the prosecution of criminal cases of the greatest significance to society. The state prosecutor shall also prosecute the cases where the decision to bring charges is made by Parliament, the Ministry of Justice, the Chancellor of Justice or the Parliamentary Ombudsman. The state prosecutor prosecutes cases which are heard by a court of appeal as

[81] Venice Commission, Report on the Prosecution Service 2010, para 61.
[82] Venice Commission, Report on the Prosecution Service 2010, paras 28, 30–31, 53 and 86.
[83] CDL-AD/2004)038 opinion on the draft law amending the law of Ukraine on the office of the public prosecutor, para 23.
[84] Government proposal HE 131/1996, p. 43
[85] Government proposal HE 17/2018, p. 26–27.

the court of first instance unless otherwise provided or ordered.'[86] The prosecutorial duties of state prosecutors are currently determined on the basis of the rules of procedure of the National Prosecution Authority and the orders of the Prosecutor General. These include the most demanding criminal cases among those mentioned in the original assignment of power to appoint, in addition to which state prosecutors prosecute other major criminal cases assigned to them by the Prosecutor General that are to be dealt with or have been taken up for consideration by the Office of the Prosecutor General. The duties and constitutional standing of state prosecutors may be assessed to differ from the duties of the Prosecutor General and the Deputy Prosecutor General to such an extent that the power to appoint (held by the Government or the President) is not likely to be subject to any amendment needs from the constitutional perspective.

It has been held in the foregoing that it would be warranted to lay down specific provisions at the level of the Constitution to govern the dismissal of the Prosecutor General and the Deputy Prosecutor General. This is partly justified by stating that strengthening their right to remain in office would strengthen the independence of the entire prosecution service. Since under section 29, subsection 1 of the Public Officials Decree, unless otherwise provided in an act or decree, public officials are dismissed or their employment contract cancelled by the authority who appointed them, pursuant to section 25 or 26 of the Public Officials Act, as things now stand, the Prosecutor General decides on the dismissal of the prosecutors mentioned in section 17, subsection 3 of the Act on the National Prosecution Authority. Prosecutors are not covered by the same right to remain in office provided for judges under section 103 of the Constitution. Instead, the dismissal of prosecutors is governed by chapter 7 of the Public Officials Act. Under section 25, subsection 2 of that Act, an authority may not terminate a public-service employment relationship for a reason attributable to the public official unless that reason is particularly compelling. The said provision mentions reasons which are definitely not considered to be particularly compelling. Under section 33 of the Act, the public-service employment relationship of public officials may be cancelled with immediate effect when the official is in gross breach or negligence of their official duties.

Taking into account, on the one hand, the difference in the independence of judges and prosecutors and, on the other, the proposal to strengthen the right of the Prosecutor General to remain in office, the dismissal of other prosecutors is not subject to any constitutional amendment needs.

2.4.9 Special courts

The Constitution allows special courts of law to be established by an act in specifically defined fields (section 98, subsection 3). The current special courts are the Market Court, the Labour Court and the Insurance Court. The High Court of Impeachment, on which separate provisions are laid down in section 101 of the Constitution, may also be considered a special court. The same applies to military courts, which may be established in areas where martial law has been declared to hear criminal cases instead of general courts of first instance when this is necessary for the appropriate organisation of the administration of justice. While section 98, subsection 4 prohibits the establishment of provisional courts, the Constitution does not bar the establishment of *permanent* special courts. The provision prohibiting provisional courts means that separate courts cannot be established to hear individual cases, nor may the competence of courts in terms of region, instance or substance determined under general law be derogated from in individual cases. Section 21, subsection 1 of the Constitution also precludes the establishment of provisional courts (government proposal HE 1/1998, p. 156).

The establishment of special courts has been justified by a need to centralise certain cases to courts specialised in them and holding the necessary specialised expertise required to decide the cases. On the

[86] Act on Public Prosecutors (199/1997), section 7.

other hand, they decentralise the court organisation, which may be problematic for those using court services. Special courts with their expert and interest-representing members have also been held to be problematic with regard to the independence and impartiality of courts.[87] European history moreover includes troubling examples of permanent special courts established to consider political crimes and used to undermine judicial independence and the realisation of legal security. It may be assessed that the formulation of section 98, subsection 3 of the Constitution provides latitude as to the manner in which the exercise of judicial powers is arranged in specifically defined fields. Due to the independence of the judiciary, the establishment of new special courts should indeed be approached with reservation.

Taking into account the risks to judicial independence and the realisation of protection under the law entailed in the establishment of new special courts, the working group examined the option of limiting the establishment of permanent special courts to be governed at the level of the Constitution. One option would be to name the current special courts in section 98, subsection 3 and remove from the provision any mention of provisions on special courts being laid down by an act. This amendment together with section 98, subsection 4 and section 21, subsection 1 precluding the establishment of provisional courts would impose restraints on the establishment of new special courts by requiring that the provisions regarding these are to be laid down in the Constitution. Attention was paid in the assessment to striking a balance between the permanence of the court system and adaptation to a changing society. The assessment was carried out against a historical backdrop of reducing the number of special courts by assigning matters for consideration by the general courts, in addition to which the commission on development trends in the court system has considered it necessary to examine if the Insurance Court and the matters considered by it might be integrated into the courts hearing a more general range of matters. On the other hand, as the spheres of life and justice become splintered into ever more narrow sectors calling for specialised expertise, the requisite expertise must be acquired, and this is the need met by the special courts for their part. The commission on development trends in the court system has considered the preferred response to be that the necessary expertise be acquired for the general courts of law and administrative law through enhancement of the judges' expertise or the consultation of experts.[88] The working group found that both current regulation and the option of laying down provisions on special courts at the level of the Constitution entailed potential challenges and that the issue therefore required further assessment.

2.4.10 Expert and lay members

Besides permanent (tenured) and fixed-term judges, courts may also have other members who exercise judicial powers. Under the Courts Act, these members comprise lay judges, military members and the expert members of the various courts, as well as other part-time members and the deputy members of the Åland Administrative Court. From the perspective of independence, potential threats may be associated with influence through the expert members and the related representation of interests.[89] The composition of the court may also be influenced by changing the number of expert and lay members as well as legally trained judges.

According to the relevant government proposal (HE 7/2016, p. 52), expert members refers to court members who take part in deciding cases in the courts in the capacity of experts or representatives of a given party. In general courts, an expert composition differing from the regular court composition is rarely seen and in practice, even then only in cases of military law. Experts may also be utilised in general courts for specific groups of cases, on which provisions are separately laid down in substantive law (e.g. Copyright Act, section 61b). In the administrative courts, expert members take part in the consideration of cases in

[87] Report of the commission on development trends in the court system 2003:3, p. 383.
[88] Report of the commission on development trends in the court system 2003:3, p. 32, 383, 387.
[89] Report of the commission on development trends in the court system 2003:3, p. 32, 383, 387.

matters involving child protective services, involuntary care under the Mental Health Act and matters referred to in the Communicable Diseases Act. The expert members of the highest courts are discussed in section 2.1.5.3.

Special court compositions also comprising expert members are typical of the special courts. The Labour Court consists of the president and a labour court judge plus fourteen expert members. Two of the expert members shall be legally trained and shall not represent the interests of employers or employees. Of the other expert members, eight shall have expertise in employment relationships and four in public-service employment relationships. Provisions on the quorate composition are laid down in the Act on the Labour Court and expert members representing various interests may make up the majority in the court composition.

In the Market Court, market court judges and technically qualified judges of the Market Court may be joined in hearing and deciding cases by expert members with expertise in competition or oversight matters, procurement matters, intellectual property rights matters or market law matters. Under the Market Court Proceedings Act, a quorate court composition may include no more than two expert members and expert members may not make up the majority of the composition. The Insurance Court comprises not only the insurance court judges but also the chief physician and other physician members, expert members with expertise in working conditions or business, and expert members with expertise in military injuries. The Act on Proceedings in the Insurance Court provides for quorum in such a way that the possible expert members do not make up the majority of the court's composition. The number of expert members in the Market Court and Insurance Court is not fixed; instead, a sufficient number of expert members shall be designated. A sufficient number of deputy members may also be designated for the expert members of all the special courts.

Expert members are not governed at the level of the Constitution; rather, provisions on their appointment, term and share of court composition are laid down by an ordinary act. The number of expert members in the composition of the court could thus be changed by amending an ordinary act. This could pose a threat to independence if an attempt was made to influence the composition of the court by means such as increasing the number of expert members, for example. The working group considered the possibility of recording in the Constitution the requirement that judges make up the majority of the composition of courts. Such an entry in the Constitution might prevent the exertion of influence on the composition of the court though court members who are not judges. The requirement that judges make up the majority of the court composition would warrant further examination with regard to matters such as defining the concepts of judge and majority of judges. Defining a court composition in which judges make up the majority is not straightforward, for example because, according to the relevant government proposal (HE 7/2016), expert members and other part-time members of the court are also considered judges. In their exercise of judicial powers, expert members and lay judges are independent in the same way as judges (HE 7/2016). On the other hand, the roles of non-legally trained members vary in the courts. Besides part-time expert members, some special courts also have permanent members who are not legally trained. One such example are the technically qualified judges of the Market Court. The requirement of majority of judges would, in practice, entail a considerable change from the status quo, taking into account the compositions of district courts with lay judges and military members and the regulation of the composition of the Labour Court.

While the Constitutional Law Committee has not held the interest-based composition of a given decision-making body to be problematic per se with regard to the independence required under section 21, subsection 1 of the Constitution (Constitutional Law Committee statements PeVL 35/2001, PeVL 22/1997), it has consistently held that interest-based members being in the majority in the body is not compatible with the requirement of independence (PeVL 22/2005, PeVL 25/2004, PeVL 55/2002). (PeVL 14/2016 p. 7–8, see also PeVL 34/2006 and PeVL 37/1997). The Constitutional Law Committee has also held that as far as

the concept of 'independence' is concerned, there is no barrier to making a decision-making body partly interest-based, 'in the case of the Labour Court, for example, with persons put forward by the social partners, as long as there can be confidence in the impartiality of the decision-maker in all individual cases' (government proposal HE 309/1993, p. 74/I). (Constitutional Law Committee statement PeVL 35/2001).

The European Court of Human Rights has adopted a fairly positive view of using interest-based or expert members of courts (Kellermann v. Sweden, 26.10.200; Le Compte, Van Leuven and De Meyer v. Belgium, 23.6.1981), even though in individual disputes, such members may compromise the independence or impartiality of the court and hence the realisation of Article 6 of the European Convention on Human Rights due to the parties they represent (Langborger v. Sweden [plen.], 22.6.1989, 34–45).

Lay judges are used in hearing criminal and land law cases in the district courts. When taking part in the adjudication of cases, lay judges are members of the court and subject to the same accountability as judges, yet the position is at heart a governmental position of trust. A key social justification for the use of lay judges has been that they represent the people's sense of justice, oversee the administration of justice in the district courts and ensure the public nature of proceedings. Generally speaking, lay judges have the same standing on courts as expert members (government proposal HE 7/2016, p. 129). Lay judges are not regulated at the level of the Constitution and their use may be expanded by amending an ordinary act. As is the case with expert members, the use of lay judges to influence the composition of the court could therefore pose a threat from the viewpoint of external judicial independence. The system of lay judges has also been criticised for reasons including the fact that the political parties play a key role in the appointment of lay judges.[90] In its Rule of Law Report, the European Commission recommended that Finland reform its system of appointment of lay judges. [91]

In the working group's assessment, any threats related to the representation of interests and influence on the composition do not, however, justify a need to record in the Constitution the requirement for judges to hold a majority, when the grounds for and extent of the use of expert and lay members – and in particular the diversity of the duties of expert members of courts – are taken into account. The discussions of the working group also touched upon the possibility of abolishing the system of lay judges and its impact on the external independence of the judiciary.

2.4.11 High Court of Impeachment

2.4.11.1 Composition and quorum of the High Court of Impeachment

Under section 101 of the Constitution, the 'High Court of Impeachment deals with charges brought against a member of the Government, the Chancellor of Justice, the Parliamentary Ombudsman or a member of the Supreme Court or the Supreme Administrative Court for unlawful conduct in office'. The High Court of Impeachment also deals with the charges referred to in section 113, i.e. charges brought against the President of the Republic. The High Court of Impeachment also hears criminal charges brought against a Judge of the Court of Justice of the European Union[92].

The High Court of Impeachment is a special court separate from the Supreme Court and Supreme Administrative Court that hears charges of offences in office brought against the highest political leaders, the Justices of the courts of highest instance and the supreme overseers of legality. Its competence is not subordinate to the competence of either the Supreme Court or the Supreme Administrative Court. A

[90] Deputy Ombudsman's statement 20.3.2023 (reg.no. 1609/2023), p. 3.
[91] SWD(2025) 926 final, 2025 Rule of Law Report Country Chapter on the rule of law situation in Finland
[92] Under Article 3 of the Statute of the Court of Justice of the European Union, where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

judgment issued by the High Court of Impeachment can only be reversed or set aside by the Court itself (Act on the Hight Court of Impeachment and Handling of Ministerial Responsibility Issues, section 17). Since its creation in 1922, the High Court of Impeachment has only been convened on four occasions, most recently in 1993 (see also government proposal HE 1/1998, p. 55). All four cases concerned offences in office allegedly committed by ministers.

Under section 101, subsection 1, the High Court of Impeachment consists of the President of the Supreme Court, presiding, and the President of the Supreme Administrative Court, the three most senior-ranking Presidents of the Courts of Appeal and five members elected by the Parliament for a term of four years 'While serving as judges, all members of the High Court of Impeachment would be independent and subject to the specific right to remain in office laid down in section 103.' (government proposal HE 1/1998, p. 158). Under the law proviso in section 101, subsection 3 of the Constitution, 'More detailed provisions on the composition, quorum and procedure of the Court of Impeachment are laid down by an Act.' 'The specific nature of the cases considered, especially when they involve charges against ministers,' is the rationale used to justify the composition (government proposal HE 1/1998, p. 158). The intention was to retain a balance in the composition of the Court between professional judges and members elected by Parliament (HE 1/1998, p. 158). At present, four of the five members of the Court elected by Parliament are serving Members of Parliament and the composition of the Court in the term 2024–2027 reflects the political balance of power in Parliament.

The High Court of Impeachment membership of judge members is tied to their judicial office. No other qualifications or restrictions apply to the five Court members elected by Parliament except for the age of mandatory resignation (67).

The Act on the High Court of Impeachment and Handling of Ministerial Responsibility Issues (196/2000) governs topics such as quorum in the High Court of Impeachment (section 8), choice of presiding judge and the order of substitution of members (section 7) and the retirement age of members (section 6). The Act also covers the handling of ministerial responsibility issues in Parliament, proceedings in the High Court of Impeachment and requests for review. Unless otherwise provided in the Act on the High Court of Impeachment and Handling of Ministerial Responsibility Issues, the provisions of the Criminal Procedure Act and the Code of Judicial Procedure observed in criminal cases where the charges were brought by the prosecutor shall apply, mutatis mutandis, to proceedings in the High Court of Impeachment (section 11). The foregoing applies, for example, to chapter 13 of the Code of Judicial Procedure concerning the disqualification of judges, which nonetheless fails to cater for a situation where a Member of Parliament is first involved in bringing the charges and then hearing the case in the role of judge.

The High Court of Impeachment constitutes a quorum when eight members are present. At least four of the members taking part in hearing a case shall have been elected by Parliament and four shall be members of the High Court of Impeachment ex officio. Due to the formulation of section 101 of the Constitution, it is possible that, by amending an ordinary act, the quorum of the High Court of Impeachment could be changed, for members elected by Parliament to make up the majority of the membership, for example. In its Opinion on the Constitution of Finland, the Venice Commission recommends fixing the required quorum in the provision of section 101 of the Constitution instead of delegating this issue to the legislature.[93]

The duties of the High Court of Impeachment in hearing charges of offences in office against the highest public officials are vital to the functioning of the rule of law. Such duties may be judged to require strong guarantees of independence and impartiality. Judgments handed down by the High Court of Impeachment may not be appealed (Act on the High Court of Impeachment and Handling Ministerial Responsibility Issues, section 16). The legislation concerning the High Court of Impeachment may be seen to present certain

[93] Venice Commission's Opinion on the Constitution of Finland, 2008, para 111.

challenges with regard to judicial independence and the said Court has not been examined vis-à-vis EU law or international human rights treaties (Article 6 ECHR in particular). Member States are obliged to guarantee judicial independence for all courts that may apply EU law (TEU Art. 19(1)). Member States shall see to the separation of powers in a way that ensures the independence of the judiciary in relation to the legislature and the executive[94]. The activities of the courts must be organised in such a manner that they are immune from external pressure that could impact court members' decisions in administering justice.[95]

The High Court of Impeachment is very seldom convened and it is actually launched and organised only after charges have been brought. The quorum of the Court is governed only by an ordinary act. In a departure from ordinary appointment procedure, the members of the High Court of Impeachment are elected by Parliament. Except for age, no specific qualifications are required of members and there is no impediment to simultaneous service on the High Court of Impeachment and as a Member of Parliament, for example (cf. Constitution, section 27, subsection 3). In addition, in cases of ministerial responsibility issues as well as in respect of charges against the supreme overseers of legality and the President of the Republic, assessing whether charges may be brought is the duty of Parliament. Current legislation and its preparatory documents also fail to provide clarity on the question of defining cases of offences in office in respect of members of High Court of Impeachment judges who are not holders of judicial office as well as the procedure for hearing such cases. It may be assessed that section 118 of the Constitution on the accountability of public officials for the lawfulness of their official actions also applies to members of the High Court of Impeachment – unlike to the members of the courts of highest instance – yet earlier examination has left the procedure and the forum unclear.

In its report on the proposal concerning national regulation of the Regulation on the European Public Prosecutor's Office, the Constitutional Law Committee states, 'In the view of the Committee, the Government should examine more broadly whether the provisions on proceedings in the High Court of Impeachment are up to date, taking into account the EU-linked legislation now under assessment, for example.'[96] In 1994, the report of a working group on ministerial responsibility proposed abolition of the High Court of Impeachment. The matter was disregarded in the constitutional reform, in which the competence of the High Court of Impeachment was extended to cover also charges against the President of the Republic and the Parliamentary Ombudsman and Deputy Ombudsman.[97] The working group on ministerial responsibility noted, 'The historical justification for retaining the High Court of Impeachment has grown less relevant. The Supreme Court has become established as the independent general court of highest instance and there is no such lack of confidence in its impartiality and capacity to function as may have been felt towards the judiciary in the early part of the century.'[98] The working group moreover emphasised that while it is not essential for Parliament to retain its influence over the composition of the

[94] C-896/19, Repubblika v. Il-Prim Ministru, ECLI:EU:C:2021:311, para 54

[95] See e.g. joined cases C-585/18, C-624/18 and C-625/18, A. K. et al. (Independence of the Disciplinary Chamber of the Supreme Court), ECLI:EU:C:2019:982, para 121, and case C-896/19, Repubblika v Il-Prim Ministru, ECLI:EU:C:2021:311, para 54.

[96] Constitutional Law Committee report PeVL 39/2020, p. 7

[97] Unlike in Finland, in Norway, Denmark and Iceland, for example, where the composition of the court of impeachment is equivalent with that adopted in Finland, the said Court can only hear cases of ministerial responsibility.

[98] Ministerivastuujärjestelmän kehittäminen, työryhmän mietintö [Development of the system of ministerial responsibility, working group report] Publication 1/1994 of the Law Drafting Department of the Ministry of Justice, p. 77. The report also describes how the process of establishing the High Court of Impeachment was contemporaneous with establishment of the courts of highest instance, at which time not all Members of Parliament had undivided confidence in the judiciary. Finland's lack of an independent supreme court before 1918 may have been a further contributing factor. Before 1918, the judicial division of the Senate had the highest general jurisdiction. p. 76

court hearing cases of ministerial responsibility, it should be noted that the requirement of independence also applies to the High Court of Impeachment.[99]

The issues relating to the possible abolition of the High Court of Impeachment and the hearing of cases of ministerial responsibility are broader in terms of principle and outside the mandate of this working group, which is tasked with assessing the constitutional independence of the judiciary. Topics such as examination of the hearing of cases of ministerial responsibility is thus not within the working group's purview. (In Sweden, the 'riksrätt' impeachment court was abolished in the 1970s and any cases of offences in office against members of the courts of highest instance are heard by the Supreme Court.)

The composition of the High Court of Impeachment has been justified with the special nature of the court and the need for political expertise. However, that justification is difficult to reconcile with the hearing of cases of offences in office against the members of the courts of highest instance and is, instead, capable of calling into question the independence and impartiality of the Court as well the independence of the courts of highest instance. Calling into question the independence of the courts of highest instance, only recently established at the time, was once also given as a justification for the High Court of Impeachment and its composition.

Even though no European norm or standard prevents the parliament from appointing the justices to the supreme court, and parliamentary involvement provides the supreme court with democratic legitimacy, the Venice Commission has been wary of the dangers of politicisation when the final deciding power in judicial appointments is given to a political body whose involvement is more than a formality. The Venice Commission has considered the combination of legislative and judicial power in one and the same person to be problematic, as it may create doubt as to the objective impartiality of the judge concerned.

Under section 27, subsection 3 of the Constitution, the Justices of the Supreme Court and the Supreme Administrative Court cannot serve as Members of Parliament. A Member of Parliament appointed to a court of highest instance ceases to be a Member of Parliament as of the date of appointment. The justification for this provision is given as the requirement of independence. The provision also seems to be in tension with section 3 of the Constitution if, like until now, Parliament were to elect its serving Members to the High Court of Impeachment.

Cases in the High Court of Impeachment are prosecuted by the Prosecutor-General. However, cases against a member of the Supreme Court or the Supreme Administrative Court may be prosecuted by the Chancellor of Justice or the Parliamentary Ombudsman (Act on the High Court of Impeachment and Ministerial Responsibility Issues, section 10). The decision on bringing charges of unlawful conduct in office against a judge is made by the Chancellor of Justice or the Parliamentary Ombudsman. The decision on bringing charges against ministers, the supreme overseers of legality and the President of the Republic in the High Court of Impeachment is made by Parliament.

2.4.11.2 Assessment of amendment needs

The legislation concerning the High Court of Impeachment has been seen to present challenges with regard to judicial independence, as detailed in the preceding section, in particular in relation to the role of serving Members of Parliament as members of the High Court of Impeachment. The working group assessed the legislation concerning the High Court of Impeachment within the confines of its mandate, i.e. from the viewpoint of the constitutional independence of the judiciary. The mandate given to the working group was also the basis for its examination of any possible needs to amend the provision in the current Constitution. However, it would be appropriate to conduct a more specific examination of amendment needs relating to

[99] Ministry of Justice publication OM 1/1994, p. 78.

the High Court of Impeachment as a part of a wider overall review of the role of the Court, which is a question extending beyond this working group's mandate. Therefore, the working group does not propose amendment of the current wording of the section and instead considers it appropriate that the challenges noted in respect of judicial independence be assessed in the context of a broader review of the High Court of Impeachment.

As a part of its assessment of possible amendment needs, the working group assessed the rationale for excluding the hearing of charges of offences in office against members of the courts of highest instance from the competence of the High Court of Impeachment. The amendment could be accomplished by removing from subsection 1 of the section the mention of member of the Supreme Court and the Supreme Administrative Court, thus removing from the High Court of Impeachment the competence to hear charges against members of these courts. This amendment would also align the forum in which members of the Court of Justice of the European Union may be charged with that of the members of Finland's courts of highest instance, as under Article 3 of the Statute of the Court of Justice of the European Union, where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

The hearing of charges of offences in office against members of the Supreme Court and the Supreme Administrative Court cannot be deemed to require the specialised expertise required to hear charges against ministers. This would further support the view that charges of offences in office against members of the courts of highest instance should no longer fall within the competence of the High Court of Impeachment, which would underscore and reinforce the independence of these courts and their members from both executive powers and jurisdictional powers. In its report, the working group on developing the system of ministerial responsibility held that going forward, charges brought against members of the Supreme Court could be heard in the Supreme Court (Ministerivastuujärjestelmän kehittäminen [Development of the system of ministerial responsibility]. Working group report OM 1/1994, Ministry of Justice).

Removing the hearing of charges of offences in office against members of the courts of highest instance from the competence of the High Court of Impeachment would align with the system adopted in Sweden in respect of such charges. In its constitutional reform of 1974, Sweden abolished its 'riksrätt' court of impeachment. Under chapter 11, section 8 of Sweden's Instrument of Government, 'legal proceedings regarding a criminal act committed in the performance of an appointment as a member of the Supreme Court or the Supreme Administrative Court are instituted in the Supreme Court.' The fundamental doubts raised by abolition of the 'riksrätt' court were rebutted by making reference to the fact that the Supreme Court was traditionally already required to hear cases concerning its own decisions (applications for reversal and cases in which damages were claimed from the state on the basis of an error made by the Supreme Court). The change was justified with the independence of the judiciary as well as the fact that the role of the Supreme Court as the court of highest instance in the judiciary would not be blurred when it heard any eventual charges of offences in office. A further reason given for the decision was that the Supreme Court was able to maintain impartiality and ensure that no appearance of political influence or abuse of power was seen in the legal system, whereas the hierarchy of the judiciary would be undermined if cases of offences in office were assigned to the courts of appeal, for example.

Chapter 22, section 1 of the Courts Act contains the provisions on the forum for hearing cases of offences in office against judges. The provision on the forum where cases of offences in office are to be heard is formulated in such a way that the case against an accused person shall not be heard by the court where that person is employed in a public-service relationship. Removing the hearing of charges of offences in office against members of the courts of highest instance from the competence of the High Court of Impeachment would mean a departure from this fundamental premise.

Removing the hearing of charges of offences in office against members of the courts of highest instance from the competence of the High Court of Impeachment would mean that the Supreme Court would be required to hear a case of offences in office against one of its own Justices. This might pose challenges in obtaining a qualified court composition, taking into account the amendments proposed to section 100 concerning the maximum number of members of the Supreme Courts. However, with regard to judicial independence, there are troublesome issues, as described in the foregoing, associated with the High Court of Impeachment hearing charges of offences in office against the members of the courts of highest instance. It would be possible to employ a similar rationale as in Sweden to justify assigning cases of offences in office against judges of the courts of highest instance to the competence of the Supreme Court instead of the High Court of Impeachment. Even now, the Supreme Court is required to consider any extraordinary request for review concerning a judgment of the High Court of Impeachment.

If the hearing of charges of offences in office against members of the courts of highest instance were removed from the competence of the High Court of Impeachment, that Court would continue to hear charges of unlawful conduct in office brought against a member of the Government, the Chancellor of Justice or the Parliamentary Ombudsman. The High Court of Impeachment also deals with the charges referred to in section 113, i.e. charges brought against the President of the Republic.

If the Supreme Court were made, by law, the forum for hearing charges of offences in office against members of the courts of highest instance, this might result in an increase in the number of cases of offences in office against members of a court of highest instance in which the power to bring charges resides with the injured party on the basis of section 118, subsection 3 of the Constitution, unless changes were proposed to the power to bring charges.

In its examination of a request for review of a decision concerning the issuance of a caution to a judge, the Constitutional Law Committee considered it to be appropriate that a pathway of legal safeguards be made available within the judiciary. The Committee noted that the relevant legislation would nonetheless lead to a situation where administrative courts might decide, in judicial review, on appeals against administrative decisions issued by the chief judge of the same administrative court in matters relating to colleague judges in cases of public service law. The Committee emphasised the importance of the assignment of a qualified judge to ensure the qualification of the court's composition (Constitutional Law Committee report PeVL 39/2022, para 7, and Courts Act, chapter 14, section 1). Assigning cases of offences in office against members of the Supreme Court to that Court instead of the High Court of Impeachment along with the proposed regulation concerning the number of Supreme Court Justices could lead to a situation where a qualified court composition could not be achieved. In addition, in terms of judicial independence, it is not only relevant that the court is independent; the court must also be seen to be independent. The viewpoints presented are in favour of keeping the forum for hearing cases of offences in office against the members of the courts of highest instance unchanged.

The working group also discussed an alternative where the composition of the High Court of Impeachment would be determined according to the nature of the case to be heard so that in cases involving charges against members of the Supreme Courts, the High Court of Impeachment should consist solely of judges who are holders of judicial office while in other cases, the composition would remain the same as under current legislation. However, it was pointed out that case-by-case regulation concerning court composition is not characteristic of the manner in which the Constitution is formulated.

The working group examined the possibility of clarifying subsection 2 of the section with a provision that underscores the separation of powers under section 3 of the Constitution and reinforces the independence of the judiciary so that Members of the Finnish or European Parliament, members of the Government and the President of the Republic would be barred from membership of the High Court of Impeachment. A

provision of this kind would emphasise the rule of law and more clearly separate judicial powers from the exercise of legislative and governmental powers to their respective quarters in the manner required under section 3 of the Constitution while still retaining the status and competence of the High Court of Impeachment. A provision of this kind would also be consistent with section 27, subsection 3 of the Constitution, under which serving as a Member of Parliament is incompatible with membership in a court of highest instance. The provision would also mean that if a member appointed by Parliament were subsequently elected to Parliament or as President of the Republic, or appointed as a member of the Government, that member would have to be replaced on the High Court of Impeachment.

Appropriate parliamentary expertise in the High Court of Impeachment when hearing charges of offences in office against senior political leadership could continue to be ensured even though the membership of the Court no longer included serving Members of Parliament. The change would also resolve the tensions with regard to the independence of the proceedings that would arise when a serving Member of Parliament could first take part in deciding in Parliament to bring charges against the President of the Republic or a member of the Government in proceedings under section 113 or 114 of the Constitution and then subsequently hear the same charges as a member of the High Court of Impeachment. This consideration would favour a provision barring members of the Finnish Parliament, members of the Government and the President of the Republic from membership on the High Court of Impeachment.

The legislation in respect of Members of Parliament would align with the regulatory approach adopted in Norway and Denmark, barring the members of the court of impeachment elected by the parliament to serve as members of parliament during impeachment proceedings. In Norway, members of the Government are also barred from serving on the court of impeachment. In Norway and Denmark, charges brought against members of the supreme court are heard by a court of impeachment consisting in part of judges holding judicial office and in part judges elected by the parliament.

An option that was also examined was to incorporate into subsection 3 of the section a basic provision governing the quorum of the High Court of Impeachment, for example such that the Court constitutes a quorum with eight members and that at least four of the members taking part in hearing the case shall have been elected by Parliament and four shall be members of the High Court of Impeachment ex officio. Due to the current formulation of section 101 of the Constitution, it is possible that, by amending an ordinary act, the quorum of the High Court of Impeachment could be changed, for members elected by Parliament or judges holding judicial office to make up the majority of the membership, for example. The quorum provision could safeguard the fundamental right to protection under the law laid down in section 21 of the Constitution as well as the requirement of judicial independence enshrined in section 3, subsection 3 of the Constitution. Safeguarding the relevance and independence of the High Court of Impeachment's duties would favour incorporation of the provisions on the quorum of that Court in the Constitution, taking into account the specific import of the cases heard by the High Court of Impeachment and its judicial power over the highest governmental bodies and offices as well as the significant representation on the Court of persons other than ones holding judicial office. In its Opinion on the Constitution of Finland, the Venice Commission also recommends fixing section 101 of the Constitution by incorporating into it the provisions on quorum instead of delegating this issue to the legislature.

Such a provision on quorum would correspond to the provisions laid down in section 8 of the Act on the High Court of Impeachment and Handling of Ministerial Responsibility Issues (196/2000) and the principle of balance adopted at the time (government proposal HE 185/1999, p. 20). Under such a provision, the High Court of Impeachment would constitute a quorum when either four or five members elected by Parliament as well as four or five judges holding judicial office take part in the hearing of a case.

The alternative means discussed above to reinforce the independence of the hearing of charges of offences in office against members of the courts of highest instance as well as the independence of the High Court of Impeachment should be examined also in the context of any eventual comprehensive review of the High Court of Impeachment.

3 PROVISION-SPECIFIC RATIONALE

Section 21. *Protection under the law.* The concept 'other authority' in the first sentence of the section's subsection 1 would be changed to read 'authority'. The change would clarify the separation of powers enshrined in section 3 of the Constitution by drawing a clearer conceptual distinction in the provision between judicial and executive powers through the removal from subsection 1 of wording drawing a parallel between courts of law and authorities exercising executive powers. The current provision equates governmental administration and the administration of justice in a way that allows them to be perceived as part and parcel of the same official activities. The proposed formulation underscores judicial independence as well as the independence and separateness of the administration of justice from implementing powers.

To a certain extent, the definition of 'authority' depends on the manner of examination and field of law. In the Constitution, the concept of 'authority' is used in a broad and administrative sense and the constitutional concept of authority must indeed be seen as a broad one. Under the Constitution, both governmental administrative bodies and the courts constitute authorities in the broad sense of the word (i.a. Constitution, section 12, subsection 2; section 21; and sections 107–109). The administrative concept of authority shall be separated from the constitutional concept of authority: in the administrative sense, the authorities consist only of those that are a part of the governmental administrative structure proper. The proposed amendment of section 21 of the Constitution clarifies the difference between the administration of justice and administrative procedure.

Section 21 of the Constitution concerning protection under the law is indissociable from section 3, subsection 3 of the Constitution as well as its chapter 9 concerning administration of justice. The specific requirement of judicial independence has been laid down in law in order to realise fair trials and the fundamental right to protection under the law. Judicial independence derives its objective and rationale through the provisions concerning the fundamental right of protection under the law. In the provisions, the requirement of judicial independence is expressly linked to the right to protection under the law that is safeguarded for everyone as a fundamental right. Since section 21 concerning the fundamental right of protection under the law is integrally linked to section 3, subsection 3 of the Constitution, and because it couples the requirement of judicial independence with the fundamental right of protection under the law, the provision may be perceived as the core of judicial independence to which all other provisions concerning administration of justice are linked. Section 21 of the Constitution is linked to Article 6 of the European Convention on Human Rights and the relevant case law concerning an independent court drawing its competence from law as a part of the right to a fair trial. Therefore, it is justified for the formulation of the provision to emphasise the separation of independent courts from executive powers and to eliminate the parallel between courts of law and administrative authorities.

The amendment concerned would clarify the wording of the provision to emphasise the separateness of courts of law from governmental administration, the independence of the courts and the key role of independent courts as an element of the fundamental right of protection under the law. The proposed amendment has been formulated as narrowly as possible to retain the structure of the provision without any need to break down the provisions concerning administration of justice and administrative procedure into separate subsections. The changes proposed to the current practice of application of the provision would not bring about any changes per se.

The words ‘court of law or other public authority’ are used in the Constitution’s section 17, subsection 2 and in its sections 107, 108 and 109. [Translator's note: while the exact same words are used in Finnish, the words are not exactly the same in each mentioned section in the English translation of the Constitution. The meaning, however, is exactly the same.] No amendment needs similar to those in respect of section 21, subsection 1 that is a part of the legislation on fundamental rights are assessed to exist in respect of these provisions due to the particular characteristics relating to the fundamental right to protection under the law and competent court recounted above. As a result of the amendment, the constitutional concept of authority would have somewhat different substance in the Constitution’s section 21, in the chapter dealing with fundamental rights, than in its sections 17, 107, 108 and 109. The proposed amendment would nonetheless be justified due to the importance of the subject matter regulated. Section 21 concerning the fundamental right to protection under the law holds central relevance to the independence of the judiciary and any amendment of the formulation of other provisions would require a separate assessment.

The final part of the subsection concerning the right of everyone ‘to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice’ is examined in the Rationale section of this document.

Section 98. *Courts.* The section contains the basic provisions concerning courts. A new subsection 3 is proposed for the section. Under this subsection, further provisions on general courts of law and administrative law are laid down by an act. At present, the Constitution does not expressly require further provisions on general courts of law and administrative law to be laid down by an act.

The independence and autonomy of the judiciary safeguarded under the Constitution and international human rights instruments binding on Finland, as well as the rule of law, require the provisions on courts to be laid down by an act. Although it may be regarded that in the Constitution, the independence of the court system and the fundamental right of protection under the law, along with the other provisions of the Constitution concerning courts, include the requirement that provisions on courts be laid down by an act, the regulation nevertheless requires specification in order to safeguard judicial independence.

The proposed law proviso would support the independence of the judiciary in the long term as well as its relative organisational permanence. It would also increase the consistency of regulation and clarify the legal situation. Under the Constitution, provisions on matters such as special courts (section 98, subsection 3) and the prosecution service (section 104) shall be laid down by an act. The provision would mean that considerable powers to regulate the organisation of the court system could not be transferred to a lower-level issuer of norms by means of an ordinary act.

Provisions on the general courts of law and administrative law are laid down in section 98, subsections 1 and 2 of the Constitution. The law proviso is therefore proposed to be formulated so that further provisions shall be laid down by an act (cf. current subsection 3). The proposed law proviso requires the legislator to lay down provisions on the said courts but leaves the specifics of the regulation up to the legislator’s discretion. The reference to an act thus limits, on the one hand, the power of Parliament to transfer legislative power belonging to it to be used at the level of subordinate statute while, on the other, also limits the authority of a lower-level issuer of norms to issue provisions on general courts of law and administrative law. In this respect, the constitutional effect of references to acts is based on the express provision in section 80, subsection 1 of the Constitution, under which the principles governing the rights and obligations of private individuals and the other matters that under the Constitution are of a legislative nature shall be governed by acts (Constitutional Law Committee report PeVM 10/1998, p. 11).

The proposed specific law proviso concerning general courts of law and administrative law would mean that a court would need to be established by an act and that the act would need to lay out the fundamental provisions relevant to the court’s independence and operations. The law proviso would safeguard the

independence of courts and serve to ensure the realisation of the principle of legality and the right of individuals to have their cases heard by a legally competent court.

The current subsection 3 stating that special courts which exercise judicial powers in specific areas of competence shall be provided for by law would remain unchanged to become a new subsection 4. The current subsection 4 stating that provisional courts shall not be established would remain unchanged to become a new subsection 5.

A provision stating that the administration of the court system shall be organised in a manner that safeguards the independence of courts and judges as further specified by an act is proposed to be added to the section as its new *subsection 6*. While the requirement that the administration of the court system shall be organised in a manner that safeguards the independence of courts and judges may be inferred from section 3, subsection 3 of the Constitution which states the independence of courts, the Constitution contains no express provision to this effect.

The organisation of the courts' central administration is relevant to their external and structural independence. The objective of the proposed provision is to safeguard the organisation of court system administration under all circumstances in a manner that safeguards the independence of courts and judges. The proposed provision would complement the provision of section 3, subsection 3 of the Constitution concerning independent courts and the right secured under its section 21, subsection 1 to have cases dealt with appropriately and without undue delay by a legally competent court.

The administration of justice could be indirectly influenced by means of administrative arrangements. The central administration of the courts may cover matters such as the performance guidance and premises management of courts, the maintenance and development of information systems and the enhancement of the expertise of court personnel, as well as attending to the practical considerations regarding employment and public-service employment in the courts, such as the practical measures involved in advertising judicial office vacancies. Administrative issues relating to the allocation of cases may also hold significance with regard to judicial independence. The provision would impose restraints on legislation to interfere in the organisation of court system administration in a manner that would infringe on the independence of courts and judges.

First of all, courts of law must be independent of the influence of other parties in their administration of justice. The organisation of administration in a manner that safeguards the independence of courts and judges comprises, on the one hand, the independence of administration relative to the executive and, on the other, the independence of courts relative to the central administration of the courts (see also Constitutional Law Committee statement PeVL 49/2018, p. 3). The proposed provision would continue to allow Parliament to impose a certain general framework for the organisation of court system administration by exercising its budgetary and legislative powers. It would, however, limit the guidance powers of the ministry over court system administration. The executive would not be permitted, for example, to issue orders or impose conditions on the specific use of the appropriations available to the agency. Organising the administration of the court system in a manner that safeguards the independence of courts and judges would mean that the administrative structures and decision-making powers of the central administration would also need to be organised in a manner that safeguards the independence. One of the requirements for this would be for judges to make up the majority of the decision-making body (see also Constitutional Law Committee statement PeVL 49/2018, p. 3). The proposals put forward in the context of section 102, on the appointment of judges on the proposal of an independent body on which judges hold a majority, should also be taken into account.

The term 'court system' used in the provision matches the corresponding term used in the Constitution's preparatory documents in terms of substance. The relevant government proposal (HE 1/1998, p. 155) states

that chapter 9 includes further provisions on the court system and that the same term also appears in section 103, subsection 1 of the Constitution. [Translator's note: the term used here for 'tuomioistuinlaitos' is translated as 'court system', as in the Courts Act, while in the translation of the Constitution, the same term is translated as 'judiciary'.] The concept of 'administration' describes the relationship between independent and impartial courts and the body responsible for the administration of the court system better than, for example, the term 'central administration,' which may be taken to suggest a centralised or hierarchical structure (cf. Constitution, section 119). The formulation 'shall be organised' sets a constitutional obligation on the legislator to organise the administration of courts in a manner that safeguards their independence.

At present, the National Courts Administration is the body responsible for organising the administration of the court system and its objectives include safeguarding the position, independence and operating environment of the courts. However, with regard to the permanence of the Constitution, it is not justified to give constitutional status to any given authority and instead, the regulation aims to describe at a sufficient level of generality the organisation of the court system's administration in a manner that safeguards independence.

The proposed provision contains a reference to law 'as further specified by an act', by which the organisation of the independent administration of the court system is linked to specifying regulation to be implemented by means of an ordinary act. Such references to law are used in the Constitution when, for example, regulation to be included in the Constitution cannot be formulated in an absolute and adequately comprehensive manner. The substance of the provision may be specified by an act but only in a manner that clarifies the Constitution and without undermining the foundation of the main rule (government proposal HE 309/1993, p. 28). The proposed formulation leaves latitude for the legislator, who may within the confines of the provision also take into account any changes taking place in the operating environment of the court system while accounting for the requirement of independence.

Section 100. *Composition of the Supreme Court and the Supreme Administrative Court. Subsection 1* of this section is proposed to specify the composition of the highest courts with a provision concerning the range of variation in the number of members of these courts. The provision would strengthen the impartiality and independence of the highest courts and safeguard the appropriate performance of their duties under all circumstances. The current provision of 'the requisite number of other members' would be replaced by a more specific provision on the exact range of variation in the number of permanent members (referred to in the current translation of the Constitution as 'tenured judges'). The objective of the provision is to prevent any unwarranted increases or reductions in the number of members of the highest courts together with the other provisions of the Constitution which guarantee judicial independence, in particular the proposed specifications to the appointment procedure (section 102) and the right to remain in office (section 103). Regulation of the appointment procedure would complement the regulation of range of variation in such a way that the initiative of the court would be required for a proposal to appoint.

The current membership of the highest courts was adopted as the point of departure in the regulation of number of members. Both the Supreme Court and the Supreme Administrative Court would have at least 15 permanent members. The provision on the minimum number of members would correspond to what is currently provided in respect of minimum number of members in section 10 of the Act of the Supreme Court and in section 10 the Act on the Supreme Administrative Court. The minimum number is also linked to the provision on the quorum of the highest courts under subsection 2 of this section. Since the highest courts would continue to have a competent quorum when five members are present, the minimum number of members would be equal to three quorate court compositions.

The maximum number of members is proposed to be set at 25 permanent members in addition to the president of the court. Similarly with regard to the minimum number, the chosen figure accounts for the competent quorum of five members of the highest courts. At present, the Supreme Court consists of its president and 18 permanent members. The number of members in 2015–2024 has been between 16 and 18, excluding leaves of absence, with no more than one fixed-term member at a time. The number of permanent members on the Supreme Administrative Court is currently 22. In 2000–2024, the Supreme Court has had between 19 and 25 members and between 0 and 9 fixed-term members. Based on this and, when adopting as a point of departure the trend in highest court membership over the past 25 years, the maximum number of members is proposed to be set at 25. The proposed range of variation together with the regulation of the appointment procedure would mean that the resource within the range of variation should be exercised only based on the needs of the courts' functioning.

The range of variation in the number of members of the highest courts must be fairly narrow so as not to make their number susceptible to significant changes or ones that multiply the number of court members. If the difference between the minimum and maximum number set for court members were significant, this could allow unforeseeable changes in the courts' operations. An excessively narrow range, meanwhile, might unduly restrict the flexible and appropriate organisation of the courts' duties.

As a part of the judiciary, the highest courts play a key role in upholding a democratic state under the rule of law. The highest courts exercise the highest judicial powers, by which they also oversee the exercise of public power in accordance with law and are responsible for issuing precedents to serve as a basis for the assessment of similar cases in the future. The need to specify, at the level of the constitution, the number of members of the courts of highest instance has also been recognised in Finland's closest peer countries (Sweden, Norway). Developments in certain EU Member States illustrate how increasing the number of judges on the highest courts has been seen as an effective way of influencing the operations of these courts. In Sweden, laying down provisions on the range of variation in the number of members of the highest courts has been proposed. In Norway, a provision on the range of variation in the number of members of the highest courts was adopted in section 88, subsection 2 of the Norwegian constitution in 2024.

The objective of the provision is to strengthen the independence of judges and courts in the long term. In Finland, there have been no attempts to unduly effect change in the number of members of the highest courts. The current provision of the Constitution on the number of members of the highest courts is loosely formulated, however, and it thus allows the number of highest court members to be increased or decreased by amending an ordinary act. Without a constitutionally set maximum number of members, it is therefore possible to inflate the number of highest court members, especially if the right of initiative to appoint such court members also remains outside the court system. An increase in the number of highest court members caused by an external influence would result in judicial independence being jeopardised. Decreasing their number, meanwhile, could impact on the ability of the highest courts to perform their duties in a way required for a fair trial.

The task of the highest courts in a state under the rule of law and their constitutional status require specific provisions on the number of members in order to protect the courts' independence. Precise regulation of numbers is not entirely alien to the Constitution in Finland, either; section 101, for example, concerning the High Court of Impeachment, provides for a specific number of court members. Besides the required specificity of the object of regulation, the provision also seeks to ensure that regulation at the level of the Constitution will withstand the test of time and account for different situations in society so that the provision does not unnecessarily preclude court-driven reactions to unforeseen situations or development of the highest courts.

The range of variation in permanent court members would apply to the Supreme Court and the Supreme Administrative Court. Both at present and during the time frame since 2000 that has been examined, the Supreme Administrative Court has had more permanent and fixed-term members than the Supreme Court. The Supreme Court and the Supreme Administrative Court are not identical in terms of duties and therefore changes in society as well as exceptional circumstances may be reflected differently on them. The Supreme Administrative Court could face a greater need to augment its resources, for example in cases of a mass influx of foreigners into the country and a high number of official decisions eligible for judicial review. At the same time, the Supreme Administrative Court has been systematically developed towards becoming more of a precedent court by enhancing internal legal remedies within administration – in particular, the broad and expanded introduction of the procedure of request for administrative review in 2010 and the adoption of the system of leave to appeal as the general rule in 2020. It is not considered justified to lay down different provisions in the Constitution on the number of members of the two highest courts.

A mention of permanent members is also proposed to be added to the provision. The wording of the current provision does not differentiate between permanent and fixed-term members, in contrast to section 102 concerning appointments, for example, which does differentiate between the appointment of permanent (tenured) judges and other judges. According to the relevant government proposal (HE 1/1998, p. 157/II), the supreme courts may also comprise additional members when this is necessary in light of the number of pending cases or for another reason. Additional members have since come to be referred to as fixed-term members in legislation concerning the supreme courts (Administration Committee report 7/2001, p. 3).

The specification concerning permanent members proposed for the provision emphasises that the number of members and composition of the highest court could not be influenced by appointing fixed-term members. Even though no barrier to appointing a judge for a fixed term can be derived from the Constitution, it must nonetheless be considered an exception, especially with regard to the highest courts. Fixed-term appointments may be estimated to deliver weaker internal independence than permanent ones by making the judge dependent on further appointments. The objective of the proposed regulation is to make it possible to appoint legally trained members to the highest courts for a fixed term only to serve as acting judges substituting for a permanent one. If it were possible to appoint fixed-term members to the highest courts in situations besides ones requiring an acting judge to substitute for a permanent one, perhaps even in excess of the proposed range of variation for permanent members, such conduct would undermine the express objective of the provision concerning the number of judges of the highest courts and call the relevance of the entire provision into question. More generally, allowing the broad appointment of fixed-term members to the highest courts under the Constitution could send the wrong message as to the exceptionality of fixed-term judges.

Both the Supreme Court and the Supreme Administrative Court have consistently had fixed-term members who were appointed for the duration of a permanent member's leave of absence or extended medical leave. In the Supreme Administrative Court in particular, fixed-term members have been appointed for other reasons involving the temporary organisation of the court's work, for example due to a sudden increase in the case load. The functioning of the highest courts must be ensured under all conditions and the chance to prepare for temporary and unforeseeable needs must be taken into account while at the same time strengthening judicial independence. Providing for the number of permanent members in the manner proposed would retain the conditions for flexible organisation of the duties of the highest courts within the range of variation by changing the number of permanent members. A change of this kind in the number of court members would, under the proposed provision concerning appointment procedure, only be possible on the court's own initiative. Legally trained members could be appointed for a fixed term only to serve as acting members substituting for legally trained members. The proposed regulation is not

intended to change the role of category-specific expert and military members in the composition of the highest courts. In other words, expert members and military members would be excluded from the range of variation determined in section 100 (for more on expert members in the highest courts, see section 2.1.5.3 of the rationale).

No amendment of *subsection 2* of this section is proposed (see section 2.1.5.4 of the rationale).

Section 102. *Appointment of judges.* The section is to be specified by laying down further provisions on the procedure to be observed in appointing judges. The objective of the provision is to bring regulation under the Constitution in line with the established practice in judicial appointments. The proposed specifications seek to strengthen and safeguard, in the long term, the independence of courts and judges by statutorily boosting the binding nature of appointment proposals made by a body on which judges make up the majority. The proposed regulation would safeguard the external independence of courts and judges. A provision at the level of the Constitution specifying the preparation of judicial appointments and the appointment procedure would provide guarantees that the rules governing the appointment procedure are protected for the long term, so that the responsibility for preparing and making proposals regarding judicial appointments cannot be made a part of executive or legislative powers by an ordinary act. At the same time, a certain latitude for modifying the current arrangement would be retained (for more on this, see the rationale).

In the procedure for appointing permanent (tenured) judges, the procedures preceding the actual decision to appoint are of such significance to the structural independence of the courts that the key elements and fundamental policy of the appointment procedure should be enshrined in the Constitution. The government proposal concerning the Constitution (HE 1/1998, p. 76/II) also emphasises that when organising the procedure for judicial appointments, account must be taken of the requirements imposed by judicial independence. When developing the appointment procedure, the aim shall be to arrive at a procedure which, on the one hand, safeguards the independence of the court system from undue external influence and, on the other, retains confidence in the courts and their functioning as well as the transparency and appropriateness of judicial appointments. In its report on the Constitution (PeVM 10/1998, p. 30/II), the Constitutional Law Committee drew attention to the fact that the preparation of judicial appointments must 'prevent appointments that excessively rely on the judiciary's internal self-supplementation'. The Legal Affairs Committee, too, has held that judicial independence and the separation of powers do not mean that 'only a system of self-supplementation would be acceptable for the judiciary and the Government, for example, could have no part in judicial appointments. What is at issue is the entirety of the system of appointments and its de facto emphases and balances.' (Legal Affairs Committee Report 1/2000, p. 4).

Subsection 1 of this section would provide for the appointment of the president and members of the Supreme Court and the Supreme Administrative Court. Under the proposed provision, the president and other members of the Supreme Court and the Supreme Administrative Court would be appointed by the President of the Republic in accordance with the proposal of the court concerned. The term 'proposal' here would refer to a reasoned proposal on appointment made by the Supreme Court or the Supreme Administrative Court and presented to the President of the Republic by the Government in accordance with section 58 of the Constitution. The procedure would align with established practice with regard to the appointment of permanent members, and also largely with the current provisions laid down in chapters 11 and 12 of the Courts Act. It is also proposed that a reasoned proposal from the relevant court be required for the appointment of the presidents of the highest courts. Proposals for appointment could be made and members appointed only within the range of variation of court members laid down in section 100 of the Constitution, and only with an eye to meeting the needs of the courts' functioning.

Under the current section 102, tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an act. The proposed section 102, subsection 1 would not limit the decision-making procedure to permanent members only and instead the procedure referred to therein would apply to fixed-term members as well. (With regard to fixed-term members, see the detailed rationale for section 100 concerning acting positions and fixed-term members.)

Subsection 2 of this section would provide for the appointment of judges other than those of the highest courts. For the sake of clarity in regulation, the provisions on the appointment procedure for members of the highest courts and that for other judges would be laid down in separate subsections. This would also serve to underscore the constitutionally significant status of the highest courts, which differ from all other courts. Under the subsection, other permanent judges would be appointed by the President of the Republic in accordance with the proposal of an independent body on which judges make up the majority. The appointment procedure would align with current established practice and the current provisions of chapter 11 of the Courts Act concerning the appointment of permanent judges to courts other than the highest courts.

The term 'proposal' here would refer to a reasoned proposal on appointment made by a body on which judges make up the majority and presented to the President of the Republic by the Government in accordance with section 58 of the Constitution. At present, the Judicial Appointments Board is the independent body on which judges make up the majority that is referred to in the subsection. However, with regard to the permanence of the Constitution, it is not justified to give constitutional status to any given authority and instead the regulation aims to describe at a sufficient level of generality the sought-after procedure that emphasises judicial independence.

Under chapter 11, section 7, subsection 3 of the Courts Act, a reasoned proposal for the appointment of a judge is made by the Judicial Appointments Board provided for in chapter 20 of the Act. The Government appoints the Judicial Appointments Board for a term of five years at a time. The Supreme Court and Supreme Administrative Court prepare reasoned proposals for the appointment of their respective president and members (Courts Act, chapter 11, section 7, subsections 1 and 2).

The proposal for appointment referred to in subsections 1 and 2 would formally be binding on the President of the Republic. According to the relevant government proposal (HE 60/2010, p. 14–15), tying the President's discretion to the Government's proposal for a decision in judicial appointments within the President's competence would be inappropriate with regard to judicial independence. Although, as at present, an appointment proposal would be submitted to the President for decision on the motion of the Government, in accordance with section 58, subsection 1 of the Constitution, the proposed sections 1 and 2 would reserve the right to make proposals to the highest courts regarding their own members and to a body on which judges make up the majority regarding other judges, therefore limiting the discretionary powers of the Government in appointments, both as to whether to propose a person for appointment and as to which person is proposed. The regulation would strengthen the external independence of the judiciary and reserve for the highest courts themselves the right to decide when new members are required. Together with the range of variation in the number of members proposed for the Constitution this creates strong and lasting protection for the independence of the highest courts. The provision is a part of the whole made up of sections 100, 102 and 103. Together with the provision proposed for section 100 concerning the more precise number of members of the highest courts, this provision would limit the ability of actors external to the court system to increase the number of court members.

A provision on the decision-making procedure in judicial appointments would be added to *subsection 3* of this section. The proposed more specific section 102 of the Constitution concerning judicial appointments would be, by nature, a special provision relative to section 58 of the Constitution. This would mean that

instead of section 58, subsection 2, the now proposed section 102, subsection 3 would apply to the decision-making procedure observed in judicial appointments. If the President of the Republic does not decide a judicial appointment in accordance with the proposal referred to in subsection 1 or 2, the matter would be referred back to the court or body that submitted the proposal for further preparation. The matter would then be decided in accordance with the new proposal. In other words, the President of the Republic could not refuse to make a decision for a second time once a new proposal was presented for decision-making. A proposal made by the Supreme Court would thus be referred back to the Supreme Court; a proposal made by the Supreme Administrative Court to the Supreme Administrative Court; and a proposal by a body on which judges make up the majority, to that body. Accordingly, the party making the proposal would not be the Government or the presenting ministry, in light of subsections 1 and 2.

It would be justified to provide that, in the event of rejecting a binding proposal, the matter be referred back to the party that made the proposal, in accordance with section 58, subsection 2 of the Constitution. Referral could be an option in situations where, for example, questions requiring further investigation or unforeseen circumstances arise when the matter is being presented to the President. The new proposal need not differ from the earlier proposal in terms of content, however.

The regulation proposed for section 102, subsections 1–3 of the Constitution would mean that the minister concerned, the Government and the President of the Republic would be bound by the proposals under subsections 1 and 2. In the matter of a judicial appointment, the Government's motion under section 58, subsection 1 of the Constitution would be bound to the proposal of the court or a body on which judges make up the majority, and the President would only have the option of making or not making the appointment as proposed. The President of the Republic would have no power to interfere in the content of the proposal. While the provision would considerably limit the powers of the Government and the President of the Republic in matters of judicial appointments when compared to the current situation, it would nonetheless codify established practice in a manner that safeguards judicial independence. The limitation of discretion would emphasise the relevance of the body making the proposal, on which judges make up the majority. Parliamentary accountability would be realised when applying decision-making procedure as laid down in section 58 in other respects.

The law provisos concerning the appointment procedure and the appointment of other judges would remain unchanged in terms of content to become a new *subsection 4*. In its report concerning the fundamental rights reform, the Constitutional Law Committee stated how the Constitution contains two types of regulatory provisos: 'as specified by an act' and 'as provided by an act'. The Committee stated that while there is no major difference between the two, the purpose of the reference to 'specifying' has been to 'underscore the legislator's limited latitude that is bound by the main rule expressed in the Constitution' (Constitutional Law Committee report PeVM 25/1994, p. 6). Since the content of the regulatory provisos differs, no amendment of them is proposed in order to make the text of the provision more concise.

A law proviso concerning the nomination of a judge or a member to a supranational court would be added to the section as a new *subsection 5*. The actual appointment to supranational courts is not made by the national body concerned. The concept of 'supranational court' in the provision refers to international courts and the Court of Justice of the European Union. International courts are courts such as the European Court of Human Rights, the International Criminal Court and the Permanent Court of Arbitration, for example. The position of member refers to offices such as Advocate General in the Court of Justice of the European Union. Supranational courts such as the Court of Justice of the European Union and the European Court of Human Rights play a key role for Finland as an EU Member State and a signatory of the European Convention on Human Rights.

Due to the significance of the supranational courts and taking into account the provisions laid down in section 1, subsection 3 of the Constitution, it is justified for the chapter of the Constitution concerning the administration of justice to also cater for the nomination of judges or members to these courts. The law proviso emphasises the significance of the procedure for nominating candidates. Even though the body nominating candidates is not required under the provision to have judges in the majority, it is vital to account for the necessary representation of the judiciary.

Section 103. *The right of judges to remain in office.* Judicial independence is safeguarded by the particularly strong right of judges to remain in office. Subsection 1 of this section is described in the relevant government proposal (HE 1/1998, p. 160/I) as the principle of judicial irremovability. The right of judges to remain in office is a vitally important, key element of the rule of law and the independence of the judiciary. Undermining it could jeopardise the independence of the judiciary and hence the right of individuals to a fair trial before an independent and impartial court. The right of judges to remain in office also applies for the duration of their term to judges appointed for a fixed term. The basic principle with regard to the court system is the permanence of judicial offices.

The proposal would specify the provision in the section's subsection 1 stating that a judge shall not be removed from office, except by a judgement of a court of law. [Translator's note: the English translation of the Constitution uses the term 'suspended from office', yet the meaning of the Finnish is removal from office, which term is also used in the translation of the Criminal Code referred to below.] According to the relevant government proposal (HE 1/1998, p. 160/I), a judge could be removed from office only by the judgment of a court of law issued in the context of criminal proceedings. The provision does not currently mention criminal proceedings, nor does it specify in more detail the reason for removal from office, but the matter concerns removal from office as provided in chapter 2, section 10 of the Criminal Code. As far as suspension from office is concerned, the same provisions apply to judges as to other public officials.

In its Opinion concerning Finland, the Venice Commission held that for the reason of independence and autonomy, the grounds for suspension, dismissal or resignation of judges should be laid down in the Constitution, and the competent court should be set out, as well as the right of appeal of the judge concerned.

Specification of subsection 1 of this section is proposed by adding to the provision, alongside the current procedural requirement, a description of the substantive requirements for removal from office, i.e. the grounds on which a judge could be removed from office. The provisions of the Public Officials Act in force regarding termination of public-service employment do not apply to judges and instead, the public-service employment of a judge can be terminated prematurely only by means of removal from office, i.e. subject to the conditions laid down in chapter 2, section 10 of the Criminal Code. Since the grounds for removal from office are provided at the level of an ordinary act, a more specific provision in the Constitution would better safeguard the right of judges to remain in office and hence their independence. The proposed provision aligns with the conditions for removal from office laid down in chapter 2, section 10 of the Criminal Code. It would limit the opportunity of the legislator to provide for removal from office at the level of an ordinary act as a sanction for minor infractions.

In addition, it is proposed that the second sentence of subsection 1 be amended so that judges could be transferred without consent only to another judicial office in the event of a reorganisation of the court system. This would represent a change to the status quo, as currently judges may be transferred without consent also to non-judicial offices in the event of a reorganisation of the court system (see government proposal HE 1/1998, p. 160; Constitutional Law Committee statement PeVL 3/1994). The amendment would strengthen the right of judges to remain in office and limit the possibilities of interfering with judicial independence by means of reorganisation and transfers to other offices. Reorganisation of the court system

would refer to measures such as merger or disestablishment of courts. At present, reorganisations are governed by chapter 14, section 4 of the Courts Act.

As at present, the special right to remain in office would also apply to persons appointed to a fixed-term judicial office for the duration of the term for which they were appointed.

The law proviso in subsection 2 of the section is proposed to be specified and linguistically updated to reflect the current legal situation. Even though under section 103, subsection 2 of the Constitution, provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are to be laid down by an act, no such provisions have actually been laid down. Under section 35 of the Public Officials Act, a public official's public service relationship shall end without giving notice or other actions signifying the termination of the public service relationship at the end of the month during which the public official reaches the retirement age unless, subject to the consent of the public official, the public service relationship is continued for a maximum of two years. However, judges cannot be authorised to remain in their office after retirement age (Public Officials Act, section 3a, subsection 4). The Act contains no provisions on an obligation to resign upon reaching retirement age or the procedure to observe when a public official fails to resign upon reaching retirement age. The same applies to the termination of the public-service employment relationship on the basis of loss of the capability to work. The proposed amendment would be essentially linguistic and in line with the established legal situation.

A limitation of the law proviso concerning the age of retirement for judges would be added to subsection 2 of this section. The law proviso in force regarding the obligation to resign a judicial office at a certain age allows the retirement age to be lowered by amending an ordinary act. If it was decided to considerably lower the age of retirement by amending an ordinary act, this could obligate a majority of the Justices on the courts of highest instance to resign. According to the proposal, a provision on lowering the retirement age of judges could not apply to existing public-service employment relationships. The provision, while allowing retirement age to be raised and lowered, would safeguard the right of judges to remain in office by excluding existing public-service employment relationships from regulation to lower the retirement age. Retirement age reforms in Finland have focused on raising the age of retirement and linking it to life expectancy. The concept 'existing public-service employment relationship' corresponds to that used in the Public Officials Act and refers to such a relationship that has already started and has not yet ended.

The Court of Justice of the European Union has issued several judgments finding that regulation lowering the age of retirement for judges was contrary to the requirement of judicial independence (for more details, see section 2.1.7.3 of the rationale). The Venice Commission, too, has levelled strong criticism against the lowering of the retirement age, when it applies also to serving judges. In principle, there is no impediment to raising the retirement age when serving judges maintain the possibility to take retirement in accordance with the rules in force at the time of the change.

The law proviso concerning terms of service would remain in subsection 3. 'Terms of service' refers to matters such as the remuneration of judges and other key aspects of the public-service employment relationship (Constitutional Law Committee statement PeVL 19/2001, p. 2). The basic premise has been for the financial and social benefits of judges to be determined on the same grounds as those for other public officials. The Public Officials Act also applies to judges in the main. Special provisions applying to judges that differ from those applied to other public officials mainly appear only in respect of those issues having to do with judicial independence (HE 1/1998, p. 160).

In Finland, judges are currently covered by the system of collective agreements for public officials except for the Justices of the courts of highest instance, whose remuneration is governed by the Act on the terms of service of the presidents and members of the Supreme Court and the Supreme Administrative Court (196/1991).

The key provisions with regard to the law proviso in section 103, subsection 3 of the Constitution are also section 80, subsection 1 of the Constitution and its section 125 concerning general qualifications for public office and other grounds for appointment. The Courts Act lays down provisions on the obligations and responsibility of judges as well as on the qualifications of judges. The law proviso in section 103 of the Constitution read together with section 80 means that matters such as the qualifications of judges cannot be addressed by means of regulation at a level lower than that of an act.

Section 104. *Prosecutors.* It is proposed, firstly, that an express provision on the independence of the prosecution service be added to section 104, *subsection 1* concerning prosecutors and the prosecution service. The addition would specify the requirement of the independence of prosecutorial activities indicated in the provisions and preparatory documents of the Constitution and would strengthen the rule of law. At the same time, it would safeguard the right to a fair trial by strengthening the constitutional guarantees of the organisation and the performance of prosecutorial activities. It is also proposed that the provision concerning the appointment of the Prosecutor General be augmented by including a mention of the Deputy Prosecutor General as well. It would further be provided that the provisions concerning the Prosecutor General shall apply, mutatis mutandis, to the Deputy Prosecutor General. The provision requiring provisions on the prosecution service to be laid down by an act would remain unchanged.

Prosecutors are the only authority having powers at all stages of the criminal justice process, from pre-trial investigation up to the court proceedings. Under the Criminal Investigation Act, a prosecutor may order a pre-trial investigation to be conducted or an investigative measure in such an investigation to be performed. A prosecutor may also decide, on the motion of the senior investigating officer, that no pre-trial investigation is to be conducted or that the investigation is to be terminated. Provisions on the consideration of charges and on bringing and prosecuting charges are laid down in the Criminal Procedure Act. Judicial proceedings arranged in accordance with the accusatory principle involve, as an essential element, the principle expressed in chapter 11, section 3 of the Criminal Procedure Act, that the court can only convict a person of the offence with which that person has been charged. The independence of the prosecution service must be secured in the exercise of all of the service's powers. The Constitutional Law Committee has underscored the significance of independence not only in deciding on charges but also with regard to the duties of the prosecutor in matters such as issuing penal orders (statement PeVL 7/2010) and proposals for judgment (statement PeVL 7/2014).

It follows from their broad powers that prosecutors exercise significant public authority. In the criminal justice process in particular, the prosecutor plays such a significant role that judicial independence alone is not sufficient to safeguard the administration of justice from external influence. Prosecutors, too, should be able to carry out their duties without such influence or the threat of it. The administration of justice is subject to a general requirement of independence, which when the courts are concerned is specifically expressed in the Constitution's section 3 requiring judicial powers to be independent. A similar requirement of independence may be deemed to apply to the prosecution service, which is a part of the judiciary, and the performance of prosecutorial duties by prosecutors (Government proposal HE 1/1998, p. 83/II). On the other hand, it is obvious that prosecutors shall comply with the law and ensure that fundamental and human rights are realised in their activities. The independence of the prosecution service is thus important to the rule of law and in particular to strengthen the equality and right to a fair trial protected under sections 6 and 21 of the Constitution. The appropriate implementation of criminal liability also indirectly safeguards the realisation of other fundamental rights and constitutional principles, as these are protected by a number of criminal law provisions.

The independence of the prosecution service is nonetheless different in nature compared to the court system, which is due to the duties and constitutional status of prosecutors that differ from those of judges and courts. The specific independence of judicial powers under section 3, subsection 3 of the Constitution

only covers the courts. Likewise, the specific right to remain in office safeguarded under section 103 of the Constitution only applies to judges. In the current constitutional perspective, prosecutors can largely be equated with other public officials. Regardless, the external independence of prosecutors is an essential condition linked to the rule of law and fair trials as well as the supervision of the exercise of power and it must be safeguarded under all circumstances (see e.g. European Court of Human Rights judgment in the case Kövesi v. Romania, 5.5.2020, paras 90–93 and 208). Since the independence of the prosecution service plays an important and central role in maintaining the rule of law, it would be warranted to safeguard that independence at the level of the Constitution. This means that the prosecution service shall, in particular, be independent relative to the legislative and executive powers and also, on the other hand, relative to courts, the parties to cases and other persons as well.

In the Finnish system, individual prosecutors have direct powers to handle criminal cases while the National Prosecution Authority has autonomous and independent responsibility for organising the prosecutorial activities. The decision to exercise the powers of the prosecutor is held solely by the independent prosecutors, not by the executive or the legislative. The proposed express provision requiring the prosecution service to be independent would impose effective restraints on interference in the organisation of prosecutorial activities in a way that would jeopardise their independence. It is essential to the independence of the prosecution service to prevent external parties from influencing the actions of prosecutors in individual cases. It should also be noted that the National Prosecution Authority is organised as an agency under the Ministry of Justice. The proposed specific requirement of independence would not call for absolute institutional independence in the future, either. The provision would nonetheless prevent the drafting of legislation that would impact on the independence of the National Prosecution Authority by means such as substantive guidance or inappropriate appointments. Independence must moreover be taken into account in, for example, the performance guidance of the prosecution service.

The requirement of the prosecution service's independence also requires guaranteeing the autonomy and independence of individual prosecutors. Individual prosecutors must be able, under all circumstances, to make the decisions within their power autonomously and without their independence becoming compromised. The independence of prosecutors is also, by nature, external in particular, meaning that prosecutors must be able to make their decisions without undue influence or the threat thereof. The decisions of autonomous and independent prosecutors may be intervened in only by the Prosecutor General, who has the right under law to take up a prosecutor's decision for reconsideration and to order any subordinate prosecutor to prosecute a case where the Prosecutor General has decided that charges are to be brought. A certain degree of relativity in the internal independence of the prosecution service is thus accepted as a basic premise for the organisation of prosecutorial activities. In spite of the external independence of the prosecution service and prosecutors, the decisions and actions of prosecutors other than the highest ones may be subject to hierarchical control within the service. Section 11, subsection 2 of the Act on the National Prosecution Authority allows the Prosecutor General to take over a case from a subordinate prosecutor or designate a subordinate prosecutor to prosecute a case in which the Prosecutor General has decided that a charge is to be brought. The Prosecutor General may also order a subordinate prosecutor to consider charges in a given case. The said arrangement of competence safeguards the independence of individual prosecutors in that the highest prosecutors cannot order a subordinate prosecutor to decide any case in a given way and instead, the decision is to be made by the prosecutor concerned. Nonetheless, with regard to the independence of the prosecution service, it is important that the highest prosecutors do not exercise the said powers in a way that would compromise the independence of the entire service.

The Consultative Council of European Prosecutors (CCPE) in its Opinion No. 19 (2024) on managing prosecution services to ensure their independence and impartiality states that there is a diversity of legal

systems and models existing across Europe and that in many legal systems, public prosecution services are structured as highly hierarchical institutions, led by a chief prosecutor such as the Prosecutor General. As a consequence, the independence and impartiality of the entire prosecution service largely depends on how independent and impartial its head is. The rationale of the government proposal that resulted in the amendment of the Constitution Act drew attention to the fact that the constitutional status of the highest prosecutor was relevant to judicial independence, as prosecutors play an active part in instigating and handling criminal cases (government proposal HE 131/1996, p. 14/II). The requirement of the prosecution service's independence is also indirectly indicated by section 27, subsection 3 of the Constitution, under which the Prosecutor General cannot serve as a member of Parliament. The provision was included in the Constitution for the express purpose of safeguarding the independence of the prosecution service (government proposal HE 1/1998, p. 83/II).

The Prosecutor General has important powers provided for in the Constitution and relating to supervision of the highest state bodies. Under the Constitution, charges against the President of the Republic (section 113), members of the Government (section 114, subsection 3) and the Chancellor of Justice and the Parliamentary Ombudsman (section 117) are prosecuted by the Prosecutor General. The Office of the Prosecutor General also appoints a significant number of prosecutors: its remit covers the appointment of the entire body of district prosecutors (roughly 450 strong at present), as well as the issuance of assignments to management and special duties in the National Prosecution Authority and the submission of proposals to the Government on the appointment of state prosecutors. The Prosecutor General decides administrative matters concerning the entire National Prosecution Authority, unless otherwise provided or ordered. Internal independence requires the highest prosecutors to use these powers of theirs, too, on grounds laid down by law, in accordance with the principle of the rule of law, while at the same time ensuring that their actions never undermine but rather strengthen the independence of both the prosecution service and the individual prosecutors. In this respect, the requirement of independence imposes certain framework conditions on the organisation of the prosecution service's inner workings, too.

Under section 104 of the Constitution, the President of the Republic appoints the Prosecutor General. The rationale given for this provision stated that since the office is one specifically mentioned in the Constitution Act, it is consistent that appointment, too, be governed by the Constitution (government proposal HE 1/1998, p. 161/II). The Prosecutor General is appointed in observance of the procedure laid down in section 58 of the Constitution. The President of the Republic makes the decision in Government on the basis of a motion proposed by the Government. No amendments are proposed to the regulation of the procedure for appointing the Prosecutor General. The proposed independence requirement, in conjunction with section 125, subsection 2 of the Constitution, means that the Prosecutor General and the Deputy Prosecutor General must be appointed in a manner that safeguards the independence of the prosecution service.

In dealing with prosecution matters, both the Prosecutor General and the Deputy Prosecutor General exercise the same powers of the highest prosecutor independently of others and also independently of each other (current section 12, subsection 2 of the Act on the National Prosecution Authority). Neither has the highest prosecutor's right of devolution or substitution over the cases with which the other deals but both have an equal right to exercise these rights over all other prosecutors in the prosecution service. Under section 17, subsection 1 of the Act on the National Prosecution Authority, the Deputy Prosecutor General is currently appointed in the same procedure as the Prosecutor General, whose appointment is governed by section 104 of the Constitution. Due to the constitutional status of the Prosecutor General and because the Deputy Prosecutor General has the same power of decision as the Prosecutor General in matters to be dealt with by him or her, there are grounds to lay down provisions in the Constitution on the appointment of the Deputy Prosecutor General as well. The procedure would be the same as for appointing the Prosecutor General. An arrangement consisting of two highest prosecutors is moreover capable of

considerably reducing the impact of any eventual external influence on the functioning of the prosecution service. This viewpoint that is also relevant to the independence of the prosecution service speaks in favour of providing for the appointment and the status of the Deputy Prosecutor General in the Constitution.

The provision would state, owing to the status and powers of the Deputy Prosecutor General described above and because of the independence of the prosecution service, that the provisions concerning the Prosecutor General shall apply, mutatis mutandis, to the Deputy Prosecutor General. The formulation aligns with that of section 38 concerning the Parliamentary Ombudsman. The Prosecutor General is mentioned in the Constitution in its section 27 concerning eligibility and qualifications for the position of Representative (i.e. member of Parliament), section 113 concerning the criminal liability of the President of the Republic and section 114 concerning the prosecution of ministers. In addition, the section 104 now examined would apply, mutatis mutandis, to both of the highest prosecutors, and the subsections 2 and 3 proposed below would correspondingly apply to the Deputy Prosecutor General.

A new *subsection 2* would be added to the section to provide for the removal from office and dismissal of the Prosecutor General and the Deputy Prosecutor General. Under the said provision, the Prosecutor General could not be removed from office except by a judgment of a court as laid down in section 103, subsection 1, or by termination of employment on the basis of unlawful conduct that demonstrates manifest unsuitability for the office.

As noted above, the autonomy and independence of the activities of a hierarchically organised prosecution service are largely based on the protection enjoyed by the highest prosecutors who lead the service. The proposal would strengthen this protection with regard to the right to remain in office. This would, at the same time, strengthen the independence of the entire prosecution service. According to the proposal, the highest prosecutor could firstly be removed from office by a judgment of a court as laid down in section 103, subsection 1. The referenced provision concerns the removal of a judge from office. The reference would also apply to the substantive conditions for removal from office, meaning that such removal would only be possible if the highest prosecutor were convicted of a criminal offence that demonstrated manifest unsuitability for the position.

Secondly, the highest prosecutor could be dismissed on the basis of unlawful conduct that demonstrated manifest unsuitability for the position. The decision to dismiss would be made by the Government, after consulting the Supreme Court, unless the President of the Republic reserved the right to decide the matter. Providing for such an opportunity is due to the fact that it is not considered justified to formulate the regulation to wholly align with the right of judges to remain in office. As stated in the foregoing, the Prosecutor General and the Deputy Prosecutor General are not wholly equated with judges in terms of status. Removal from office might also involve challenges arising from the hierarchical organisation of the prosecution service, as this sanction is only possible when removal from office is requested by the individual prosecutor prosecuting the criminal case.

On the other hand, restraints must clearly be imposed on the dismissal of the highest prosecutor by decision of the executive so as to prevent the abuse of such power. Correspondingly with removal from office, the substantive condition applying to dismissal would be unlawful conduct demonstrating manifest unsuitability for a position as the highest prosecutor. Such conduct might consist of not only a criminal offence that has not resulted in the highest prosecutor's removal from office but also, for example, the kind of activities referred to in subsection 1 that compromise the independence of the prosecution service, or other such severe action or negligence, due to which the person is no longer in a position to hold the office of the highest prosecutor. In any case, the dismissal should be based on objectively robust reasons that are sufficiently compelling with regard to the duties of the highest prosecutor.

A law proviso is also proposed for the subsection stating that provisions on the termination of employment of the Prosecutor General are laid down by an act. This would refer to the procedure to be complied with in dismissal from office. By strengthening the right of the Prosecutor General to remain in office, the law proviso would support the independence of the Prosecutor General and hence the entire prosecution service.

A new *subsection 3* would be added to the section containing provisions on the ending of the Prosecutor General's public-service employment relationship on the basis of reaching retirement age or losing the capability to work. A provision on lowering the retirement age of the Prosecutor General could not apply to an existing public-service employment relationship, however.

The formulation of the provision would correspond to section 103, subsection 2 concerning judges and the rationale for that stated above with regard to it. The specific protected right of the highest prosecutors to remain in office would not mean that they would be appointed for life. The regulatory proviso on the ending of the public-service relationship on the basis of reaching retirement age or losing the capability to work is necessary, because the highest prosecutors are appointed for an indefinite rather than a fixed term.

A new *subsection 4* would moreover be added to the section stating that the other terms of service of the Prosecutor General would be provided for separately by an act.

The formulation of the provision would correspond to section 103, subsection 2 and the rationale to that stated above with regard to it. The status of the highest prosecutors under public-service law differs, however, from that of judges, who are subject to the Courts Act. In addition to the Public Officials Act, the highest prosecutors are subject to the provisions of the Act on the National Prosecution Authority in particular. It would follow from the status of the highest prosecutors that they would be exempt from the provisions of the Public Officials Act on topics such as making public officials available for the Government's use.

4 PARALLEL TEXTS

The Constitution of Finland (731/1999) **Currently in force**	 **Proposed**
Section 21 *Protection under the law* Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or *other* authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.	Section 21 *Protection under the law* Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an act.
Chapter 9 Administration of justice	
Section 98 *Courts of law* The Supreme Court, the Courts of Appeal and the District Courts are the general courts of law. The Supreme Administrative Court and the regional Administrative Courts are the general courts of administrative law. Special courts that exercise judicial powers in specific areas of competence are provided for by law. Provisional courts shall not be established.	Section 98 *Courts of law* The Supreme Court, the Courts of Appeal and the District Courts are the general courts of law. The Supreme Administrative Court and the regional Administrative Courts are the general courts of administrative law. *Further provisions on the general courts of law and administrative law shall be laid down by an act.* Special courts that exercise judicial powers in specific areas of competence shall be provided for by law. Provisional courts shall not be established. *The administration of the court system shall be organised in a manner that safeguards the independence of courts and judges as further specified by an act.*

Section 100 *Composition of the Supreme Court and the Supreme Administrative Court* The Supreme Court and the Supreme Administrative Court are composed of the President of the Court and *the requisite number of Justices.* The Supreme Court and the Supreme Administrative Court have a competent quorum when five members are present, unless a different quorum has been laid down by an Act.	Section 100 *Composition of the Supreme Court and the Supreme Administrative Court* The Supreme Court and the Supreme Administrative Court are composed of the President of the Court and *15–25 other permanent members.* The Supreme Court and the Supreme Administrative Court have a competent quorum when five members are present, unless a different quorum has been laid down by an act.
Section 102 *Appointment of judges* Tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an Act. Provisions on the appointment of other judges are laid down by an Act.	Section 102 *Appointment of judges* *The president and other members of the Supreme Court and the Supreme Administrative Court are appointed by the President of the Republic in accordance with the proposal of the court concerned.* *Other* permanent judges are appointed by the President of the Republic in accordance with *the proposal of an independent body on which judges make up the majority.* *Notwithstanding the provisions of section 58, when the President of the Republic does not decide the matter in accordance with the proposal, the matter is referred back to the court or body that submitted the proposal for further preparation. The matter is then decided in accordance with the new proposal.* *Further provisions on the appointment procedure are laid down by an act.* Provisions on the appointment of other judges are laid down by an act. *Provisions on the procedure to nominate judges and members to supranational courts are laid down by an act.*
Section 103 *The right of judges to remain in office* A judge shall not be suspended from office, except by a judgement of a court of law. In addition, a judge shall not be transferred to another office without his or her consent, except where the	Section 103 *The right of judges to remain in office* A judge shall not be removed from office, except by a judgment of a court, *and only when the judge has been convicted of an offence that demonstrates manifest unsuitability for judicial office*. In addition, a judge shall not be transferred to another office

transfer is a result of a reorganisation of the judiciary. Provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are laid down by an Act. More detailed provisions on the other terms of service of a judge are laid down by an Act.	without consent, except where the transfer *to another judicial office* is a result of a reorganisation of the judiciary. *Provisions on the termination of the public-service employment relationship of judges on the basis of reaching retirement age or losing the capability to work* are laid down by act. *A provision on lowering the retirement age of judges cannot apply to existing public-service employment relationships.* Provisions on the other terms of service of judges in other respects are separately laid down by an act.
Section 104 *Prosecutors* The prosecution service is headed by the highest prosecutor, the Prosecutor-General, who is appointed by the President of the Republic. More detailed provisions on the prosecution service are laid down by an Act.	Section 104 *Prosecutors* The *independent* prosecution service is headed by the Prosecutor General as the highest prosecutor. The Prosecutor General *and the Deputy Prosecutor General are* appointed by the President of the Republic. *The provisions concerning the Prosecutor General shall apply, mutatis mutandis, to the Deputy Prosecutor General.* More detailed provisions on the prosecution service are laid down by an act. *The Prosecutor General cannot be removed from office except by a judgment of a court as laid down in section 103, subsection 1, or by termination of employment on the basis of unlawful conduct that demonstrates manifest unsuitability for the office. Provisions on the termination of employment of the Prosecutor General are laid down by an act.* *Provisions on the ending of the public-service employment relationship of the Prosecutor General on the basis of reaching retirement age or losing the capability to work are laid down by an act. A provision on lowering the retirement age of the Prosecutor General cannot apply to an existing public-service employment relationship.* *Provisions on the other terms of service of the Prosector General are laid down separately by an act.*