

AMENDMENT FORM

Suggestion for amendment of Article 20, Title IV of Part I of the Constitution

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Status : - Member: Hjelm-Wallén, Lekberg and Lenmarker
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Article 20 : The Court of Justice of the European Union¹

1. The Court of Justice, including the High Court², shall ensure ~~respect for the Constitution and Union law~~ **that in the interpretation and the application of the Constitution and of the acts adopted by the institutions and organs of the Union the law is observed.**³

~~The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.~~⁴

2. The Court of Justice shall consist of one judge from each Member State, ~~and shall be assisted by Advocates-General.~~ The High Court shall include at least one judge per Member State. ~~++~~ The number **of judges of the High Court** shall be fixed by the Statute of the Court of Justice. The judges ~~of the Court of Justice and the High Court, and the Advocates-General of the Court of Justice,~~ **shall be** chosen from persons whose independence is beyond doubt and who satisfy the conditions set out ~~at in~~ Article [XX] of Part II. **They** shall be appointed by common accord of the governments of the Member States for a term of six years, ~~renewable.~~ **Judges may be reappointed.**⁵

¹ Paragraph 1 of Article 20 does not specifically exclude ECJ jurisdiction over CFSP and CFSP elements of international agreements. This issue will have to be addressed explicitly in Part I.

² We have doubts on name "High Court".

³ The wording "ensure respect for" seems vague when describing the main object of the Court of Justice. The proposed wording corresponds to article 220 EC but takes into consideration that the jurisdiction of the Court according to the Constitution includes not only the former first pillar areas. The meaning of and the distinction between "the Constitution" and "Union law" is unclear and is therefore replaced by the terminology currently used in the opening articles of the Constitution.

⁴ The second paragraph should be deleted. Title IV concerns the rights and obligations of the institutions of the Union and the articles of this title are thus aimed at the institutions, not the Member States. It therefore seems inconsistent to include a paragraph concerning the obligations of the Member States to ensure effective legal protection in the field of Union law.

⁵ The role of the Advocates-General should be reviewed. A possibility for the Court of Justice to require the assistance of Advocates-General in certain cases could be laid down in

3. The Court of Justice shall **have jurisdiction to hear and determine the cases set out in Articles [YY] of Part II.**⁶ ~~be competent for:~~
- ~~— ruling on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases and according to the modalities foreseen in article [YY] of Part II;~~
 - ~~— preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;~~
 - ~~— ruling on appeals on decisions given by the High Court or exceptionally reviewing these decisions under conditions laid down in the Statute of the Court.~~
4. **The High Court shall have jurisdiction to hear and determine the cases set out in Articles [YY] of Part II, if so provided in the Statute of the Court of Justice. Decisions given by the High Court shall be subject to a right of appeal to the Court of Justice under the conditions and within the limits laid down in Article [ZZ] in Part II.**
5. **According to Article [YYY] in Part II specialized courts may be set up to hear and determine at first instance actions brought in specific areas within the jurisdiction of the Court of Justice.**⁷

the Statute, as well as the fixing of their number. The other suggestions for amendments are made for editorial reasons.

⁶ Since the overall task of the Court is set out in paragraph 1 in Article 20 and the jurisdiction of the Court will be defined elsewhere in the Constitution, it would seem more appropriate to simply refer to these articles. An effort to go beyond such a reference seems both unnecessary and risks to raise questions on the interpretation of Article 20 when read together with the articles defining the jurisdiction of the Court in detail.

⁷ In order to give a correct description of the court system, a reference to the High Court should be included in Article 20 as well as a reference to the specialized courts.