

## **Excerpts from the notes to the Constitutional Bill**

### Re article 2

Article 2 of the Constitution makes provision for the main outlines of constitutional structure. It is based upon Montesquieu's above-mentioned theory on the separation of powers into three branches. The provision on definition of the powers departs, however, from the theory in that there is not full equality in the legal status of the branches. As the Constitution also provides that certain matters can only be arranged by legislation, including the fiscal governance of the state, the Constitution, together with the rule of parliamentary government, ensures the legislature a certain key position vis-à-vis other holders of state power.

Changes to the present provision of article 2 of the Constitution do not disrupt this arrangement. It is clearly stated that all state power springs from the nation, and that the nation applies that power either directly, i.e. via elections and referenda, or via those who hold state power on the nation's behalf, as provided in the Constitution. A change has been made from the terms of the present Constitution, stating that the President holds only executive powers, and not legislative power together with parliament.

### Re article 3

The notes of the Constitutional Council state with regard to art. 3 that this is a new provision, which defines the extent of Icelandic territory. Under this provision it will not be permissible to divide the state, as for instance is the case in the USA, Germany and Spain. The article is unchanged from the proposal of the Constitutional Council.

### Re article 4

Art. 4 addresses citizenship, for which provision is made in art. 66 of the present Constitution. The objective is to make provision for the principles regarding citizenship, i.e. that a person acquires Icelandic citizenship if he/she has a parent who has Icelandic citizenship; that citizenship may be otherwise be granted under the law; that no person may be stripped of Icelandic citizenship unless he/she has acquired citizenship of another state, and that an

Icelandic citizen is free to enter the country, and cannot be deported. The provision is somewhat altered from the present article 66; the latter part of that provision is now transferred to a new provision on rights of residence and movement in article 26 of the Bill. A change is proposed from the Constitutional Council's proposal, that clause 2 para. 3 should be moved to art. 26, as its content belongs in the context of that provision. The provisions of clause 1 para. 1 are new: the principle is stated that those who have a parent with Icelandic nationality acquire the right to Icelandic citizenship. The wording of the Constitutional Council has, however, been revised, in order to ensure that it will provide only the scope that appears to have been intended. Para. 2 provides that no person may be stripped of Icelandic citizenship, but that provision may be made in law that a person may be stripped of citizenship, should he/she have or acquire by consent citizenship of another state. This is an alteration to the Constitutional Council provision, which stated unconditionally that no person could be stripped of Icelandic citizenship. The provision accords with para. 1 art. 66 of the present Constitution, with the addition that a person may be stripped of citizenship if he/she has citizenship in another state, cp. Art 12 of the Icelandic Citizenship Act, no. 100/1952. Para. 3 is an unaltered provision from clause 1 para. 2 art. 66 of the present Constitution.

#### Re article 5

This is a new provision, whose objective is to provide for the scope of the Constitution, including the duties of the public under the Constitution, and the heading of the provision has been changed accordingly. The provision contained in para. 2 has, after technical revision, been altered from the Constitutional Council's proposal, in such a way that, instead of providing in general terms that everyone must observe the Constitution and legislation, obligations and rights arising from it, provision is made specifically, in a separate clause, for the duty to respect rights under Chapter II. This provision relates closely to art. 9 (protection of rights).

Provision is made in para. 1 that government authorities must ensure that all are able to enjoy the rights and freedoms entailed by the Constitution. Reference here is mainly to Chapter II (human rights), but the provision also has relevance in other cases, when certain rights are a corollary of the provisions of the Bill, for instance in arts. 4 (citizenship), 65 and 66 (electors' call for referendum and electors' proposal of parliamentary business), and 71 (taxes). The Constitutional Council's notes point out that para. 2 provides for the duty of all to respect the law and the rights of others, and the duties incumbent upon them under the Constitution. This entails a clear intention that the Constitution may, in certain circumstances, have a direct effect on civil law, entailing the possibility of prosecuting private persons who violate the

human rights of others, on the basis of the Constitution, without the State having any involvement. A claim for compensation in such a case could be based, for instance, on art. 26 of the Compensation Act no. 50/1993. In most cases, however, the safeguarding of human rights which arises from the provision of the constitution would presumably be elaborated in general legislation, which will be interpreted, in accord with the accepted rules of interpretation, in accord with the Constitution in any dispute between two private parties. Such effects via interpretation are deemed to be an aspect of indirect influence on civil law. In such cases, the direct influence on civil law need not be an issue. That would mainly be an issue in exceptional cases, where gaps exist in the protection afforded by general law. Signs may already be seen of such direct effects of the Constitution on civil law in Icelandic legal practice, cp. a Supreme Court verdict of 11 March 2004, in case no. 342/2003. The Supreme Court confirmed the verdict of the district court, which had applied the rule of equality provided in art. 65 of the present Constitution, in a case between two private parties in which a claim was made for compensation under the Seamen Act, due to alleged unlawful dismissal. The plaintiff alleged that he had been discriminated against due to his place of residence. Similar provisions in law of other countries may be found e.g. in the Irish and South African constitutions. Paras. 1 and 2 art. 8 of the South African constitution make provisions on the scope of the human rights section which are very similar to art. 5, and confer direct influence on civil law. Para. 1 states that the constitution is binding for all branches of government, and para. 2 that it is binding for private parties, account being taken of the relevant rights and duties. Art. 40 of the Irish constitution also contains provision that the State shall respect and safeguard the human rights of individuals; and, as the duty also extends to courts, the Supreme Court of Ireland has accorded the constitution's human rights provision direct influence on civil law, so that private parties are able to claim compensation from each other due to violations of human rights. In German law, the constitutional court has mainly accorded the human rights provision of the basic legislation indirect influence on civil law; but verdicts have also been given which indicate that private parties are directly bound by human rights provisions, and responsible for payment of compensation for violations.

As the Constitutional Council points out in its note to art. 9, potential effects on civil law are, however, contingent upon whether the rights in question may be deemed by their nature to extend to private parties, or whether they apply only to parties holding public authority. This applies both to direct and indirect effects on law. For that reason a change has been made to para. 2 art. 5 of the Constitutional Council's proposal, stating that private parties shall respect the rights provided in Chapter II, as applicable. The question of whether the relevant rights can apply to legal disputes between private parties is contingent firstly on the import of the rights. Thus, for instance, the right to fair judicial process under art. 28 cannot apply to legal

disputes between private parties. Other rights may apply to legal disputes between private parties, but only up to a point. Thus a private party running a school is bound by the duty not to discriminate among students on admission under art. 24, but not by the duty, incumbent only on public authorities, to provide education free of charge. With regard to this and other aspects of effect on civil law, see the note to art. 9.

#### Re article 6

The provision is based upon art. 65 of the present Constitution. Its objective is to provide for the principle of equality. Instead of the present Constitution's provision that "Everyone shall be equal before the law and enjoy human rights," the Constitutional Council proposed that para. 1 art. 6 should be worded: "We are all equal before the law and shall enjoy human rights without discrimination." In technical revision of the Constitutional Council proposal, a decision was made to use more conventional legal language and revert to the original wording; this is also consistent with the other provisions of the Human Rights chapter. The provision is thus now stated as a rule, cp. the wording "All people shall be equal before the law."

The Constitutional Council enumeration of examples of forms of discrimination is considerably altered from art. 65 of the present Constitution; its effect is to bring out those attributes which will be deemed least to justify differential treatment. The provision contained in para. 2 is unchanged from the present provision. The provision establishes, along with the rights to life and to human dignity, the basis for all other provisions of the Human Rights chapter. The rule of equality is closely tied to all other provisions of the Human Rights chapter, and is applied, as appropriate, together with them. It has, however, a broader scope than with regard to constitutionally- enshrined human rights.

#### Re article 7

This is a new provision, whose objective is to ensure the inherent (literally "inborn") right of all to life. The provision establishes, along with the provisions on equality and the right to human dignity, a basis for all the other provisions of the Human Rights chapter. The content of the provision is also directly connected with arts. 22 (right to means of subsistence), and 23 (health and health services), and the prohibition of the death penalty contained in art. 29 of the Bill.

#### Re article 8

This is a new provision, whose objective is to reinforce the ideological basis of safeguarding human rights, which consists in respect for human dignity, which also entails respect for the diversity of human life. The provision establishes, along with the provisions on equality and right to life, a basis for all the other provisions of the Human Rights chapter. It is most closely connected with art. 10 (protection against violence), the parts of art. 11 concerned with protection of the right to self-determination, art. 22 (social rights), art. 23 (right to health and health services), art 27 (deprivation of freedom), and art. 29 (prohibition of the death penalty, torture, other degrading treatment and forced labour).

The provision is modelled on art. 1 of the UN Universal Declaration of Human Rights, which states that “All human beings are born free and equal in dignity and rights.” Human dignity is emphasised as a fundamental human right in the preambles to many international human-rights covenants, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The European Court of Human Rights has also pointed out that, together with freedom, respect for human dignity is at the very heart of the Declaration of Human Rights. A recent Charter of Fundamental Rights of the European Union also states in art. 1 that “Human dignity is inviolable. It must be respected and protected.”

In its notes the Constitutional Council specifically points out that the provision takes account of the Convention on the Rights of Persons with Disabilities which states in art. 3 as one of the principles of the Convention “Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.” The Constitutional Council also cites art. 3 of the UN Universal Declaration of Human Rights which states that: “Everyone has the right to life, liberty and security of person.”

#### Re article 9

The article is not based on any provision of the present Constitution. Its objective is to make provision for the duties of the State according to the Human Rights chapter, and to safeguard an indirect horizontal effect, and also to provide for the conditions of permissible restrictions on human rights. The provision of para. 1 is as proposed by the Constitutional Council, but with a technical alteration to the wording, so that the wording “The authorities are at all times required to protect citizens” is altered to “The government is at all times required to protect the public” against violations of human rights. In examination of the Human Rights chapter, a decision was made to insert a new general provision on restriction of human rights, which is

contained in para. 2. The addition is made for technical and substantive reasons in connection with Iceland's international human-rights obligations.

#### Re article 10

This is a new provision, whose objective is to provide special protection against violence which is not so grave as to be covered by art. 29, and to ensure the civil law implications of protection against violence of all kinds. The Constitutional Council proposed that the provision be worded: "Everyone shall be guaranteed security and protection against violence of any kind." In technical revision of the Bill, a decision was made to omit the word "security." The heading of the article was revised accordingly. The provision elaborates on the right to live with dignity under art. 8 of the Bill. It relates to art. 6 with regard to gender-based violence, and to art. 29 of the Bill, as some forms of violence fall within the terms of forced labour, torture or inhumane or degrading treatment.

#### Re article 11

The article is based upon art. 71 of the present Constitution. Its objective is to safeguard the privacy of personal life, home and family. In para. 1 the Constitutional Council has changed the wording of the present provision: instead of a provision that "everyone shall enjoy" such privacy, the provision is now that it be "guaranteed." There is no intention to alter the substance of the provision; the right to privacy has long entailed both positive and negative duties. The provision of para. 2 is unchanged from para. 2 art. 71 of the present Constitution. In technical revision of the Constitutional Council's proposals, a decision was made to omit the special provision on restrictions in para. 3, which was the same as para. 3 art. 71 of the present Constitution. Instead, restrictions of rights under the provision are subject to para. 2 art. 9. This alteration entails no material change. The provisions of art. 11 relate most closely to the provisions of arts. 23 (health and health services) and 26 (freedom of movement). It also has some relevance to the provisions of arts. 33 and 35 on nature and the environment. Those aspects of personal privacy which are concerned with the right to self-determination relate, of course, to the provisions of art. 10 on protection against violence, and of art. 29 prohibiting forced labour, torture and other inhumane or degrading treatment or penalty.

The Constitutional Council's note to this provision states that the provision reproduces almost exactly art. 71 of the present Constitution, and that its import is unchanged; that the wording of paras. 1 and 3 has been altered, and that otherwise the notes to prior versions of the article should be consulted, especially with regard to amendments made in 1995. The note states that the objective of the article is to safeguard the privacy of personal life, home and family; and it

is also stated that the privacy of personal life and the family are protected under the principles of Icelandic legislation; that this is consistent with art. 8 of the European Convention on Human Rights, which provides right to respect for private and family life, home and correspondence, and with the International Covenant on Civil and Political Rights, which in addition mentions honour and reputation.

#### Re article 12

The objective of art. 12 is to safeguard the interests and rights of children on the children's own terms, in accord with the principles of the UN Convention on the Rights of the Child. Para. 1 art. 12 is the same as para. 3 art. 76 of the present Constitution, with the exception that the Constitutional Council has added a reference to "all" children. The Constitutional Council intends, however, that the provision shall have a stronger influence on law than has been attributed to the present provision. The Constitutional Council adds new provisions in arts. 2 and 3. In addition to the legal protection afforded under art. 12, children can also in their own right enjoy other rights laid down in the Bill.

#### Re article 13

The article is based upon the provisions of art. 72 of the present Constitution. Its objective is to protect the right of ownership, and to provide for special rules governing expropriation. The provisions of para. 1 are unchanged from para. 1 art. 72 of the present Constitution. In view of the general provisions for restrictions of rights under para. 2 art. 9, the Constitutional Council's following proposal for para. 2 has been omitted: "Ownership rights entail obligations as well as restrictions in accordance with law." The Constitutional Council removed the provision of para. 2 art. 72 of the present Constitution stating that the right of foreign parties to own real property interests or shares in business enterprises in Iceland may be limited by law. That possibility will, nonetheless, still exist. The provisions of art. 13 have some material connection to art. 22 (social rights) and art. 25 (freedom of employment). It overlaps in various ways with art. 34; and it is connected with provisions on taxation in art. 71 of the Bill.

#### Re article 14

This article provides for freedom of expression and information. The provision is based upon art. 73 of the present Constitution; in addition to freedom of opinion and expression, the proposal now makes special provision for the freedom to seek, receive and disseminate

information and ideas, which is the content of what is known as “freedom of information.” The wording takes account *inter alia* of art. 10 of the European Convention on Human Rights, and art. 19 of the International Covenant on Civil and Political Rights. The Constitutional Council’s proposal has been changed by adding freedom of information, which was entailed by art. 15 according to the Council’s proposals; and authority for restrictions has been removed from the provision, as this is covered by the general authority for restrictions in para. 2 art. 9 of the Bill. Provisions concerning open and free debate have been moved to art. 16. The freedom of expression provided here relates to various other provisions of the Constitution, i.e. freedom of the media under art. 16, freedom of culture and learning under art. 17, freedom of religion and conviction under art. 18, freedom of association and assembly under arts. 20 and 21, activities of political associations under para. 51, the right of the public to democratic influence, especially under arts. 39, 40 and 41, and art. 41 regarding parliamentary elections, art. 107 on municipal elections and public participation, arts. 19, 60, 65, 66, 111 and 113 on referenda, para. 2 art. 49 on the freedom of expression of parliamentarians and ministers, para. 3 art. 12 on children’s right to self-expression, and para. 2 art. 35 regarding the public’s right to have influence on preparation of decisions which have an impact on the environment and nature.

#### Re article 15

The provision is concerned with the public’s right of access to official documents. This is a new provision which is not made in the present Constitution. The provision is based upon the Constitutional Council’s proposal, to which certain technical revisions have been made, *inter alia* taking account of the Council of Europe Convention on Access to Official Documents of 18 June 2009. Iceland has in fact not ratified the Convention, and it has not yet taken effect because it has not reached the required number of ratifications. Nonetheless it is the best source for internationally-recognised standards in this field. The part of the Constitutional Council’s proposals which addresses freedom to disseminate information has been moved to art. 14 (see note to that provision). The provision relates to para. 1 art. 35 (government duty to provide information regarding the environment and nature), para. 2 art. 50 (duty of members of parliament to provide information on financial interests), and the equivalent duty of government ministers under para 2 art. 88. Art. 51 (transparency of finances of political parties and candidates), para. 1 art. 28 (court proceedings to be conducted in public), art. 55 (meetings of Althing to be held in public), art. 61 (publication of legislation), art. 93 (government ministers’ obligation of disclosure and truthfulness) and art. 97 (special autonomy of agencies which gather information necessary in a democratic society).

### Re article 16

As stated in the Constitutional Council's note, this is a new provision, not in the present Constitution, reflecting the importance of free and autonomous media in a free country. Technical revisions have been made to the Constitutional Council's proposals. In addition, matters under art. 14 in the Constitutional Council's proposal regarding the conditions of free and informed debate have been moved to art. 16. The provision concerning informants ("whistleblowers"), which was included in art. 16 under the Constitutional Council's proposal, has been moved to art. 15. In the wording of the provision, account was taken of recommendations and resolutions of the Council of Europe Committee of Ministers and the provision of the Norwegian Constitution on freedom of expression (art. 100). The provision relates mainly to art. 14 (freedom of expression, opinion and information) and art. 15 (public right of access to official documents). It reinforces the rights for which provision is made in those articles.

### Re article 17

New provisions are made under art. 17, to safeguard certain cultural rights. According to the Constitutional Council's notes, its intention is to safeguard academic freedom, i.e. the freedom to teach and to pursue research at university level, and the freedom of artists to pursue their art. The provision relates closely to arts. 14, 20 and 21 of the Bill, as the general provisions for freedom of opinion and expression, and those on freedom of association and assembly, apply also in this field.

In its notes the Constitutional Council points out that provisions to safeguard science, scholarship and the arts are found in various constitutions. For example, such a provision is made in para. 3 art. 5 of the German Constitution, para. 1 art. 16 of the South African Constitution, arts. 20 and 21 of the Swiss Constitution, and para. 3 art. 16 of the Finnish Constitution. The provision of art. 17 are also modelled on para. 3 art. 15 of the International Covenant on Economic, Social and Cultural Rights, which provides that the parties undertake to respect the freedom indispensable for scientific research and creative activity. The provision also relates closely to the provisions of item a para. 1 art. 15 of that Covenant, and para. 1 art. 27 of the UN Universal Declaration of Human Rights, providing for the right freely to participate in the cultural life of the community.

## Re article 18

The provision entails considerable changes to the provisions of arts. 63 and 64 of the present Constitution. Its objective is to insert into the Human Rights chapter of the Constitution modern provisions on freedom of religion and conviction. Para. 1 reflects the right to remain outside religious organisations which is provided in para. 2 art. 64 of the present Constitution. In addition the Constitutional Council proposed a clearer provision that the protection under this provision extended also to “philosophy.” In examination of the Council’s proposal in light of Iceland’s international human-rights obligations, the word “conviction” has also been added to the subjects of protection. The Constitutional Council’s proposal also included that there should be a clear provision for the right to the opinion in question, and the right to change it. Para. 2 includes a special provision on practice of religion, i.e. the right to establish religious groups, an equivalent to which is in art. 63 of the present Constitution. In examination of the Constitutional Council’s proposals, the word “philosophy” was also added to para. 2 in accord with international safeguards of human rights. The Constitutional Council’s proposals also included a special provision for restrictions, but in view of the addition of para. 2 art. 9, this has been omitted. The provisions of art. 18 relate closely to the provisions of arts. 14 (freedom of expression), 19 (organisation of the church) and 20 (freedom of association).

## Re article 19

The Constitutional Council’s provision contained the following provision in art. 19:

“The organisation of the Church may be provided for by law.

If the Althing approves a change in the organisation of the State Church the matter shall be submitted to a vote for approval or rejection by the entire electorate of the country.”

In an advisory referendum held on Saturday 20 October 2012, the following question was among those submitted to the electorate: *Would you like to see provisions in the new Constitution on an established (national) church in Iceland?* A majority answered *yes*.

In view of this, paras. 1 and 2 art. 19 contain the same provisions as in art. 62 of the present Constitution, unchanged, except that reference is made to para. 2, not art. 62. The provision is to be understood in the same way as hitherto.

## Re article 20

The article is based upon art. 74 of the present Constitution. Its objective is to ensure the safeguarding of freedom of association, both positive and negative. Positive freedom of association is the subject of para. 1. The provision is equivalent to clause 1 para. 1 art. 74, with the exception that, instead of the provision that Associations “may be formed” “for any lawful purpose,” the Constitutional Council’s proposal was: “Everyone shall be guaranteed the right to form associations for any lawful purpose.” The change to the wording is not intended to alter the import. In examination of the Constitutional Council’s proposals in light of Iceland’s international obligations regarding human rights, a decision was made to use the concept "*mynda*" (= form) instead of the concept "*stofna*" (= establish). The provisions of clause 2 para. 1 art. 74 of the present Constitution remain unchanged, stating that “An association may not be dissolved by decision of a government authority.” The Constitutional Council proposed the omission of clause 3 para. 1 art. 74 of the present Constitution, which is: “The activities of an association found to be in furtherance of unlawful objectives may however be enjoined, in which case legal action shall be brought without undue delay for a judgment dissolving the association.” This change has little practical effect, in view of the general authority for restrictions under para. 2 art. 9. Negative freedom of association is safeguarded under para. 2. The provision is the same as clause 1 para. 2 art. 74 of the Constitution. In addition the Constitutional Council proposed the following clause 2 para. 2, which is the same as clause 2 para. 2 art. 74 of the present Constitution: “However, obligatory membership of an association may be provided for by law if necessary in order to enable an association to carry out its lawfully decreed functions for reasons of the public interest or the rights of others.” That provision was omitted during technical revision, and para. 2 art. 9 applies instead. The change entails no material alteration. The provisions of art. 20 relate closely to the provisions of arts. 18 (freedom of religion and conviction) and 21 (freedom of assembly). In addition to the clear link with art. 74 of the present Constitution, art. 20 is modelled especially on art. 11 of the European Convention on Human Rights and art. 22 of the International Covenant on Civil and Political Rights. The provisions on freedom of association and of assembly have, however, been separated, the latter being placed in a separate article, unlike the provisions of the present Constitution and the Convention on Human Rights.

## Re article 21

The provisions of art. 21 aim to safeguard freedom of association. They are much changed from para. 3 art. 74 of the present Constitution: “People are free to assemble unarmed. Public

gatherings may be attended by police. Public gatherings in the open may be banned if it is feared that disorder may ensue.” Due to the provisions of para. 2 art. 9, the change has, however, little material effect. The provision is closely linked to art. 20 (freedom of association), and also arts. 14 (freedom of expression and information) and 18 (freedom of religion and conviction).

#### Re article 22

The provisions of art. 22 are new, providing for specific social rights, based on para. 1 art 76 of the present Constitution. Its objective is to guarantee to the public decent conditions of life and social security, and thus to prevent people’s life or wellbeing being placed at risk due to poverty, illness or other factors preventing their supporting themselves. The additions proposed by the Constitutional Council vis-à-vis the present Constitution are mainly concerned with the provision in para. 1 that “Everyone shall be ensured by law the right to means of subsistence.” Para. 1 also provides that all shall be ensured by law the right to social security. That right and its further elaboration in para. 2 is based upon para. 1 art. 76 of the present Constitution, which makes provision for the main aspects of that right. Some changes of wording have been made in para. 2 from para. 1 art. 76 of the present Constitution: these emphasise matters which are deemed to fall under the aegis of protection by the Constitution. The provision is closely linked to arts. 8 (human dignity), 12 (children’s rights), 13 (rights of ownership), 23 (health services) and 25 (freedom of employment). It also relates to art. 33 (Icelandic nature and the environment).

#### Re article 23

Art 23 makes a new provision on what is termed the “right to health.” Its objective is to ensure that health shall be a defining principle in society, and to guarantee to all health services which are appropriate, professional and ambitious. The additions to the import of the provision proposed by the Constitutional Council vis-à-vis the present Constitution consist of providing in general terms for the right in para. 1, and in para. 2 providing in more detail for the aspect of the right that “Everyone shall be ensured by law the right to accessible, appropriate and adequate health services.” In technical examination of the Constitutional Council’s proposals, a decision was made to add the word “health” to the heading of the provision, so that it more closely reflects the two aspects of the content. The right to health services is not entirely new, as certain aspects of this have been deemed to be entailed by para. 1 art. 76 of the present Constitution, which provides for the right to “assistance in case of sickness.” The provision is closely related to arts. 7 (right to life), 8 (human dignity), 11

(privacy), 10 and 11 (protection against violence and prohibition of inhumane treatment), 22 (social rights) and 33 (nature conservation).

#### Re article 24

Art. 24 makes new provision for the right to education. Its objective is to ensure the rights of all to education in primary and secondary schools (but not specialist schools) which meet certain standards regarding content of study, and to guarantee all those for whom schooling is compulsory access to education free of charge. The provisions of para. 1 are unchanged from para. 2 Art. 67 of the present Constitution; its scope is, in keeping with international developments in law, more extensive than was entailed when the present Human Rights chapter was approved. The Constitutional Council proposes new provisions in paras. 2 and 3 guaranteeing compulsory schooling free of charge, and certain content of education. In examination of the Human Rights chapter regarding whether the legal protection was in any way lacking vis-à-vis Iceland's international obligations, it transpired that no protection was provided for parents' right to ensure that their children's education is in keeping with their religious or philosophical convictions, and hence a decision was made to add such a provision in para. 4. The provisions of art. 24 relate to some degree to all the other Human Rights provisions, as learning is seen as a premise for the individual to be able to enjoy his/her rights. The provision relates directly to arts. 12 (children's rights) and 18 (freedom of religion and conviction).

#### Re article 25

Art. 25 provides for freedom of employment. Its objective is to ensure freedom of employment and various work-related rights in Iceland. The provision of clause 1 para. 1 is the same as clause 1 para. 1 art. 75 of the present Constitution, ensuring the rights of all to pursue the occupation of their choosing. The Constitutional Council's proposals included a proposed provision on restrictions in clause 2 para. 1, worded similarly to clause 2 para. 1 art. 75 of the present Constitution. In technical examination of the Bill a decision was made to omit that provision, as the general provision on restrictions in para. 2 art. 9 of the Bill applies to restrictions on freedom of employment. The Constitutional Council's provision provides in para. 2 for the right to negotiate employment terms and other rights relating to employment; this is, despite minor changes of wording, comparable in import to the right provided in para. 2 art. 75 of the present Constitution. In addition the Constitutional Council proposes the addition in para. 2 of a provision that all shall be guaranteed the right to fair remuneration, and that the right to decent working conditions, such as rest, holidays and leisure time, shall

be provided for by law. The content of the provisions of art. 25 relate closely to the provisions of arts. 6 (equality), 20 (freedom of association), 22 (social rights) and 23 (right to health).

The Constitutional Council's notes state that the Council intended by its changes to make the provision consistent with arts. 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and the right to enjoyment of just and favourable conditions of work which ensure *inter alia* fair wages and equal remuneration for work of equal value, rest and leisure. The Council also cited art. 23 of the UN Universal Declaration of Human Rights. It should be added that in interpretation of the provision account should also be taken of art. 1, clauses 1, 3 and 5 art. 2, and art. 4 of the European Social Charter of 1961, which Iceland has ratified.

#### Re article 26

The provisions of art. 26 address rights of residence and freedom of movement, based on the provisions of paras. 2-4 art. 66 of the present Constitution. The objective of art. 26 is to ensure general freedom of movement from Iceland and within it, and to make provision for residence by foreigners in Iceland. Para. 1 makes provision for freedom to choose a place of residence and freedom of movement, which are provided in para. 4 art. 66 of the present Constitution. The Constitutional Council proposed that the condition of lawful residence be omitted, but it is deemed correct that the condition should remain, as if it were removed that would probably lead to a change in the legal implications, whereas the Constitutional Council's notes do not indicate any such intention. As in the present Constitution, the Constitutional Council proposed that the provisions of para. 1 should include a special provision on restrictions, but this has been omitted, with reference to para. 2 art. 9 of the Bill. Para. 2 makes special provision for restriction of freedom of movement under certain conditions; the provision is unchanged from para. 3 art. 66 of the present Constitution, with the exception of a change in wording, from decision of "judges" to decision of "courts," which does not affect the meaning. Para. 3 provides for the rights of foreigners, refugees and asylum-seekers. The Constitutional Council proposed a special provision that the rights of refugees and asylum seekers to "fair and swift proceedings" shall be provided for by law. This is a new provision. The provision is now stated, with unchanged import, in clause 1 para. 3; for consistency with art. 28 of the Bill, however, the wording of the Constitutional Council's proposal has been changed to "fair proceedings within a reasonable time." In addition the provision regarding asylum-seekers is restricted to those cases where they "may be at risk of execution, torture or other inhumane or degrading treatment or punishment." Clause 1 para. 3 contains a provision

based upon clause 2 para. 1 art. 66. of the present Constitution, that provision shall be made by law for the rights of foreigners to come to Iceland and to reside here, and also for “the grounds” on which they may be deported. The provision has been moved from the place proposed by the Constitutional Council, para. 3 art. 4 of the Bill. There is no change in import from the present Constitution, despite a change in wording made by the Constitutional Council in the reference to “the grounds” on which foreigners may be deported. The provision of art. 26 on freedom of movement and residence has some connection with arts. 22 (privacy) and 27 (deprivation of freedom). With respect to residence of foreigners in Iceland and matters of refugees and asylum-seekers, the provision is closely related to art. 29 (prohibition of death penalty, torture and other inhuman or degrading treatment or punishment).

The provision is modelled on art. 2 of Protocol 4 to the European Convention on Human Rights and para. 1 art. 12 of the International Covenant on Civil and Political Rights, which provides for the condition regarding lawful residence, which the Constitutional Council proposed should be omitted. Such a proviso has been deemed necessary in order to underline the State’s sovereign right to govern matters regarding its borders and immigration. It is thus clearly established in the Constitution that those who enter the country illegally, those who violate the terms of their residence, and deportees do not have the right to choose their place of residence, or freedom of movement in the country. The Constitutional Council’s note states that the Council does not believe that the change of wording will have any material effect, but there appears to be a considerable risk that, if this sovereign right is not specifically stated in the Constitution, some material consequences may arise. The proviso contained in para. 4 art. 66 of the present Constitution has thus been reinstated. The Constitutional Council also proposed that that freedom of residence and movement should be “subject to any limitations laid down by law.” Due to the approach taken in this Bill, to make provision for general authority for restrictions of human rights, and the concomitant conditions, in para. 2 art. 9, this specific provision on restrictions was removed, like other such provisions which do not exceed in scope the provisions of para. 2 art. 9. Nonetheless, the principles on which restriction of rights may be based under para. 1 remain similar to what has hitherto applied. In this respect, see the enumeration in the note to para. 4 art. 66 of the present Constitution.

#### Re article 27

The provisions of art. 27 are only slightly altered from those of art. 67 of the present Constitution. Its objective is to prohibit deprivation of freedom except in certain exceptional circumstances permitted by law, and to provide for the rights of those deprived of freedom. The Constitutional Council altered the wording of para. 3 art. 67, replacing reference to

“heavier sanctions than fines or punitive custody” with a reference to “imprisonment.” In addition, judges’ authority to release people on bail was removed. The Constitutional Council altered the wording of para. 4 in order to clarify that the provision applied to deprivation of freedom other than that entailed by criminal proceedings. Following examination of the provision in light of Iceland’s obligations under international human-rights agreements, a decision was made to add a comprehensive enumeration of the exceptional cases which justify deprivation of freedom.

#### Re article 28

The objective of art. 28 is to provide for the most important aspects of safeguarding human rights in the judicial context. The Constitutional Council proposed that clause 1 para. 1 art. 28 on fair process should be the same as clause 1 para. 1 art. 70 of the present Constitution, except that the form of the word *court* was altered from “dómstóli” to “dómstól.” In technical revision of the Constitutional Council’s proposal, a decision was made to revert to the prior form, in keeping with custom in legal language. Clause 2 para. 1 provides, like clause 2 para. 1 art. 70 of the present Constitution, that court proceedings shall be conducted in public. The Constitutional Council also proposed a provision for exceptions, as in the present Constitution, but with altered wording. Due to the general provision for restrictions in para. 2 art. 9 of the Bill, it is unnecessary to provide especially for all those cases which may justify restrictions on the holding of court proceedings in public. The provision for exceptions was thus removed as part of the technical revision of the Bill. Para. 2 provides for the right to be deemed innocent until proven guilty, which is the same as para. 2 art. 70 of the present Constitution. In examination of the Constitutional Council’s proposals in light of Iceland’s international human-rights obligations, and possible gaps in legal protection, it transpired that the Constitution nowhere provides for *ne bis in idem*, the right not to be tried or punished again for the same offence, i.e. double jeopardy. This has not been deemed to be entailed by art. 70 of the present Constitution. It is thus proposed that such a provision be added to para. 3. The provisions of art. 28 relate closely to Chapter VI (Judiciary), where further provision is made for the autonomy of courts.

Clause 1 para. 1 is unchanged in meaning from art. 70 of the present Constitution. This is modelled on art. 6 of the European Convention on Human Rights. It is pointed out that the provision entails in certain cases a right to oral proceedings and immediacy at the appeal stage, in civil as well as criminal cases. In its ruling of 6 December 2007 in a case brought by Súsanna Rós Westlund against Iceland, the European Court of Human Rights concluded that the provisions of para. 3 art 158 of the Civil Proceedings Act no. 91/1991 could lead to a

violation of this aspect of the Convention. The provision entails that should the defendant in a civil case not put forward a defence in the Supreme Court, he/she can unilaterally prevent the Supreme Court assessing whether grounds exist for oral proceedings in order that proceedings be fair, for instance due to disagreement on events or legal rules, which cannot be resolved on the basis of the documents in the case alone. It will be necessary to revise this provision following the enactment of this Bill.

#### Re article 29

The provisions of art. 29 are unchanged from art. 68 and para. 2 art. 69 of the present Constitution. Its objective is to prohibit the death penalty and ensure protection against forced labour and the most severe forms of violence. The provision also elaborates on the right to live with dignity which is provided in art. 8 of the Bill. Art. 29 is closely related to art. 10, which grants further protection against violence less severe than that provided for in art. 29. Art. 10 also ensures that the Constitution's legal protection regarding violence of any kind extends to both public and private life, and this applies also to conduct covered by art. 29. The provision is also closely linked to clause 2 para. 3 art. 26 (rights of refugees and asylum-seekers).

#### Re article 30

The provisions of art. 30 are based on para. 1 art. 69 of the present Constitution. Its objective is to ensure that a person cannot be punished for conduct which was not against the law when it occurred, and that no more severe penalty must be applied than was permitted by law at the time.

The Constitutional Council altered the wording of clause 1, so that instead of referring to conduct which was deemed criminal "at that time when" it occurred, or was totally analogous to "such" conduct, reference is now made to "when" it took place and conduct fully analogous to "the" conduct. In clause 2 the Constitutional Council makes a change of wording, so that instead of providing that penalties may not be more severe "than the law permitted at the time of commission," the provision now states that they may not be more severe than "was permitted by law at the time." In technical revision of the Constitutional Council's proposals a decision was made to change the heading of the provision from "Prohibition of retroactive penalties" to "Prohibition of provision for retroactive penalties," which was deemed more accurate. The change is not intended to change the meaning. The provision has some connection to art. 28 (fair process) although it is more concerned with the content of criminal law than with procedure as such.

#### Re article 31

This is a new provision, whose objective is that compulsory military service shall not exist in Iceland, although Icelanders resident abroad may be required to perform military service.

#### Re article 32

This is a new provision, whose objective is to conserve the Icelandic national heritage, and declare it an asset of the nation. According to the Constitutional Council's notes the provision is similar to that regarding Icelandic nature and natural resources in arts. 33 and 34.

#### Re article 33

This is a new provision, whose objective is to enhance nature conservation, make provision for the principle of sustainability, and ensure the public's right to certain assets relating to the environment. The provision relates to arts. 11 (privacy), 22 (right to means of subsistence) and 23 (health and health services), para. 1 art. 26 (freedom of movement), arts. 34 (natural resources), 35 (information on the environment and interests regarding decisions which have a considerable impact on the environment and nature) and 36 (protection of animals). Following the Constitutional Council meeting of 8-11 March 2012, the representatives proposed a change from the original proposal, and those changes have been adopted in the Bill. The wording of para. 3 has also been altered. The Council had proposed the wording: "The use of natural resources shall be managed so as to minimise their depletion in the long term with respect for the rights of nature and future generations." The provision now refers to respect for the "value of nature and interests of future generations."

#### Re article 34

This is a new provision. The objective of para. 1 is to provide for national ownership of natural resources not subject to private property rights, and to define the meaning of national ownership. The provision does not affect existing property rights in natural resources, nor the concomitant entitlements of owners of such rights. The objective of para. 2 is to define more closely, with enumeration of examples, the kind of resources which may be deemed national assets. The objective of para. 3 is to provide for sustainable use of resources in national ownership, guided by the public interest. The objective of para. 4 is to provide for the conditions for permits for utilisation, or other indirect rights relating to resources in national ownership, or other limited public assets, which may be granted in the future. The provision does not affect existing permits for utilisation or indirect ownership rights.

#### Re article 35

This is a new provision, whose objective is to provide for the main principles of environmental law. The wording is unchanged from the Constitutional Council's proposal, with the exception that the word "substantial" has been added to para. 2 on public right of access to preparation of decisions that have an impact on the environment and nature. This has been done in order that the text of the provision reflect the intention explained in the Constitutional Council's notes. The provision relates closely to arts. 33 and 34 of the Bill, and also relates to some degree to arts. 11 (privacy) and 15 (public right to information).

#### Re article 36

This is a new provision. The Constitutional Council's notes indicate that its objective is to create a basis for general legislation on protection of animals, and to be a declaration of policy in this field.

#### Re article 37

The present Constitution contains no provision that gives an overall summary of the roles of the Althing (parliament), but refers to its various tasks in a number of provisions. The objective of art. 37 is to define more clearly the demarcation between the tasks of the legislature and those of other holders of government power.

The Constitutional Council's note to art. 37 indicates that the provision is modelled on the proposal of the Constitutional Committee, and the proposal of the Parliamentary Review Committee regarding response to the parliamentary Special Investigation Committee. The notes point out that provisions on the main roles of parliament are scattered in the present Constitution, and the provisions on the monitoring role of parliament are unclear.

The structure of the system of government, however, reflects a certain technical elaboration of democratic government, as stated in the notes to Chapter I of the Bill above. Provision in the Constitution that certain matters may only be governed by law, including the state's fiscal governance, ensures, together with the rule of parliamentary government, that the legislature has a certain key position vis-à-vis other branches of government, including the executive branch. The position of the executive branch in the government system, and the way in which it handles its governance, must thus be strongly influenced by its position vis-à-vis the legislature (parliament). The executive branch is thus dependent, in two senses: on the one hand in that the legislature determines the spheres of activity of the executive, beyond what is provided in the Constitution. This entails that the executive cannot act except on behalf of the

legislature, and it must implement laws enacted by the legislature. It must also remain within the boundaries determined by law. On the other hand, the rule of parliamentary government entails that the appointment of the highest officers of the executive (the cabinet) at any time is contingent upon the willingness of parliament to support, or at least not to oppose, them in office. On this basis the cabinet bears political responsibility vis-à-vis parliament, to which certain constitutional means are guaranteed to enforce that responsibility, and serve as a check on the government. The Constitutional Council's notes also state that this definition of the role of the Althing in art. 37 serves to establish more clearly the demarcation between the executive and legislative branches. Reference is made to such a demarcation in *inter alia* the Swedish and Finnish Constitutions.

In this way the legislature is given an advantage in the handling of state power; and in this is perhaps the clearest manifestation of how democratic government and protection of citizens' rights are integral to the system of government. The State institution which has that power is elected at regular intervals at general elections, where electors can choose in a multi-party system. The Constitutional Council's note to art. 37 reiterates accordingly the fundamental aspect of representative democracy that the power of the Althing springs from the nation, and not from political parties, interest groups or third parties.

Art. 37 of the Bill reiterates that the fiscal governance of the state is in the power of the Althing. This is in accord with the present organisation of government, and is more fully elaborated in arts. 68-72 and 74 of the Bill. The Althing's fiscal powers are of two kinds. On the one hand they consist in the production and approval of an estimate of the State's revenue and expenditure under para. 1 art. 42 of the present Constitution, see art. 68 of the Bill. On the other hand they consist in monitoring of the implementation of the Budget, and auditing of State finances as further provided in law, under art. 43 of the present Constitution, see. Art. 74 of the Bill.

The legislature's holding of the State's fiscal power is due to its influence both on the public and on all the executive governance of the State, and also partly that of local government; hence it is directly connected with other fundamental aspects of democratic organisation, and has a major influence upon their nature. For simplicity, it may perhaps be said that the relationship between fiscal power and other aspects of government is manifested in the fact that the highest officers of the executive (the cabinet) are responsible to parliament, in accord with the role of parliamentary government, for the implementation of the Budget, and on the basis of the democratic system parliament is answerable at regular intervals to the public for its actions. The Althing's authority regarding decision-making powers on the State's fiscal governance is addressed further in the notes to arts. 68-72 and 74 of the Bill.

### Re article 38

The provision is the same as art. 36 of the present Constitution.

The Constitutional Council's note to art. 38 states that the provision is the same as the Constitutional Committee's proposal, and the present Constitution. Reference is made to the Danish Constitution, under which it is treasonable to disturb the peace of parliament, to order such disturbance, or to obey such an order. It is stated that there is no such provision in the Swedish or Finnish Constitution.

The notes also state that the Constitutional Council discussed whether to use the word "security" instead of "peace." A decision was made against doing so, as the import of "security" was deemed too narrow, and in addition usage is established in the interpretation of art. 36, which it was not deemed necessary to change.

### Re article 39

The provisions of art. 39 of this Bill entail considerable changes to the electoral procedures provided in art. 31 of the present Constitution. Provision is here made for an electoral system which may be termed a "national electoral system with safeguards for electoral districts," with the aim of introducing personal candidacy, and ensuring that the weight of votes be as equal as possible. By a letter of the Constitutional and Supervisory Committee dated 28 February 2012, the Constitutional Council was reconvened for a four-day session, with the task of considering the Committee's questions and comments regarding possible amendments to the Constitutional Council's original proposals. The Constitutional Council then submitted its response to the Constitutional and Supervisory Committee's questions and comments by a letter dated 11 March 2012. This Bill makes provisions based upon the wording of art. 39 proposed by the Council in that letter. This wording is more concise than in the Council's original proposals, and in addition the Constitutional Council has sought to clarify the wording of certain points raised by the parliamentary committee.

The Constitutional Council's notes state, regarding the electoral system proposed in art. 39: "an electoral system is proposed which has been termed a 'national electoral system with safeguards for electoral districts.' A description follows of the fundamental features, electoral districts and slates, personal candidacy, safeguarding of electoral districts, and the scope available to the legislature, together with discussion of each subject and a summary of the debate which took place within the Council.

### *Electoral districts and candidacy*

The country may be divided into electoral districts. These shall number no more than eight. The number and boundaries are left to the legislature to decide. Those who favour the idea of the country being a single electoral district must look to the Althing regarding when and if that becomes a reality. By the same token, those who feel that the regions must have their own representatives in parliament here take a certain risk.

Candidates may stand a) as members of a slate in an electoral district, b) as members of a slate in an electoral district and on a national slate for the same organisation, or c) on the national slate alone. From the electors' point of view, the country is partly a single electoral district, as they have the option of voting for candidates on national slates, while also being able to vote for candidates and slates in their own electoral district, as hitherto. The other aspect concerns candidates: they can direct their candidacy at voters closest to them geographically.

The question may be raised of whether such arrangements exist in other countries. They do, and the main model is the Netherlands. The Dutch system combines the country being a single electoral district with candidacies which are partly local, in a manner not unlike what is proposed here. The population of the Netherlands is, however, much larger than that of Iceland. The Danish system is also similar. The system of variable numbers of seats representing electoral districts, according to the election results, applies in a number of countries, including e.g. Austria.

### *Personal candidacy*

Voters can vote for candidates, one or more, from any slate in his/her electoral district, or from national slates, should the legislature make use of its authority to take that step. If not, provision can be made in law that the vote must be confined to the slates of a single organisation.

Personal candidacy in some form is not unknown here in Iceland. Until 1959 members of the Althing were generally elected as personal candidates in one- or two-member electoral districts. This method is still used in municipal elections in cases where non-partisan elections without party slates are held. When slates were first introduced in Icelandic elections, a little over a century ago, efforts were made to preserve personal candidacy, by permitting voters to alter the order of candidates on a slate. This possibility has hardly been used, and indeed it is ineffective. Only once has a parliamentary candidate not been elected due to changes to the slate by voters. From 1959 to 2000 it was near-impossible to alter the order of a slate, but following an amendment to legislation at the beginning of this century this method has had some influence; and four times since then the order of candidates on a slate has been revised

due to electors' action. In the Council's proposals this principle is adopted fully, the intention being that the selection of candidates should be entirely in the hands of the electors.

The proposed constitution does not exclude the possibility of candidates on slates being placed in a certain order, e.g. they could be put forward alternating male and female candidates. The order, however, would only serve as guidance for the electors, and would have no other influence. Provision for how slates are to be ordered must be made in legislation on elections. A voter can opt not to place candidates in order, by voting for a slate as a whole, and leaving it to others to place the candidates in order. The question may be asked, whether it might be permissible to put forward a slate in a certain order, a vote for the list as a whole having some specific value in the ordering of the candidates. This is certainly a possibility, but experience both here and abroad has shown that this makes individual candidacy almost pointless. In practice, the ordering of the slates determined the outcome. Such an arrangement would not be consistent with the definition of personal candidacy put forward above.

The Bill's provisions for personal candidacy, which are here proposed, provide for electors to be permitted to choose candidates from national slates and from slates in their own electoral district. As discussed below, in practice most candidates will presumably be on national slates, although they may also be on regional slates. The system of personal candidacy proposed here thus goes much further, whether or not selecting of candidates from multiple slates is permitted, than the 2009 government Bill on personal candidacy, under which electors could select candidates only from one slate, and indeed only half the names on that slate. Arguments for and against this freedom of choice are discussed in the general notes to this Chapter of the Bill.

Personal candidacy does not mean that parties play no role in candidacy. Groups, parties and other such organisations are, as before, expected to select in some manner the candidates amongst whom the electorate can choose. They may also put forward their slate in an order which is purely advisory. Electors may also vote for a slate *in toto*. Finally, it is an important point that provision is made for proportional representation, whereby organisations (parties) are allocated seats reflecting as closely as possible their total share of the votes. This excludes, for instance, a system of first-past-the-post election, whereby the organisation with the largest share of the votes gains all the seats.

These constitutional proposals do not include any provision for the methods to be applied in the electors' selection, and counting of votes. That is left largely to the legislature. The provision may permit selection by electors by writing crosses by candidates' names, or ordering them by number. The counting of votes may be carried out in various ways; if

crosses are used the obvious conclusion is that the total number of crosses would determine the result; but various methods could be applied in determining the ordering of candidates. For example, the numbers allocated to candidates could be expressed as points (the Borda count method), or used as the basis of Single Transferable Vote (STV) system.

### *Electoral District Safeguard*

By electoral legislation, electoral districts may be guaranteed a minimum number of seats. Up to 30 parliamentary seats are assigned for this purpose. No electoral district may be assigned more such tied seats than reflect the number of electors. This guarantees a minimum representation. As a rule, electoral districts will be allocated more seats. Electoral districts may even be allocated more seats than reflect the number of electors, if candidates there appeal to electors elsewhere. All candidates of a certain organisation, in all regions of the country, can presumably be voted for by electors. It is likely that more candidates – at least initially – will wish to be connected to electoral districts, if the country is divided into electoral districts. They could nonetheless attract voters from other electoral districts, by also being on the national slate, as would be permitted under the Constitutional Council proposals. In that way electoral districts could be allocated more parliamentary seats than reflect the number of electors within the district – but that would be by the will of the electors, and not as determined by the electoral system, as is now the case to some extent. It is also possible that an electoral district may be allocated fewer seats than reflect the number of electors, whether because candidates in the district have not appealed sufficiently to the electors there, or because the electors have preferred candidates in other electoral districts.

The provision on “safeguarding electoral districts” is intended to prevent this by (as the name implies) ensuring that a stated minimum number of seats are allocated to candidates for the electoral district. Initially these tied seats are seen as serving to safeguard the representation of the regions; while future developments regarding distribution of members in electoral districts under the electoral system proposed may be expected to determine how the legislature applies this authority.

The Bill provides that up to 30 parliamentary seats (just under half the total) may be allocated in this manner. No provision is made for how they are to be divided among electoral districts, except that the number of seats earmarked for an electoral district must not exceed the proportion representing the number of electors in the district, based on the average number of electors represented by each of the 63 Members.

There are a number of moot points here. The provision on tied parliamentary seats will undeniably make electoral legislation more complicated, and thus conflicts with the principle

that the legislation should be as transparent as possible. Consideration must also be given to the fact that, should the country be divided into electoral districts, an electoral district may find itself almost without parliamentary seats, should votes be cast in some improbable manner. The question may be asked, whether 30 seats (almost half the total) is the correct proportion. Here a compromise was reached between the principle of having no such safeguard for electoral districts, and proposals for a proportion almost as high as in the present system, whereby all seats are tied to electoral districts. It should be stressed that this provision is seen as a safeguard, which is hardly likely to come into effect if votes are cast in the most probable pattern.

Finally, it is pointed out that the safeguard under this provision applies only if the country is divided into electoral districts.

#### *Scope of the legislature*

In the view of the Constitutional Council, the legislature is allowed broad scope for further elaboration of the electoral system. Suffice here to mention the following:

1. All power to delineate electoral districts, and determine their number, is allocated to parliament, including the option not to divide the country into electoral districts.
2. There is no provision for the electoral method, except that it shall be proportional. Many constitutions provide for the use of the d'Hondt, Sainte-Laguë or largest-remainder method, or others.
3. Almost all aspects of elaborating individual candidacy are left to parliament, including the important factor of whether electors are to be permitted to choose from the slates of many parties, or whether they must confine themselves to candidates of a single party.
4. All important aspects of allocation of tied parliamentary seats, which are in some ways similar to the present electoral-district seats, are now in the hands of parliament, which has not been the case hitherto.
5. The legislature is required to promote gender parity in parliament, but the method of doing so is left to parliament.

#### *Notes to specific paragraphs*

The term “nationally elected” Members in para. 1 means that members of Althing shall be elected directly, at a general election. The concept of “proportional representation” has been removed, as its import has always been unclear. On the other hand, provision is made later in the article that elections shall be proportional. Under the Bill Members of the Althing will continue to be elected for a term of four years. This does not prevent the possibility of

members losing their mandate on dissolution of parliament, or in other cases specified in the Constitution.

Para. 2 contains a new provision, stating that the weight of votes shall be the same in all parts of the country. The meaning here is that one group of electors is not given, in advance and systematically, more weight than others, beyond what is entailed by rounding up or down in allocation of seats.

Para. 3 contains a change to the present Constitution, whereby the legislature is to determine the number of electoral districts, and their boundaries. Provision is made, however, that districts shall not number more than eight. The legislature may also decide that the entire country shall be a single electoral district. It should be borne in mind that the meaning of *electoral district* differs in the system proposed here from its meaning in the present system.

It was deemed necessary to insert a new provision, in para. 4, on candidacy arrangements. No such concept appears in the present Constitution, but the above-mentioned term *proportional representation* has long been taken to indicate that candidacies should be on slates, not individuals. The provision is new that it is permissible to put forward a special national slate for those candidates who choose not to be connected to a specific electoral district, and also candidates on district slates who so desire. In such a case, the candidate must be on two slates of the same party. Otherwise, it is not permissible for a name to be on two different slates. It is probable that most candidates will take up this option, so that the national slate will in practice be an overall slate for most candidates of each party. It should be pointed out that slates in electoral districts will, of course, cease to exist if the country is not divided into electoral districts. There is no provision for the number of candidates who must, or may, be on each slate. It is left to the legislature to issue rules on how organisations may allocate candidates to specific slates – district or national slates. It is appropriate that there should be great flexibility to give organisations the option of focussing on local candidacies on the one hand, and national candidacies on the other.

Para. 5 provides general guidance on how elections are to be carried out. Clause 1 provides that electoral legislation shall give electors the option of selecting any candidates from the slates in the electoral district, and on national slates. Clause 3 permits the legislature to narrow the options available, and limit them to candidates for the same organisation. Provision may be made in law for how many candidates may be selected, or the number may be unlimited. It is also left to the legislature to decide how electors indicate their selection of candidates, e.g. by crosses or numbers. Electors are also to be permitted to select one, and only one, slate, as stated in clause 2 of the paragraph. This may be either a district slate or a national slate. The elector is thus deemed to select all the candidates on the slate, instead of selecting individual

candidates. In the counting of votes this is an important point, according to which the order in which names appear on a slate selected *in toto* has no weight in the allocation of seats.

Para. 6 provides that parliamentary elections shall be by proportional representation. This entails that the number of Members representing each organisation of candidates shall be in proportion to the total number of votes cast nationally. The wording of the provision is taken from the present Constitution with respect to the allocation of “adjustment seats.” The provision for proportional representation excludes, for instance, a “first-past-the-post” system whereby the organisation with the largest number of votes receives all the seats.

Personal candidacy, whether within the same organisation or not, as provided in para. 7, is a crucial part of this Bill. When parliamentary seats come to be allocated, a yardstick exists to measure the number of votes for each candidate, and the support gained from votes for slates – as provision is made that selection of a slate *in toto* is an equal vote for all its candidates. Here the term *atkvæðastyrkur* (strength of votes) is deliberately used, and not *atkvæðatala* (number of votes). This is because the measurement of the position or strength of a candidate may be via crosses, points, or ordering of some nature. For the same reason the provision calls for allocation of seats to be “based on” strength of votes, as it is not possible to say specifically that it must be in proportion to strength of votes. This paragraph gives the legislature considerable leeway to elaborate the system of counting, according to the voting method which is preferred.

Para. 8 authorises the legislature to tie up to 30 parliamentary seats to specific electoral districts. The paragraph provides only for a minimum number of seats. As a rule, far more seats will be district seats, unless national slates gain a very large following. This provision has been included mainly to ensure that the regions will be adequately represented in parliament in proportion to the number of electors. The second clause contains guidance to the legislature on factors which must be taken into account in allocation of tied seats among electoral districts. This guidance is essentially a further elaboration of the main provision in para. 2. that the weight of votes shall be equal. If, for instance, 10% of all the electors in the country live in a certain electoral district, that district cannot be allocated more than 10% of the tied parliamentary seats; since 10% of 63 = 6.3, no more than six parliamentary seats may be tied to such a district. Otherwise no provision is made for how tied seats are to be allocated among the electoral districts. It would not be unnatural for electoral districts of smaller population to be allocated proportionately more tied seats than the more populous ones, even by dividing them among the electoral districts regardless of numbers of electors, e.g. equally. Some restrictions are placed upon the legislature, however, by the provisions of the Bill, with respect to equal weight of votes. Parliamentary seats not tied to electoral districts serve the

purpose of ensuring equality among candidate organisations, as otherwise the requirement for equal weight of votes would not be met.

Para. 9 states the clear requirement that electoral legislation shall promote as equal a proportion as possible of men and women in the Althing. The legislature is required to explore means of achieving this.

A provision like that of para. 10 is found in the present Constitution, and also in the Constitutional Committee's Example A. An amendment to the Constitution in 1999 placed it

*in the power of the legislator to determine the number of parliamentary seats in each electoral district, though in such a way that each district has at least five district seats. By the same token further provisions are to be made in law regarding electoral districts and election arrangements, including district boundaries outside Reykjavík and the surrounding area, and rules on allocation of parliamentary seats are to be fixed in law.*

*In this way certain alterations may be made to aspects of electoral district delineation and electoral methods, without the necessity to amend the Constitution. The proviso is made, however, that alterations to boundaries of electoral districts laid down in law, and arrangements for allocation of parliamentary seats, can only be made by a two-thirds majority of parliament.*

In addition, provision is made that major changes to the electoral system shall not be made within six months before the end of an electoral term. Should a change be made to the electoral term within six months after such a change being approved, it shall not take effect until after the election.”

#### Re article 40

The provision is the same as art. 45 of the present Constitution, with the exception that a provision has been added in para. 2 art. 40 of the Bill, on the length of the electoral term, which is addressed in art. 31 of the present Constitution.

#### Re article 41

The article is the same as art. 33 of the present Constitution, with only one change: the provision for legislation on rules on parliamentary elections has been moved to art. 39 (elections to the Althing).

#### Re article 42

The import of the provision is the same as that of arts. 34 and 50 of the present Constitution, except that it is proposed that para. 3 art 43 should make special provision for an alternate to take the seat of a member of parliament who forfeits his/her eligibility. This addition is in accord with present law. The provision addresses the criteria to be met for eligibility for election to parliament, and addresses the procedure to be followed if a member becomes ineligible.

It should be stressed that the provisions of art. 42 must be viewed in the context of other provisions addressing criteria for candidacy for the Althing, especially art. 39, which assumes that candidates stand as part of a slate, and that further rules on parliamentary elections are to be enacted by law. The legislature may thus, as hitherto, issue further rules on how candidacies are to be organised, e.g. by appropriate criteria for the required number of endorsements for a candidacy, etc.

#### Re article 43

The article contains new provisions on the role of the national electoral commission, and on how moot points on the validity of presidential and parliamentary elections and referenda are to be resolved. The present Constitution provides in art. 46 that the Althing itself shall determine whether members are lawfully elected. The Constitutional Council proposed that this provision be removed, and that provision be made that this task be allotted to the national electoral commission. The Council saw fit also to provide that the same should apply to all popular votes, i.e. in addition to parliamentary elections, elections to the presidency of Iceland and referenda on specific issues.

According to the Constitutional Council's proposals, a ruling of the national electoral commission under art. 43 could be appealed to the courts, as in the case of any other official ruling.

Here, however, it must be taken into account that art. 44 of the Bill provides that the Althing must convene within two weeks after a general election. That deadline would in many cases be insufficient, if the lawfulness of a parliamentary election were challenged, and submitted to the national electoral commission, and to the courts under the normal rules. A situation could arise whereby parliament was convened, although a dispute on the lawfulness of the election remained unresolved. A ruling by the Supreme Court to invalidate the election could then lead to constitutional uncertainty regarding the decisions made by parliament since it assembled, and until the Supreme Court had ruled.

With the intention of reducing the period of uncertainty about the lawfulness of an election, the proposal is made in the Bill that a ruling by the national electoral commission on the lawfulness of a parliamentary or presidential election may be appealed direct to the Supreme Court, to be further provided in law. It is assumed that in general legislation further provision would be made for participation in an appeal to the Supreme Court, and for the grounds on which such an appeal might be made. Other rulings of the national electoral council, on the other hand, would be appealed to the courts in accord with the general rules applying at any time to re-examination by the courts of decisions by government authorities, as was proposed by the Constitutional Council.

#### Re article 44

The provision of art. 44 make some changes to art. 35 of the present Constitution. The wording has been simplified, and the Althing is granted wider powers to decide by law when it shall convene.

#### Re article 45

The provisions of art. 45 address the Althing's place of assembly, as does article 37 of the present Constitution. Art. 45 of the Bill entails a change in content from the present provision, granting the Althing itself the power to decide to convene elsewhere than in Reykjavík; that power is at present held by the Prime Minister with the consent of the President of the Republic.

The Constitutional Council's notes refer to a proposal by the Constitutional Committee that the Althing, and not the President, should be able to decide that parliament convene elsewhere in Iceland than in Reykjavík.

#### Re article 46

The provisions of art. 46 entail some change in import from art. 22 of the present Constitution. The present provision is that the President of the Republic convene the Althing no later than ten weeks after a parliamentary election. Art. 46 of the Bill makes no reference to a deadline in this context, but art. 44 of the Bill provides that the Althing shall assemble not more than two weeks after a general election. Para. 2 art. 46 makes a new provision that the Speaker of the Althing, or one-quarter of the Members, may propose that the President convene the Althing; para. 2 art. 23 of the present Constitution addresses Members' authority

to call for the president to convene the Althing, if he/she has previously adjourned its session under para. 1 of that article.

The provision is unchanged from that of the Constitutional Council, except that the Council proposed that para. 2 art. 46 should provide that one-third of the Members could propose that the President convene parliament, while here a proportion of one-quarter is proposed.

Account has been taken of the proportion recommended in Council of Europe Resolution 1601/2008, Procedural guidelines on the rights and responsibilities of the

opposition in a democratic parliament,” cp. arts. 2.2.5, 2.2.7, 2.2.8, 2.3.2 and 2.5.4 of the Guidelines. The provision nonetheless reflects the intentions of the Constitutional Council, as the Council’s notes state that it was deemed right that a minority of members should be able to call for parliament to convene, if the majority failed to do so, and this would be a safeguard of the minority. That safeguarding of the minority is enhanced by the change proposed here.

#### Re article 47

The provisions of art. 47 entail no change of import from art. 47 of the present Constitution.

The Constitutional Council’s notes state that the provision contains a change of wording from the present provision.

#### Re article 48

The provision contains a slight change from art. 48 of the present Constitution. Its objective remains the same, to ensure the autonomy of Members of the Althing. This is emphasised in the Bill by the proposed provision that Members are not bound by any instructions from others, instead of the present provision that they are not bound by any instructions from their constituents.

#### Re article 49

Like art. 49 of the present Constitution, the provision is intended to ensure immunity of Members of the Althing. Para. 2 art. 49 also has a certain relevance to art. 14 of the Bill (freedom of expression and information).

Under current law, the view has been that the provision of para. 2 art. 49 of the present Constitution would apply to Ministers, by analogy. This view has been supported by the argument that under present law Ministers hold seats in parliament, and take part in parliamentary business, cp. Art 51 of the present Constitution. Under the terms of this Bill

Ministers will not have seats in parliament, and hence it cannot be assumed that the provisions of para. 2 art. 49 of the Bill would be deemed to cover their utterances in parliament. The Constitutional Council's proposal did not refer to Ministers in art. 49; it is clear, however, from the Council's notes that the intention was that Ministers should be protected under the provision. Hence it is proposed in the Bill that Ministers be specifically mentioned in paras. 2 and 3 art. 49.

#### Re article 50

A new provision is proposed in art. 50, whose intention is to enhance public confidence in members of the Althing, and enhance their credibility. The intention of the provision is to prevent Members making decisions on the basis of their own personal interests or connections.

#### Re article 51

The present Constitution makes no provision for contributions to candidates or political parties. Hence art. 51 makes a new provision, whose intention is to increase transparency in politics and to hinder finance playing too large a role in electoral campaigns. The provision relates to art. 20 (freedom of association).

The Constitutional Council's notes state that it presumed that parties and candidates would be required "in principle to publish information on contributions and grants as soon as possible." For that reason the Constitutional Council proposed a provision in para. 2 art. 51 that information on contributions above a certain minimum should be published "as they accrue," pursuant to further provisions of law. It is proposed here, however, that the words "as they accrue" be omitted. This is mainly because the Constitutional Council assumes in the note mentioned above that "in principle" information should be published as soon as possible. This appears to signify that the Constitutional Council itself assumes that some departure may be permissible under certain circumstances. The text of the provision, however, did not reflect the Council's view, as it provided for publication "as they accrue," with no proviso. The provision of art. 51 in the Bill thus allows some leeway to the legislature in this matter, e.g. to provide that in certain cases contributions are to be made public after candidates' or parties' accounts have been audited.

It should be pointed out that in enactment of legislation based on art. 51 account must be taken of the interaction of the provision with the provisions of art. 20 (freedom of

association), which restricts the legislature's scope to issue rules on associations and their activities.

#### Re article 52

Art. 52 of the present Constitution addresses election of the Speaker of the Althing. In this Bill a more detailed provision is proposed, which entails a change of import from the present Constitution. The main alteration is the requirement for an enhanced majority in election of the Speaker. This is intended to achieve greater distribution of power and more consultation in parliament. The other main change from current law is that it is proposed that the person elected Speaker shall withdraw from general parliamentary work.

The provision is unchanged from the Constitutional Council's proposal, except that it is clarified that the rule that the Speaker withdraw from general parliamentary work applies only to the elected Speaker, and not to a person who chairs parliamentary sessions until the election takes place.

#### Re article 53

The provision is the same as art. 58 of the present Constitution.

#### Re article 54

The present Constitution makes no provision for parliamentary standing committees. The provisions of art. 54 of the Bill are one aspect of the effort to enhance the weight and strength of parliamentary committees, and to reinforce the position of parliament vis-à-vis the executive branch.

#### Re article 55

Art. 57 of the present Constitution provides that meetings of the Althing shall be held in public. Clause 2 art. 57, however, provides that the Speaker and a certain number of Members may grant permission to require non-Members to be excluded; the meeting then decides whether the matter shall be debated in public or *in camera*. Art. 55 of the Bill makes no such provision. Special provision is also made in para. 2 art. 55 that a parliamentary committee may decide that its meeting shall be held in public.

#### Re article 56

Arts. 38 and 55 of the present Constitution address the right of members and Ministers to submit and propose parliamentary business. Art. 25 also provides that the President of the Republic may have Bills and other resolutions submitted to parliament; this right has been deemed to lie with the government. All cabinet Bills are, on the proposal of ministers, submitted on the basis of this provision. Under art. 56 of the Bill the change is made that Ministers' autonomous right to submit Bills and propose resolutions is removed. Instead they are to submit only Bills and proposed resolutions approved by the cabinet, without any reference to the President. This entails that Ministers' right to act is confined to matters which the cabinet is prepared to support.

#### Re article 57

Art. 57 addresses procedure for parliamentary Bills, and contains some changes from art. 44. of the present Constitution. Art. 57 of the Bill thus provides that a Bill shall be debated in at least two readings. Art. 44 of the present Constitution requires three readings. The Bill also provides that an assessment of the impact of legislation shall accompany Bills, to be further provided in law; the intention here is to conduce to high standards in legislation. Finally, the change is made from current law that Bills which have not been formally finalised by parliament do not lapse until the end of the electoral term. The aim here is to increase the likelihood of a Bill being debated in parliament, and reduce the likelihood of hurried enactment of Bills before they lapse.

#### Re article 58

The present Constitution makes no specific provision for procedures for resolutions and other parliamentary business than Bills. The objective of art. 58 is to clarify procedures for such business in parliament.

#### Re article 60

The provision is based on art. 26 of the present Constitution, which provides for confirmation of Acts, and the consequences arising if the president vetoes a Bill. Changes under the provision are that provision is made that Bills passed by parliament are submitted by the Speaker to the President for confirmation; the President is required to explain the reasoning for a veto; provision is made for a deadline for submitting the Act to a referendum; and finally

provision that the Althing may repeal the Act within five days, thus avoiding the need for a referendum.

#### Re article 61

Art. 61 of the Bill elaborates on the provisions of the present Constitution (art. 27) on publication of legislation. The objective of the provision is to conduce to legal security of the citizen. The provision also prevents government from being able to benefit by failing to publish legislation.

The Constitutional Council proposed that clause 2 para. 1 art. 61 should provide that Acts of law and government directives should never be applied in an onerous manner until after their publication. The Council's notes indicate that this wording was intended to apply the rule stated in art. 8 of the Official Gazette and Legal Gazette Act no. 15/2005. That article makes no provision that unpublished legal provisions which are deemed to convey privilege for citizens may be applied; but provision is made that unpublished legislation is binding on the government from its entry into force. The note to that Bill states that: "The provision is thus based on the argument that the government cannot make the excuse of a failure to publish directives that provide certain rights to the public or citizens. The government is responsible for ensuring that directives are correctly published, and thus it would be inappropriate for authorities to be able to excuse themselves on the grounds of negligence in publication. In addition, the government is generally in a position to be familiar with the directive in question, even if it has not been formally published. Under the provision, directives are binding on the government from the date of entry into force, regardless of whether they have been correctly published." In this Bill it has been decided that the same wording should be used as in art. 8 Act no. 15/2005, in order that there should be no doubt that the provisions of art. 61 are intended to provide for the same rule.

#### Re article 62

The provisions of art. 62 on Lögrétta (the Constitutional Advisory Body) are new. The objective is to conduce to high standards in procedures for Bills.

The provision is unchanged from the proposal of the Constitutional Council, except that the Council's proposal was that one-fifth of members of the Althing could request the opinion of the Lögrétta, whereas the Bill specifies one-quarter. In this context account has been taken of the Council of Europe's guidelines no. 1601/2008, see note to art. 46 above. In addition the wording of para. 3 art. 62 of the Bill has been altered, reading that provision for the Lögrétta

is to be made in law. The Constitutional Council's proposal referred to "the work of" Lögrétta. The reason for omitting the word "work" is that the Constitutional Council's notes indicate an intention that the legislature could issue further rules on the activity of Lögrétta, not precisely covered by the concept "work," including rules on eligibility to serve on Lögrétta.

Lögrétta's opinions are advisory, and its findings are not binding. Hence the Althing could decide to pass a Bill previously deemed by Lögrétta to be unconstitutional. By the same token, courts are not bound by the findings of Lögrétta, and could reach a different conclusion on the constitutionality of legislation.

One-quarter of Members of Althing, or a parliamentary committee, may request that Lögrétta give its opinion on a Bill before parliament. The Constitutional Council's notes state that this referral is concerned with whether the Bill is unconstitutional, or violates the State's obligations under international law. There is no provision for other issues to be submitted to Lögrétta, such as conflict with other legislation, or other aspects of the content of the Bill, except as regards its constitutionality.

#### Re article 63

This is a new provision. The objective of art. 63 is to conduce to more effective monitoring of government administration by parliament, and high standards and clearer procedures for matters concerned with ministerial responsibility.

The provision is unchanged from the Constitutional Council's proposal, except that under the Council's proposal the Constitutional and Supervisory Committee was required to carry out a review at the request of one-third of Members of Althing. The Bill makes provision for one-fourth of Members. In this context account has been taken of the Council of Europe's guidelines no. 1601/2008 on the rights and responsibilities of the opposition in a democratic parliament, cp. the note to art. 62, above.

#### Re article 64

The provisions of art. 64 entail a change to art. 39 of the present Constitution, which provides for the authority of the Althing to appoint parliamentary committees to investigate important issues concerning the public. In art. 64 of the Bill, no condition is stated that members of investigative committees be members of the Althing. In this context account has been taken of the fact that little use has been made of powers under art. 39 of the present Constitution, and

that committees of non-parliamentarians have more generally been appointed to investigate issues.

#### Re article 65

The present Constitution makes no provision for the right of a specified proportion of the electorate to call for a referendum on legislation which has been enacted by parliament. The provision of art. 65 is thus new, its intention being to enhance citizens' opportunities to influence legislation.

#### Re article 66

The present Constitution makes no provision for electors to be able to submit parliamentary business to the Althing. The provision is thus new, the intention being to enhance the influence of ordinary citizens on the work of parliament. The wording of art. 66 of the Bill is unchanged from the Constitutional Council's proposals, except that the right of electors under para. 1 is clearly confined to the submission of a Bill or a draft resolution, and not "parliamentary business" as in the Council's proposal. Neither in the text of the provision, nor in the Constitutional Council's notes, is any explanation given of the term "parliamentary business," but the notes to the provision indicate that the intention was that para. 1 art. 66 should apply to Bills and draft resolutions.

#### Re article 67

Art. 67 enumerates the conditions that must be met by cases arising from a petition by electors, or on the electors' initiative, under arts. 65 and 66 of the Bill; it also addresses the implementation of petitions and referenda.

#### Re article 68

The import of the provision is the same as art. 42 of the present Constitution.

#### Re article 69

The provision of art. 69 concerning authority for disbursements replaces art. 41 of the present Constitution. Its main objective is to ensure the influence of the Althing on the disbursement of revenues raised by the State. The changes are intended to increase stability and

transparency in the handling of State funds, and ensure greater consultation between the cabinet and parliament.

#### Re article 70

The present Constitution makes no provision comparable to art. 70 of the Bill. Its objective, with reference to the monitoring role of the parliamentary Budget Committee, is to strengthen the fiscal powers of the Althing.

#### Re article 71

The provisions of art. 71 of the Bill are the same as clause 1 art. 40 and art. 77 of the present Constitution.

#### Re article 72

The provisions of art. 72 have something in common with clause 2 art. 40 of the present Constitution, which states that loans indebting the State may not be taken, nor any real estate belonging to the State or the use thereof sold or in any other way disposed of, except by authority in law. Art. 72 of the Bill places greater restrictions on the government and legislature, by prohibiting the guaranteeing of financial obligations of private persons, except by law, and in the public interest. Art. 72 of the Bill also addresses disposal of assets of the state other than real property. The objective is thus to restrict the powers of the cabinet somewhat more than is the case under current law.

#### Re article 73

In art. 73 of the Bill rules on dissolution of parliament are somewhat changed from current law under art. 24 of the present Constitution. The objective of art. 73 is to transfer the authority to dissolve parliament entirely to parliament itself. While the President of Iceland plays a formal role in the dissolution of parliament, he/she has no authority to dissolve parliament on his/her own initiative, nor by a proposal of the prime minister, nor to refuse to dissolve parliament should parliament have passed a resolution to dissolve. The provision also changes the deadlines from those in the present provision on dissolution.

#### Re article 74

The present Constitution makes no provision for the office of Auditor General, although it addresses auditing of state finances, agencies and companies in art. 43 of the present Constitution. The objective of the provision is to ensure the constitutional position of the office of Auditor General.

The Constitutional Council's note to the provision states that it is a new provision, though with parallels in art. 43 of the present Constitution. It is pointed out that by this provision the office of Auditor General is enshrined in the Constitution. The electoral term of the Auditor General is to be five years, on the same grounds as apply to the parliamentary Ombudsman. The Constitutional Council's notes state that the provision is based mainly on the Constitutional Committee's proposal. The Council's note also states that, in order to ensure stability in the State's fiscal powers, and as one aspect of monitoring by the Althing, it is proposed that when the Minister submits the Budget bill it should be accompanied by the State's audited accounts for the prior year.

As mentioned in the note to art. 37, one of the two main aspects of fiscal power consists of monitoring the implementation of the Budget and auditing of State finances. The other principal objective of this provision is thus to ensure the Althing the constitutional right that the cabinet shall report to it on the finances of the State for the prior fiscal year. After this obligation was removed from the Constitution under the Constitution Act no. 100/1995, it has not been clear from constitutional law how Althing is formally to ascertain that the implementation of the Budget has been lawful. In accord with this, the Constitutional Council's notes state that the provision ensures stability in the State's fiscal powers, and is one aspect of the Althing's monitoring powers.

While para. 1 art. 74 addresses that aspect of the work of the Auditor General which is concerned directly with auditing, it should be stressed that the provision does not prevent the office of the Auditor General being assigned a more extensive monitoring role regarding State finances, as is the case in current law, see especially the National Audit Office Act no. 86/1997.

#### Re article 75

The parliamentary Ombudsman carries out, on behalf of the Althing, important monitoring of the work of the executive branch. The present Constitution makes no provision for the office of Ombudsman. The objective of art. 75 is to enshrine the office in the Constitution. The import of the provision on the role and work of the Ombudsman is largely consistent with

current law. Provision is made, however, in para. 2 art. 75, that should a Minister or other government authority decide not to comply with a specific recommendation of the Ombudsman, that decision shall be notified to the Speaker.

#### Re article 76

Provision is made that the President of Iceland is nationally elected, as is provided in art. 3 of the present Constitution. In addition provision is made that he/she is the Republic's Head of State. This addition is in accord with the Constitutional Committee's proposal that it is correct to state explicitly that this is the principal role of the President of Iceland.

#### Re article 77

Provision is made for the conditions of eligibility to serve as president. A change is proposed from the present provision of art. 4 of the Constitution, whereby the same conditions apply as for members of the Althing. The present provision states that any person who fulfils the requirements necessary to vote in elections to the Althing, with the exception of the residency requirement, is eligible to be elected President. The age requirement is unchanged, i.e. only those aged at least 35 are eligible.

#### Re article 78

This provision contains directives on arrangements for presidential elections, and conditions for candidacy. The change is made from the present Constitution, firstly, that the requirement for number of endorsements is stated as a certain percentage of electors. Secondly, arrangements for the elections are altered in such a way that electors are to place the candidates in order of preference. The objective of the provision is to conduce to democratic election of the president, and that candidates shall have a certain degree of support from electors.

Clauses 3 and 4 provide for changed arrangements for elections. The present Constitution states that "The candidate, if there is more than one, who receives the most votes is duly elected President." The present system thus does not ensure that a president shall have received an overall majority of votes cast, when the candidates number more than two. This can lead to a president being elected with a minority of the votes cast; only one president of Iceland has received an overall majority of votes when first elected. There is thus a great temptation for electors to vote tactically, rather than selecting the preferred candidate. The Constitutional Committee report states that this arrangement is unique among democratic

nations with a nationally-elected president, as in all other states the election of a president is to be based on a majority of votes cast. This is generally assured by two rounds of presidential elections, whereby the two candidates with the largest number of votes in the first round stand again in the second round.

According to the notes, the committee of the Constitutional Council which discussed the provision considered the possibility of providing for two rounds of presidential elections, as in some constitutions, but concluded that it would be more appropriate to use order of preference, which achieves the same objective in a single round. This may be deemed a fairly good method of revealing the will of the electors, and in addition it is inexpensive, as it requires only one round. Electors can arrange the candidates in order of preference, without being led to speculate what other electors may do. The Constitutional Council's note states that this method is more effective and economical, and places a certain pressure on electors to unite in support of candidates.

#### Re article 79

Provision is made for the duration of the President's electoral term, and restrictions on how long one person may remain in that office. The provision is changed from art. 6 of the present Constitution, in that provision is made for the number of electoral terms that one person may serve. The objective is to make clear provision for the limits of the electoral terms, and to conduce to renewal in this highest office of the nation.

#### Re article 80

Provision is made that the President shall sign an oath to the Constitution when he/she takes office. The objective is to emphasise the duties of the President vis-à-vis the Constitution. The Constitutional Council had proposed a slight change to the provisions of art. 10 of the present Constitution, so that there would be no reference to a "pledge," and no special provision for the safekeeping of the signed document. Following technical revision, however, the proposal is made here that the oath be included in the Constitution, without any provision regarding safekeeping. This follows the example of many constitutions that were examined for comparison; there is then no disagreement possible about the wording of the oath.

#### Re article 81

Provision is made for the President's terms of employment. Provision is made for the arrangement of salary payments, and the President is prohibited from undertaking other work

while in office. The Constitutional Committee did not propose any change to this article, which is based on art. 9 of the present Constitution. The Constitutional Council, however, deemed it unnecessary to state explicitly that the President must not be a member of Parliament, as that is a salaried position, covered by the general prohibition. The provision on payments to substitute holders of presidential powers is also removed. In technical revision a decision was made to add a new paragraph providing that the president appoints the secretary-general of the presidential office. The objective of the provisions is to establish a clear framework for the president's remuneration, and prevent such circumstances arising as might affect the work and credibility of the president, or lead to conflicts of interest. It is also clarified that the president, not a minister, appoints the head of the president's office.

Clauses 1 and 2 prohibit the President from performing other work for private undertakings or public agencies, which is deemed incompatible with the role of head of state. The Constitutional Council's note states that this rule does not prevent the President carrying out unpaid work for organisations working for the public good.

The provision in para. 2 art. 9 of the present Constitution for disbursements to those who exercise presidential authority during the president's absence has been removed, as according to the Constitutional Council's notes it must be deemed a normal part of the official duties of the Speaker of the Althing to undertake this duty, without special remuneration.

Clause 5 is a new provision, in addition to the proposals of the Constitutional Council, that the President appoints the secretary-general of the presidential office. This is deemed an appropriate arrangement, in order to prevent the possibility of the Minister responsible for matters regarding the presidency appointing a person to head the office, contrary to the president's wishes.

#### Re article 82

Provision is made for a substitute to undertake the duties of president in case of the president being unable to do so. One such substitute is specified, i.e. the Speaker of the Althing, whereas under art. 8 of the present Constitution provision is made for three, i.e. the President of the Supreme Court and the Prime Minister in addition to the Speaker. The objective of the provision is hence to simplify the arrangement for substitution.

The above provision entails a change to the present arrangement: art. 8 of the present Constitution has been taken to mean that presidential authority passes to the substitutes whenever the president leaves the country.

In addition to the changes proposed by the Constitutional Council, the Bill makes provision in art. 83 that in the case of disagreement over whether the provision applies, an enhanced majority of the Althing may refer the matter to the Supreme Court for resolution.

#### Re article 83

Provision is made for when the office of president is deemed to be vacant. The Constitutional Council has followed art. 7 of the present Constitution, with a minor change of wording. A change is proposed to art. 83 of the Constitutional Council's proposal. Firstly it is proposed that provision be made for the possibility that a president may become permanently incapable for reasons of health of performing his/her duties, in which case it must be permissible to elect a new president. This change is consistent with the provisions of constitutions of states which were examined for comparison. The Supreme Court is to rule on moot issues in this context, and also with respect to art. 82. It is deemed correct that an enhanced majority of the Members of Althing should be required, in order to prevent possible abuse of this provision.

#### Re article 84

There are two aspects to the provision. Para. 1 provides for the president to bear "political responsibility" of a kind vis-à-vis the nation. The initiative for ensuring that this responsibility is active is placed with the Althing, requiring a three-quarters majority of Members. The matter is then submitted to the nation in a referendum. This paragraph is the same as para. 3 art. 11 of the present Constitution. Para. 4 in the present Constitution, however, has been removed; this provided for the Althing to be dissolved and an election held, should the electorate not confirm the Althing's resolution. Para. 2 provides for the president's legal responsibility for his/her official actions. This is a major change from art. 11 of the present Constitution, which makes provision for the non-accountability of the President and his/her substitutes for executive acts. Further provision for responsibility is to be made in law. In technical revision it was deemed correct to make a minor amendment to the Constitutional Council's proposal, to clarify that the responsibility is for official misconduct, as this was the intended meaning of the proposed provision. An addition was also made, stressing that removal from office is subject to the provisions of para. 1. Clause 3 para. 2 is unchanged from the Constitutional Council's proposal, providing that the President may not be prosecuted on a criminal charge except with the consent of the Althing. This rule applies both to responsibility for official misconduct under clause 1 para. 2, and responsibility under general criminal law. The objective is to make clear provision for the president's responsibility, both vis-à-vis the nation, and with respect to violations of the law.

#### Re article 85

Provision is made for the government's authority to pardon those who have been convicted, and to grant amnesties. This power rests with the president, but it is not to be applied except by a proposal from a Minister. The provision is based on art. 29 of the present Constitution, with minor changes.

#### Re article 86

Provision is made for the position of Ministers as the supreme holders of executive powers, arrangements for substitutions, and limitations on how long one person may hold the same ministerial post. The objective is to define the status and responsibility of ministers, ensure that ministerial power is undertaken if the minister is unable to perform his/her duties, and to conduce to normal renewal in these offices. The provision entails considerable alteration from art. 13 of the present Constitution. In technical revision of the Constitutional Council's proposal, a decision was made to make certain amendments to para. 2 for clarity, and to provide for the situation of the prime minister being unable to perform his/her duties.

The notes to Chapter I and art. 37 of the Bill explain how the legislature is assigned a key role in the handling of State power, and how this relates to ideas about democratic governance, and the legal security of the people. In that context, it appears to be almost a matter of course that the executive branch must be subject to political leadership. The cabinet functions under the aegis of nationally-elected representatives, and in practice receives its mandate from them, and on the basis of the rule of parliamentary government and art. 91 it is answerable to parliament. In order that the policies of those who are answerable may be put into practice, the structure of government must also be of such a nature that its ministers, each in his/her own sphere, supervise the administration, but under the aegis of the prime minister, who coordinates their work, and have real opportunities to influence the policy. The system of government is thus based on power and responsibility going together. This is the basis of both the political and the legal responsibility of ministers. In this way the structure of the government system consists of a certain technical elaboration of democratic governance.

#### Re article 87

Provision is made for the principal rules regarding the government, cabinet meetings and the role of the prime minister; provision is also made that the cabinet shall make joint decisions on important matters or matters of policy. The objective of the provision is to lay down the framework for the roles of the cabinet and the Prime Minister. The provision is considerably

changed from arts 16 and 17 of the present Constitution. The Constitutional Council's proposal is based upon that of the Constitutional Committee. In technical revision a decision was made to state that the Prime Minister "coordinates" the work of the Cabinet, instead of using the word "oversees," which was deemed not to be sufficiently consistent with para. 1 art. 86.

#### Re article 88

This article prohibits a cabinet Minister from undertaking other employment alongside his/her ministerial office. The legislature is to provide in law for a Minister's obligation to disclose information on his/her financial interests. The objective is to prevent conflicts of interest, and to conduce to transparency regarding ministers' interest connections. There is no equivalent provision in the present Constitution.

#### Re article 89

Provision is made for the relationship between Ministers and the Althing. Major changes are made from art. 51 of the present Constitution. Thus a Minister is only to propose a Bill or proposal if it has already been approved by the cabinet, and if he/she is invited to do so. Provision is also made that a Member who is appointed to the cabinet must vacate his/her parliamentary seat while in that office. The objective is to emphasise the distinction between the legislative and executive branches.

#### Re article 90

Provision is made for the election of the Prime Minister by the Althing, and for the respective roles of the President and parliament in that process. Provision is also made for appointment of the Prime Minister and other Ministers following the election in parliament. Provision is made for the Prime Minister's power to make decisions on organisation of ministries, number of ministries, and division of tasks among cabinet ministers. Finally, provision is made for release from office of the Prime Minister and other Ministers. In technical revision certain changes were made to paras. 3 and 5, on the one hand to clarify when the process of forming a government is to begin and who is to dissolve parliament, and on the other hand to ensure that the appointment of the Prime Minister and other Ministers takes place in parallel. The provision has no equivalent in the present Constitution. The objective is to clarify the procedure for formation of a government after a general election, or when the office of Prime Minister is vacant for some other reason. The provision elaborates on the rule of

parliamentary government in far more detail than the present Constitution. A maximum number of cabinet Ministers is also laid down.

#### Re article 91

The article makes a new provision, stating the rules for a vote of no confidence in a Minister. Provision is made that a motion of no confidence in a Prime Minister cannot be passed unless a proposal for his/her successor is also passed. Provision is made for the Althing's right to declare no confidence an individual Minister other than the prime minister; he/she must then stand down from that office. The objective is to lay down a framework for the workings of Ministers' political responsibility vis-à-vis parliament, and also to avoid frivolous motions of no confidence in the Prime Minister, and hence the cabinet.

#### Re article 92

This is a new provision, stating when a government is an interim government, and providing for the limitations on its powers. The objective is to ensure that there shall be a government while a mandate is sought from the Althing for appointment of a new government, and also that such a government shall remain within the necessary limits. In technical revision the change was made that the period that an interim government remains in office is to end when a new prime minister has been appointed, and not a new cabinet.

#### Re article 93

Provision is made for Ministers' duty of disclosure and truthfulness to the Althing. The provision is based on art. 54 of the present Constitution, but makes far more precise provisions. The objective is to define in more detail Ministers' responsibility to the Althing, and to facilitate parliament's monitoring of the executive.

#### Re article 94

This is a new provision, based on the proposal of the Constitutional Committee, which obliges the cabinet to report each year on its work, and how it has implemented parliamentary resolutions.

#### Re article 95

The article provides for ministerial responsibility, i.e. the legal responsibility of Ministers for their official actions, and the procedure for enforcing such responsibility. The provision is partly based on art. 14 of the present Constitution, with the change that the responsibility is more precisely limited to government actions under that Minister's aegis on the one hand, and on the other to participation in cabinet decisions, when the cabinet functions as a government authority with collective responsibility. Furthermore, the preliminaries to prosecution are altered, and the Minister's responsibility is to be submitted to the ordinary courts, and not to a Court of Impeachment. In technical revision the wording of para. 1 was altered by the addition of the words "under their aegis" to clause 1, for clarity. It is also stated, in accord with the Constitutional Council's suggestion in the letter of 11 March 2012, that a Minister's non-accountability for cabinet decisions to which he/she has registered opposition applies to legal responsibility.

#### Re article 96

Provision is made for the appointment of public officials, with major changes from art. 20 of the present Constitution. Provision is made that appointments to public offices shall be made by Ministers and other government authorities, and not by the President. Competence and objectivity shall determine appointments. With respect to appointment of judges and the State Prosecutor, presidential confirmation is required; should this be refused, the Althing may by a two-thirds majority overrule the presidential veto. With regard to other posts as defined by law, the Minister makes appointments, having received recommendations from an autonomous committee. The chair of that committee shall be appointed by the President. Should a Minister select a person not among those deemed most qualified by the committee, the appointment is contingent upon approval by a two-thirds majority of the Althing. The objective is to ensure that appointments to public office shall be determined by competence and objectivity. The article relates *inter alia* to arts. 102 (appointment of judges), and 104 (appointment of the State Prosecutor).

#### Re article 97

This is a new provision, that an enhanced majority is required in parliament to provide for special autonomy for state agencies, and to change their role. The provision is in accord with the proposal made in the letter of the Constitutional Council of 11 March 2012.

#### Re article 98

The objective of art. 98 is to make more detailed provision than in art. 59 of the present Constitution for the duty of the legislature to determine the organisation of the judiciary.

The provision is unchanged from the Constitutional Council's proposal, except that it is proposed that the term "judiciary" be used, as in art. 59 of the present Constitution, instead of "courts." "Judiciary" is a broader term, covering e.g. the rules of procedure of the courts. Accordingly, the requirement for legislation under art. 98 applies unambiguously to such rules.

#### Re article 99

Art. 99 provides that the autonomy of courts shall be ensured by law. The present Constitution makes no such provision, although the implication of various provisions is that courts shall be autonomous, cp. especially arts. 59, 61 and 70 of the present Constitution. This provision relates closely to art. 28 of the Bill (fair process before a fair and impartial court of law).

#### Re article 100

Art. 100 of the Bill addresses the jurisdiction of courts, with some parallels in art. 60 of the present Constitution. The objective is to describe more precisely the authority of courts, and to enshrine in the Constitution the old-established custom that the courts may rule on the constitutionality of legislation.

#### Re article 101

The present Constitution makes no specific provision guaranteeing the position of the Supreme Court as the nation's highest court, although the existence of the Supreme Court is assumed, and the inference of various constitutional provisions is that it has that status, cp. especially arts. 8, 34 and 61 of the present Constitution. The objective of the provision is to provide unambiguously for this status of the Supreme Court of Iceland .

#### Re article 102

The provisions of art. 102 have some parallels in art. 61 of the present Constitution. The provisions of art. 102 are, however, more detailed, and more consistent with present legal conditions. Thus, for instance, the reference in art. 61 of the present Constitution to judges "who do not also have administrative functions" has been removed, as judges no longer carry

out administrative functions alongside their judicial duties. The intention is to safeguard judges in their work, and is thus one aspect of ensuring the autonomy of the courts, cp. also arts. 28, 96 and 99 of the Bill.

#### Re article 103

The provision of art. 103 is the same as clause 1 art. 61 of the present Constitution. The provision relates to arts. 28, 99 and 102, which all have relevance to the autonomy of the courts.

#### Re article 104

This is a new provision, whose intention is to grant constitutional protection to the autonomy of the prosecutorial authority.

#### Re article 105

It is proposed in the Bill that the provisions of art. 78 of the present Constitution on municipalities be moved, unchanged, from the Human Rights chapter of the Constitution to a new chapter on municipal matters, where it will be paras. 1 and 3 art. 105. Certain additions are proposed in para. 2 art. 105, whose intention is to strengthen the position of municipalities. Under the article municipalities are guaranteed constitutional protection in the public administration system. This entails that municipalities will be autonomous vis-à-vis other public authorities, unless otherwise determined by law; and the municipal level of government cannot be abolished, except by a constitutional amendment. Municipal governments are government authorities, and are bound by the law in the same manner as other government authorities.

The Council's notes state that the Constitutional Council deemed it right to make an addition to the provision, so that the legislature, the principal holder of State authority, would not have authority to decide for itself whether municipalities or local governments should have autonomy, and if so how much, as holders of local State authority. For that reason, and with reference to the above, the Council deemed it impossible to retain the present Constitution's provisions on municipalities unchanged.

Para. 2 states that municipalities shall have sufficient capacity and income to undertake their statutory responsibilities. According to the Constitutional Council's notes, the objective of the provision is to conduce to consistency between municipalities' statutory responsibilities and their revenues. In view of the fact that the Council proposes that provisions should be

unchanged, cp. para. 3, that the sources of revenue of municipalities shall be decided by law, as well as their right to decide whether and how to use them. It was deemed necessary to provide in stronger terms for the legislature's duty to ensure consistency between tasks and revenues, i.e. to ensure that sufficient revenues are available for the municipalities' statutory responsibilities.

Para. 2 entails that the legislature is under an obligation to arrange matters in such a way that municipalities are sufficiently robust to carry out their responsibilities in an efficient manner, account being especially taken of their size. Municipal governments also have a duty to comply with the legislature's rules, and to manage their affairs in such a way that their fiscal governance is satisfactory. Rules are to be further elaborated in law regarding checks and monitoring of municipal finances, in consultation with municipalities, in order that it may be ensured that municipalities are sufficiently robust to carry out their statutory responsibilities efficiently.

The Constitutional Council's notes state that the objectives of sufficient capacity and consistency between tasks and revenues may also be achieved by collaboration among municipalities, which is now common, through regional groupings of municipalities under the Municipalities Act and other legislation.

#### Re article 106

Art. 106 of the bill proposes a new provision that the principle of subsidiarity be enshrined in the Constitution; this entails that those aspects of government services which are deemed best governed locally by municipalities shall be under their governance. The provision is partly based on an equivalent rule within the European Union. Local government of municipalities is based upon the democratic principle that people have a right to have a direct influence upon their immediate environment.

#### Re article 107

A new provision is proposed regarding municipal elections and public participation; this is based upon the proposal of the Constitutional Committee, with the exception of a change of wording in para. 1. Provision is made for the duty of the legislature to address the right of inhabitants of a municipality to request a referendum on local matters. The provision enshrines in the Constitution the present right of inhabitants to elect representatives in local government.

The Constitutional Council's note states that the Council deemed it correct to make provision in para. 1 that, as has long applied by law, municipalities shall be governed by local governments under a mandate from the inhabitants, which are elected by popular vote in a secret ballot. The note states that it was deemed correct to make provision in the Constitution for such a fundamental right as the election of local government. It should be pointed out that the right of inhabitants of a municipality to a referendum on local matters is grounded in the same basis as the right of the public to a referendum on legislation. The nature and consequences of such referenda differ, however, in many ways. Municipal governments are government authorities, and thus are bound by law in their activities. A referendum on a municipal matter can thus never be concerned with a matter other than those which a municipality is permitted to undertake by law. Legislation on referenda of inhabitants of a municipality about municipal matters naturally takes account of this, as otherwise the law would be ineffective. Hence it is not necessary in the Constitution to make such detailed provision for the matters which may be submitted to a local referendum, as in the case of matters to be submitted to a national referendum.

#### Re article 108

The provisions of art. 108 require consultation with municipalities and associations of municipalities, as far as possible, in the preparation of legislation which directly concerns municipal matters. The present Constitution makes no such provision. The intention is to conduce to high standards in legislation, and thus the rule has some connection to para. 2 art. 57 of the Bill.

Art 108 proposes a formal rule on the duty of consultation in preparation of legislation, if the legislation has relevance to municipal matters. The Constitutional Council's notes state that the duty is incumbent on those who prepare any legislation – the relevant ministry or Minister in the case of a cabinet Bill, but also Members of the Althing and parliament staff on their behalf, in the case of Members' Bills.

#### Re article 109

The nature of international affairs means that the activities of government authorities in this field are informed by law to a lesser degree than most other fields of administration. For that reason it may be argued that there is reason to recommend special provision for the influence of the legislature on procedure in foreign affairs, in order to meet requirements arising from the rule of legality, the rule of parliamentary government, and other structure of the system of government, cp. notes to Chapter I and art. 37 above.

Para. 1 art. 109 stresses that it is for the government to form foreign policy and to speak on behalf of the State, and it is also stressed that its work in that field is carried out on behalf of the Althing, and under its supervision. According to the Constitutional Council's notes this provision "removes any ambiguity about the ultimate authority regarding the state's foreign policy lying with the Althing, and not with the cabinet, or individual ministers." The Constitutional Council points out, however, that this wording "provides a certain indication that the cabinet may, in certain circumstances, have greater leeway in the pursuit of foreign policy than in various other matters."

The notes and the wording of the provision are consistent with what normally applies to the status of the executive in the administrative system, and it should be interpreted in view of that. As stated in the note to art. 37 of the Bill, the executive branch is dependent upon parliament in two senses: on the one hand in such a way that the legislature shapes the field of activity of the executive beyond what is determined by the Constitution. This means that the executive branch can take no action except on behalf of the legislature, and it is obliged to implement legislation enacted by the legislature. It must also remain within the limits laid down by law. On the other hand, the rule of parliamentary government means that the appointment of the highest authority of the executive at any time – the cabinet – is contingent upon parliament being willing to support it, or at least not to oppose it in office.

The nature of international affairs means that the activities of government authorities in this field is informed by law to a lesser degree than most other fields of administration. In accord with that, the government has been regarded as having some freedom in its authority for policy-making in the field of foreign policy, and being able to act as required by changing circumstances. In this sense it enjoys greater scope in the pursuit of foreign policy than in various other fields. On the other hand, the reference to action on behalf of the Althing may be taken to stress that the legislature is assured, in foreign affairs as others, certain opportunities to influence government, including to make resolutions on foreign affairs, and to give the government directives.

The rule of parliamentary government and ministerial responsibility mean that parliament monitors the government, and it has certain means at its disposal to provide checks on government, as further provided in the Constitution and, as applicable, in legislation; these include the right to be provided with information, and to consultation, cp. para. 2 art. 109. Taking this into account, the inference must be that the *final authority* of parliament, according to the Constitutional Council's notes, refers *primarily* to the means the Althing possesses to enforce that responsibility. Active governance and policy-making in the field of

foreign policy must, as hitherto, rest with the Minister, as provided at the beginning of art. 109.

#### Re article 110

Under this provision the making of international agreements is handled by the cabinet, and hence agreements need not be submitted to parliament, except in specified cases. The Constitutional Council's notes indicate that "international agreement" means any agreement between Iceland and another state or states, whether bilateral or multilateral, which is intended to provide for rights or obligations of the Icelandic state under international law. This is the same meaning attributed to "international agreement" under art. 21 of the present Constitution. In accord with normal use of language in international agreements, it is here proposed that reference be made to Iceland as a party to those agreements made by the government on the state's behalf with other states and international bodies.

With the requirement of approval by the Althing for certain agreements, it is ensured that the government may not commit itself under the agreements without the involvement of parliament. Parliamentary approval is generally granted by the passing of a resolution proposed by the Minister of Foreign Affairs, while such approval has also been granted by law, especially if the agreement will have the force of law in Iceland, cp. for instance the European Economic Area Act no. 2/1993. The approval of the Althing is required under art. 110 in cases of three kinds: 1) if the agreements involve any surrender of, or encumbrance on, land, inland waters, the territorial sea, economic jurisdiction or continental shelf, 2) if they require amendment of law, and 3) are important for other reasons. The last of these conditions is new. The prior two are not, despite a change of wording. The change of wording is intended to formalise the customs which have arisen in the interpretation of the conditions under the present provision.

#### Re article 111

This is a new provision, which entails authority to transfer State powers to international organisations, provided that certain conditions are fulfilled. Two changes are proposed to the article as proposed by the Constitutional Council. One, arising from technical issues, concerns the object of the referendum for which provision is made in para. 2. The other reflects the will of the Constitutional Council as expressed in its note to the provision, and provides that minor transfers of power need not be submitted to a referendum. Both these proposed changes will be discussed more fully below.

The present Constitution makes no provision for the handling of the state's mandated powers in collaboration with other nations, or authority to transfer state powers, which is a growing aspect of international collaboration. Growing international collaboration by the government with other states and international bodies has, however, regularly led to a need to take a stance on moot points of this nature, especially in the context of Iceland's participation in the EEA Agreement and the Schengen Agreement. Authority to transfer power has, however, via certain methods of interpreting law, and on fulfilment of certain conditions, been deemed to exist. Scholars have differed in their views of how far such powers can be deemed to extend without an amendment to the Constitution, and it is regarded as clear that some restrictions apply.

#### Re article 112

The provision of art. 112 on the effect of international agreements are new in the Constitution. The article comprises two parts: on the one hand a general statement that all holders of State power must honour obligations under international law with respect to human rights. On the other hand it is proposed that certain international agreements should take precedence over general law. In order to achieve the effect intended according to the note to para. 2 of the article, a change of wording is proposed for greater clarity. Otherwise the article is unchanged.

#### Re article 113

The original proposal of the Constitutional Council proposed two means of amending the Constitution. On the one hand, the Althing could approve a Bill to amend the Constitution, which would then be submitted to a referendum of all the electorate for approval or rejection. The referendum was to take place at least one month, and not more than three months, after the Bill was approved in parliament. On the other hand, it was proposed that a five-sixths majority of the Althing could approve a Bill to amend the Constitution, and decide not to submit it to a referendum, in which case the Bill would nonetheless take effect. The Constitutional Council's notes stated that this provision was intended to apply to minor amendments.

The parliamentary Constitutional and Supervisory Committee's communication of 28 February 2012 to the Constitutional Committee stated that considerable comments had been made on the provision that the Althing could decide not to submit a constitutional amendment to a referendum. It also stated that the comment in the notes that the provision was intended only to apply to "minor amendments" could lead to constitutional uncertainty regarding the

validity of a constitutional amendment, and legislation arising from it. In view of this the Constitutional Council was asked whether it believed it would be possible to clarify the provision in the text of the article, or whether it believed it would be wiser to make arrangements that all constitutional amendments would be submitted to a referendum.

In its reply to the parliamentary Constitutional and Supervisory Committee dated 11 March 2012, the Constitutional Council stated that it regarded it as acceptable that the arrangement that a certain proportion of Members of the Althing could decide not to submit a constitutional amendment to a referendum be omitted from the Bill. Under the Bill, all amendments to the Constitution are to be submitted to a referendum. In addition the change is made to the Constitutional Council's proposal that in the case of an amendment to the Human Rights chapter of the Constitution, provision should be made for the amendment to be confirmed by two parliaments, as under art. 79 of the present Constitution. One of the main functions of the Constitution is to safeguard the citizens from the will and power of the majority at any time. For that reason it would be inadvisable if a majority, whether of parliament or of the electorate, could amend the Constitution at very short notice. For that reason provisions for constitutional amendments invariably demand considerable effort and consideration. In this context the constitutions of Denmark, Norway, Sweden and Finland may be mentioned; in all these states a Bill to amend the Constitution must be submitted to two parliaments, before and after an election. In the Bill it is thus proposed that amendments to the Human Rights chapter will still require to be approved by two parliaments, whereby the objective of the Constitutional Council is achieved, that the public can take a direct stance regarding such proposed amendments.