

6 June 1993

Constitution of the Canton of Bern

With the intention of safeguarding freedom and the rule of law and of creating a body politic in which everyone may live together and fulfil their responsibility to Creation,
the People of the Canton of Bern enact the following Constitution:

1. General Principles

Art. 1

The Canton of Bern

¹ The Canton of Bern is a liberal, democratic and social state governed by the rule of law.

² The authority of the state rests with the People. It is exercised by the electorate and the authorities.

Art. 2

Relationship with the Confederation and the other cantons

¹ The Canton of Bern is a state within the Swiss Confederation.

² It works together with the Confederation and the other cantons and regards itself as an intermediary between German-speaking and French-speaking Switzerland.

Art. 3

Territory of the Canton

¹ The Canton covers the territory guaranteed to it by the Confederation.

² It is divided into districts and communes.

³ In order to carry out special tasks, regional organisations may be formed.

Art. 4

Minorities

¹ The needs of linguistic, cultural and regionally minorities must be taken into account.

² To this end, such minorities may be accorded special powers.

Art. 5

Bernese Jura

¹ The Bernese Jura, comprising the districts of Courtelary, Moutier and La Neuveville, is accorded special status. This is intended to enable it to preserve its

identity, to maintain its linguistic and cultural character, and to take an active part in cantonal politics.

² The Canton shall take measures to strengthen the ties between the Bernese Jura and the rest of the Canton.

Art. 6

Languages

¹ German and the French are the Bernese cantonal and official languages.

² The official languages are

- a French in the Bernese Jura,
- b German and French in the district of Biel-Bienne,
- c German in the other districts.

³ The Canton and communes may take account of special conditions that result from the bilingualism of the Canton.

⁴ Within the authorities responsible for the Canton as a whole, anyone may use the official language of their choice.

Art. 7

Citizenship

¹ The acquisition and loss of citizenship of the Canton and of its communes is governed by legislation within the framework of federal law.

² Communal citizenship is dependent on holding cantonal citizenship.

Art. 8

Obligations

¹ Everyone must fulfil the obligations that are imposed on them by the Constitution and the legislation based thereon.

² Everyone is responsible for themselves, bears a responsibility towards their fellow human beings, and shares the responsibility for ensuring that the right of self-determination is safeguarded for future generations as well.

2. Fundamental Rights, Social Rights, Social Aims

2.1 Fundamental Rights

Art. 9

Human dignity

Human dignity must be respected and safeguarded.

Art. 10

Equality before the law

¹ Equality before the law is guaranteed. Discrimination, in particular on the

grounds of race, skin colour, gender, language, origin, lifestyle or political or religious beliefs is not permitted under any circumstances.

² Men and women have equal rights. They have the right of equal access to public educational institutions and to public office, to the same education and to the same salary for work of equivalent value.

³ The Canton and the communes shall promote the realisation of true equal rights for men and women.

Art. 11

Protection against arbitrary conduct, Protection of good faith

¹ Everyone has the right to protection against arbitrary action by the public authorities.

² The protection of good faith is guaranteed.

Art. 12

Personal rights

¹ Personal freedom is guaranteed, and in particular the right to physical and mental inviolability and to freedom of movement.

² Torture and inhuman and degrading punishments or treatments are not permitted under any circumstances.

³ Everyone has the right to respect for their privacy, their home and their postal and telecommunications.

Art. 13

Marriage and joint co-existence

¹ The right of marriage and of family life is protected.

² The freedom to choose a different form of joint co-existence is guaranteed.

Art. 14

Freedom of religion and conscience

¹ Freedom of religion and conscience and the exercise thereof are guaranteed.

² Under no circumstances is it permitted to force anyone to take part in a religious act or to make a declaration of belief.

Art. 15

Freedom to use any language

The freedom to use any language is guaranteed.

Art. 16

Freedom of domicile

The freedom to choose one's domicile and place of residence is guaranteed.

Art. 17

Freedom of expression and of information

¹ Everyone has the right to form their opinions freely, to express them unhindered, and to disseminate their opinions verbally, in writing, in images or by any other means.

² Other than in specific situations prescribed by the laws, pre-censorship is not permitted under any circumstances.

³ Everyone has a right to inspect official files in the absence of any prevailing public or private interests.

Art. 18

Data protection

¹ Everyone has the right to inspect data about them that has been processed and to request that incorrect data be corrected and unsuitable or unnecessary data be deleted.

² Authorities may process personal data only if there is a legal basis for doing so and the data is suitable and necessary for the fulfilment of their duties.

³ They must ensure that the processed data is correct and they must protect it against misuse.

Art. 19

Freedom of assembly and of association

¹ Everyone has the right to meet with others and to join together in associations, or to refrain from attending such meetings and associations.

² Public gatherings on public property may be declared to be subject to authorisation by the law or by communal regulations. Such gatherings must be permitted if it appears that they will proceed in an orderly manner and that any detriment to other users of the property seems justifiable.

Art. 20

Right of petition

¹ Everyone has the right to submit petitions to the authorities and to collect signatures for this purpose, without suffering any disadvantage.

² Restrictions on right to submit individual petitions are not permitted under any circumstances.

³ Petitions must be inspected and responded to by the authority responsible within one year.

Art. 21

Freedom of teaching and of science

¹ The right to teach and the freedom of research and teachings are guaranteed.

² Persons working in the fields of science, research and teaching shall uphold

their responsibilities with regard to the integrity of the lives of other persons, animals, plants and the basic necessities that they require to live.

Art. 22

Freedom of artistic expression

The freedom of the artistic expression is guaranteed.

Art. 23

Economic freedom

¹ The freedom to choose one's occupation and place of work, the freedom of economic activity and the right to join professional associations and trade unions are guaranteed.

² The institution of freedom of contract is inviolable.

Art. 24

Guarantee of ownership

¹ Ownership is guaranteed and, as an institution, is inviolable.

² In the event of expropriations or restrictions of ownership that are equivalent to expropriation, full compensation must be paid.

³ The Canton and the communes shall create favourable conditions for the broad distribution of private landed property, in particular for the personal use and personal exploitation of the owner.

Art. 25

Guarantees in the case of deprivation of liberty

¹ No one may be deprived of their liberty other than in the circumstances and by the methods provided for by the law.

² Anyone who has been deprived of their liberty must be notified without delay of the reasons and of their rights in a language they can understand. They have the right to have their next-of-kin informed as soon as possible.

³ Anyone who has been arrested by the police on suspicion of committing a criminal offence must within the shortest time possible be brought before a judicial authority that must decide whether the person will continue to be deprived of their liberty. If the person remains in detention, they have the right to have their case decided or to be released from detention within a reasonable time.

⁴ Anyone who has been deprived of their liberty has the right

a to be assisted by a legal adviser and to communicate freely with that person and

b to have the deprivation of their liberty reviewed in simple and expeditious judicial proceedings.

⁵ If the deprivation of liberty proves to be unlawful or unjustified, the body politic must compensate the person concerned in full for any losses incurred and if need be for pain and suffering.

⁶ No restrictions on the guarantees contained in paragraphs 1 to 3 are permitted under any circumstances.

Art. 26

Legal protection

¹ Everyone has the inviolable right to have their case heard by independent, impartial and lawfully appointed judges.

² The parties in all proceedings have a right to be heard, to examine files, to a justified decision within a reasonable time and to be notified of their rights of appeal.

³ Persons on low incomes have the right to free legal assistance and representation.

⁴ Any accused person is presumed innocent until they have been convicted in judicial proceedings and the judgement has taken full legal effect. In the event of any doubt, the verdict must favour the accused.

⁵ Conviction on the basis of an act or omission that was not an offence at the time it was committed is not permitted under any circumstances.

Art. 27

Applicability of the fundamental rights

¹ The fundamental rights must apply throughout the entire legal system.

² Anyone who carries out public duties is bound by and must contribute to the upholding of the fundamental rights.

³ The fundamental rights also apply to foreign nationals, unless federal law provides otherwise.

⁴ Minors and persons judicially deprived of their rights who are capable of judgement may themselves assert the fundamental rights that relate to their private sphere.

Art. 28

Restrictions on the fundamental rights, Essence

¹ Any restriction on a fundamental right must have a basis in law. The nature, purpose and extent of such restrictions must be adequately defined. The foregoing does not apply in cases of serious, immediate and obvious danger, and in particular in cases involving the life or health of any person, the exercise of democratic rights, or irreparable damage to the environment.

² The fundamental rights may only be restricted if this is justified in order to protect a predominant public interest or a conflicting fundamental right of a private individual.

³ Any restrictions must be proportionate.

⁴ The essence of the fundamental rights is inviolable. The essence includes in particular the guarantees that this Constitution deems inviolable or in respect of which it permits no restrictions under any circumstances.

2.2 Social Rights

Art. 29

¹ Everyone has the right to shelter when in need, to the means required for a decent standard of living, and to basic medical care.

² Every child has the right to protection, welfare provision and care as well as to a school education that is commensurate with their abilities and free of charge.

³ The victims of serious offences have the right to assistance in overcoming their difficulties.

2.3 Social Aims

Art. 30

¹ The Canton and communes shall endeavour to ensure that

- a* everyone can make a living by working subject to fair conditions, is protected against the consequences of involuntary unemployment and benefits from paid holidays;
- b* everyone may live in suitable accommodation on reasonable terms;
- c* women benefit from financial security before and after giving birth;
- d* suitable conditions are created for the care of children and the families are supported in the fulfilment of their duties;
- e* the concerns and needs of children and young people are taken into account;
- f* everyone can obtain an education and additional training in accordance with their abilities and wishes;
- g* everyone who requires assistance due to age, infirmity, illness or disability receives adequate care and support.

² They shall achieve these aims in parallel with efforts made by private initiative and responsibility and within the limits of the resources available to them.

3. Public Duties

3.1 Environment, Landscape and Cultural Heritage

Art. 31

Environmental protection

¹ The natural environment must be maintained in a healthy condition for present and future generations. Pollution of the environment due to state and private activities should be kept to a minimum.

² Natural resources may only be exploited to the extent that their capacity to renew themselves and their continued availability remain guaranteed.

³ The Canton and the communes shall ensure that the population and the natural environment are protected against damage and nuisance. The Canton shall further ensure protection from the potential dangers of the genetic engineering

procedures or genetically modified products.

⁴ The Canton and the communes shall protect their animal and plant life as well as their habitats.

⁵ The costs of environmental protection measures are normally borne by the person who causes the cost to be incurred.

Art. 32

Protection of the landscape and of cultural heritage

The Canton and the communes in cooperation with private organisations shall take measures to preserve the landscape and places of interest that are worthy of protection as well as natural monuments and objects of cultural interest.

3.2 Spatial Planning and Building Regulations

Art. 33

¹ The Canton and the communes shall ensure the economical use of the land and its properly ordered settlement, and the preservation of recreation areas.

² Spatial planning and building regulations must have the desired development of the Canton as their aim. They shall take account of the diverse requirements of the population and the economy as well as the protection the environment.

³ The Canton shall ensure that sufficient arable land is preserved for agricultural purposes.

3.3 Transport, Water, Energy and Waste

Art. 34

Transport and roads

¹ The Canton and the communes shall ensure the provisions of a safe, economic, environmentally sound and energy saving transport system.

² They shall promote public transport and the use of environmentally-friendly methods of transport.

³ They shall take account of the needs of non-motorised traffic when constructing roads.

⁴ In fulfilling their duties, they shall take account of effects on the volume of traffic.

Art. 35

Water and energy supply

¹ The Canton and the communes shall ensure the supply of water.

² They shall take measures to ensure an environmentally sound, economic and adequate supply of energy. They shall encourage the use of renewable sources of energy.

³ They shall be committed to the economical and rational use of water and energy.

Art. 36

Waste water purification and disposal of waste

¹ The Canton and the communes shall work towards the reduction of water pollution and shall ensure the environmentally sound treatment of waste water.

² They shall take measures to reduce and to recycle waste. Waste that cannot be recycled must be disposed of in an environmentally sound manner.

3.4 Public Order and Security

Art. 37

The Canton and the communes shall ensure public order and security.

3.5 Social Security

Art. 38

Social assistance

¹ The Canton and the communes shall take care of people in need in cooperation with public and private organisations.

² They shall encourage social provision and self-help, combat the causes of poverty and prevent social emergencies.

³ They may supplement subsidies provided by the Confederation for the purpose of social security.

Art. 39

Employment

¹ The Canton and the communes shall take measures to prevent unemployment and to mitigate its consequences. They shall support professional retraining and reintegration.

² The Canton shall promote health and safety in the workplace and occupational medicine.

³ The Canton and the communes shall remain impartial in legal disputes between social partners.

⁴ They shall encourage the compatibility of gainful economic activity and childcare and other care activities.

Art. 40

Housing

The Canton and the communes shall take measures to ensure the availability of reasonably priced residential accommodation and the improvement of inadequate housing conditions. They shall encourage the construction of reasonably priced housing.

3.6 Health Care

Art. 41

¹ The Canton and the communes shall protect and promote good health. They shall ensure the adequate and affordable provision of medical and nursing services to the population and provide the facilities required for this purpose.

² The Canton shall ensure through planning and an appropriate financing system the effective and efficient use of public resources. It shall ensure coordination with private institutions.

³ The Canton and the communes shall promote care and assistance in the home. They shall support effective measures in the field of addiction prevention.

⁴ The Canton shall promote natural methods of medical treatment.

⁵ It shall supervise public and private institutions, the health professions and the pharmaceutical sector.

3.7 Education and Research

Art. 42

Principles of the education system

¹ The education system has the aim of encouraging the harmonious development of physical, intellectual, creative, emotional and social skills as well as a sense of responsibility towards the environment.

² The Canton and the communes shall support parents in the upbringing and education of their children.

Art. 43

Schools

¹ The Canton and the communes shall operate public kindergartens and schools. Lessons are neutral with regard to religion and politics.

² They may provide subsidies to private schools that fulfil public tasks.

³ The Canton organises the supervision of private schools and private tuition.

Art. 44

University and Universities of Applied Sciences

¹ The Canton shall maintain a university and universities of applied sciences. They shall fulfil their tasks as a public service.

² They shall promote academic and scientific knowledge through teaching and research and shall provide services.

Art. 45

Further tasks

¹ The Canton and the communes shall support vocational and the non-vocational adult education.

² The Canton shall facilitate education by means of subsidies or other measures to promote equal opportunities.

³ The Canton shall encourage cooperation and coordination in the education system.

3.8 The Media

Art. 46

The Canton shall support the independence and diversity of the information provided in the media. Editorial secrecy for journalists is governed by the law.

3.9 Sunday Rest, Culture and Leisure Time

Art. 47

Sunday rest

Sundays and public holidays recognised by law are public days of rest.

Art. 48

Culture

¹ The Canton and the communes shall facilitate access to culture. They shall promote cultural creativity and cultural exchange.

² In doing so, they shall take account of the needs of the entire population and the cultural diversity of the Canton.

Art. 49

Leisure time, sport and recreation

The Canton and the communes shall support the sensible use of leisure time and measures to promote sport and recreation.

3.10 The Economy

Art. 50

General

¹ The Canton and the communes shall create favourable conditions for an efficient economy that is structurally and regionally balanced.

² They shall endeavour to maintain viable small and medium-sized businesses as well as a wide network of retail businesses.

Art. 51

Agriculture and forestry

¹ The Canton shall take measures to ensure an efficient and environmentally sound agriculture and forestry sector.

² It shall support family-run farms, favour direct cultivation by farm owners and encourage near-natural cultivation methods.

³ It shall ensure the conservation of the forests in their functions as a source of protection, as commercially usable land and as a public amenity.

Art. 52

Monopolies

¹ The cantonal monopolies are

- a* the salt monopoly,
- b* the water monopoly,
- c* the mines monopoly including the use of geothermal heat,
- d* the hunting and fishing monopoly.

² Existing private rights are reserved.

³ The monopolies confer an exclusive right of use on the Canton. It may assign this right to the communes or to private individuals.

Art. 53

The Cantonal Bank

The Canton shall operate a bank with the aim of encouraging economic growth and social development. The bank shall support the Canton and the communes in fulfilling their duties.

3.11 International Cooperation and Aid

Art. 54

¹ The Canton shall participate in cooperation among the regions of Europe.

² It shall contribute to the economic, social and ecological development in disadvantaged countries and shall support humanitarian aid for people in need. In doing so, it shall encourage the upholding of human rights.

4. Democratic Rights

4.1 The Right to Vote

Art. 55

¹ Every Swiss citizen who is resident in the Canton and has attained the age of 18 has the right to vote in cantonal matters.

² The right to vote of ex-patriate Swiss citizens and the exclusion from the right to vote due to incapacity or mental disability is regulated by the law.

4.2 Elections

Art. 56

Elections

¹ The People elect

- a* the Cantonal Parliament,
- b* the Cantonal Government,
- c* the members of the National Council representing the Canton of Bern,
- d* the members of the Council of States representing the Canton of Bern.

² The members of the Council of States representing the Canton of Bern are elected at the same time as the members of the National Council and for the same term of office. The system of election by simple majority applies.

Art. 57

Extraordinary general election

¹ 30 000 persons who are eligible to vote may at any time request that a general election to the Cantonal Parliament or to the Cantonal Government be held. The newly elected body completes the term of office of the outgoing body.

² Within three months of its being made, the request must be submitted to a popular vote. If the People vote in favour, new elections must be arranged without delay.

4.3 Popular Initiatives

Art. 58

Scope of application

¹ An initiative may request

- a* the complete or partial revision of the Constitution,
- b* the enactment, repeal or amendment of legislation,
- c* the termination or opening of negotiations on the conclusion or amendment of an intercantonal or international agreement, provided it is subject to a referendum, and
- d* The preparation of a decree of the Cantonal Parliament that is subject to a referendum.

² An initiative is successful if 15 000 persons who are eligible to vote sign the petition within six months. For a request for the complete revision of the Constitution, 30 000 signatures are required.

³ An initiative may take the form of a simple proposal or, provided that it does not request the complete revision of the Constitution or the preparation of a decree of the Cantonal Parliament, the form of a detailed draft.

Art. 59

Procedure

¹ The Cantonal Government assesses whether the request for the initiative is successful, and the Cantonal Parliament assesses whether the initiative is valid.

² Popular initiatives must be declared wholly or partly invalid, if they

- a* violate overriding law;
- b* are unenforceable;
- c* do not preserve unity of form or of subject matter.

³ In the case of simple proposals, the Cantonal Parliament takes the final decision on the legal form in which the legislative bill should be drafted.

⁴ Popular initiatives must be dealt with without delay.

Art. 60

Counter-proposals

¹ The Cantonal Parliament may submit a counter-proposal to a detailed initiative and to a bill that it has drafted on the basis of an initiative in the form of a simple proposal.

² The vote on the initiative and the counter-proposal is held at the same time. The electorate may validly vote in favour of both bills and indicate which of the two they would prefer in the event that both are accepted.

4.4 Popular Votes

Art. 61

Mandatory referendum

¹ The following are subject to a mandatory referendum:

- a* revisions of the Constitution,
- b* popular initiatives that are not approved by the Cantonal Parliament or in relation to which it makes a counter-proposal,
- c* intercantonal and international agreements that are not compatible with the Constitution,
- d* alterations to the territory of the Canton, other than boundary adjustments.

² Legislative bills that require an optional referendum are made subject to a mandatory referendum if 100 members of the Cantonal Parliament so request.

Art. 62

Optional referendum

¹ The following are also subject to a referendum if the request for a referendum is successful:

- a* new legislation,
- b* intercantonal and international agreements relating to matters that are

subject to an optional referendum in the Canton,

- c decisions on expenditure of the Cantonal Parliament if they relate to non-recurrent expenditure of over two million francs or recurrent expenditure of over 400 000 francs,
- d decisions of the Cantonal Parliament on concessions,
- e decisions of principle made by the Cantonal Parliament,
- f further decisions on specific matters made by the Cantonal Parliament if the law so requires, or if the Cantonal Parliament or 70 of its members so request. Elections, judicial matters, the cantonal accounts and the budget may not be made subject to a referendum.

² A request for a referendum is successful if within three months of publication of the bill, 10 000 persons who are eligible to vote request a referendum thereon.

Art. 63

Procedure

¹ A bill subject to a referendum is accepted if it receives the majority of the votes validly cast in the Canton.

² The Cantonal Parliament may make an alternative proposal in a bill that is subject to a referendum. If the referendum takes place, both the main bill and the alternative proposal must be submitted to a vote of the electorate. If the referendum does not take place, the alternative proposal is not longer valid.

³ If the Cantonal Parliament does not make an alternative proposal, 10 000 persons who are eligible to vote may submit a popular proposal within three months of the publication of an act or of a decision of principle. This is regarded as a request for a referendum.

⁴ Alternative proposals and popular proposals are subject to the same voting procedure as applies to a counter-proposal to an initiative.

4.5 Participation

Art. 64

Consultation proceedings

¹ Everyone has the right to express their opinion as part of consultation proceedings on constitutional and legislative bills as well as on other projects of general application.

² The opinions expressed are made publicly accessible.

Art. 65

Political parties

¹ The political parties participate in the shaping of opinion and in the decision-making process.

² The Canton and the communes may support them in this task.

5. Cantonal Authorities

5.1 Principles

Art. 66

Separation of powers

¹ The organisation of the authorities is based on the principle of the separation of powers. No authority may exercise state power without supervision and without restriction.

² Anyone who carries out public duties is bound by the Constitution and by the law.

³ The judicial authorities may not apply cantonal enactments that are contrary to the overriding law.

Art. 67

Eligibility for election, Administrative status

¹ Anyone who is eligible to vote in the Canton may be elected to the Cantonal Parliament, the Cantonal Government, the Council of States and to the cantonal judicial authorities, unless the Constitution or the law specifies that additional requirements be met.

² The eligibility for appointment of other members of authorities and of the staff of the Cantonal Administration is regulated by the law.

³ Administrative status is regulated by the law.

Art. 68

Incompatibility, Recusal

¹ The following persons may not at the same time be members of the Cantonal Parliament

a members of the Cantonal Government,

b members the cantonal judicial authorities,

c staff of the central and local cantonal administration,

d other persons in positions which the law deems to be incompatible.

² Anyone who is a member of a cantonal judicial authority may not at the same time be a member of the Cantonal Government or the Cantonal Administration.

³ Members of the Cantonal Government may not be members of the Federal Assembly.

⁴ Members of authorities as well as employees of the Cantonal Administration must recuse themselves when business that directly concerns them is being discussed.

Art. 69

Delegations

¹ The powers of the People may be delegated to the Cantonal Parliament and to the Cantonal Government provided such delegation is restricted to a specific field and the scope of such delegation is specified by the law. Direct delegation to other authorities is excluded.

² Subject to the same requirements, powers of the Cantonal Parliament may be delegated to the Cantonal Government.

³ The Cantonal Government may delegate its powers to other bodies if the law so permits. Directorate powers may not be delegated unless authorised by the law.

⁴ All fundamental and significant legal rules of the cantonal law must be enacted in the form of a cantonal act. Such rules include provisions for which the Constitution expressly requires an act, as well as provisions on

- a* the fundamentals of the legal status of individuals,
- b* the subject matter of taxes and charges, the principles of their assessment and the tax payer group, with exception of charges of a trivial amount,
- c* the purpose, nature and scope of significant cantonal services,
- d* the fundamentals of the organisation and the duties of the authorities,
- e* the implementation of a permanent new duty.

Art. 70

Information

The authorities must provide adequate information on their activities.

Art. 71

Liability

¹ The Canton and other organisations entrusted with public duties are liable for any loss or damage unlawfully caused by their officers in the conduct of their sovereign activities.

² The law regulates liability in other cases. It regulates the accountability of the authorities and of the staff of the Cantonal Administration.

³ The law determines the conditions under which the Canton must also accept liability for loss or damage caused by the lawful activities of its officers.

5.2 The Cantonal Parliament

Art. 72

Members, Term of office

The Cantonal Parliament comprises 160 members who are elected for a four-year term of office.

Art. 73

Election

¹ The Cantonal Parliament is elected by a system of proportional representation.

² The electoral constituencies are determined by the law.

³ The mandates are allocated to the constituencies accordingly to population. The constituency of the Bernese Jura is guaranteed twelve mandates. An appropriate representation for the French-speaking minority in the constituency of Biel-Seeland must be guaranteed.

⁴ The allocation of seats to the lists is determined by the votes obtained by the parties in the constituencies. In constituencies with two or more districts, each district is allocated a minimum of one seat.

Art. 74

Legislative powers

¹ The Cantonal Parliament enacts acts and decrees. The acts must indicate those provisions whose detail must be specified in a decree.

² The Cantonal Parliament approves

a international agreements and

b the intercantonal agreements that are not the sole responsibility of the Cantonal Government.

Art. 75

Planning

The Cantonal Parliament considers the report on the guidelines for government policy, the financial plan as well as further fundamental plans in individual areas of responsibility.

Art. 76

Financial powers

The Cantonal Parliament decides on

a the budget,

b the cantonal accounts,

c the basic rate of taxation,

d the limits for any new debts,

e Expenditure that is not the responsibility of the Cantonal Government.

Art. 77

Elections

¹ The Cantonal Parliament elects

a the President of the Cantonal Parliament,

- b* the President of the Cantonal Government,
- c* the Cantonal Chancellor,
- d* the President of the Cantonal Supreme Court and Administrative Court,
- e* the other members of the courts, unless this power is delegated to the People,
- f* the Chief Public Prosecutor.

² It may be required by the law to elect further officers.

Art. 78

Supervision

The Cantonal Parliament supervises the Cantonal Government and the administration of the highest courts and exercises supervisory control over the Administration and the other organisations entrusted with public duties.

Art. 79

Further powers

¹ The Cantonal Parliament

- a* advises and decides on all matters that are subject to a referendum;
- b* exercises the rights of participation conferred by the Federal Constitution on the cantons;
- c* may give its opinion to federal authorities in consultation proceedings;
- d* decides on conflicts of jurisdiction between the highest cantonal authorities;
- e* decides on amnesties and pardons;
- f* ... *[Repealed on 25. 9. 2005]*
- g* fulfils additional tasks that are delegated to it by the Constitution or the law.

² The law confers on the Cantonal Parliament the power to award, amend, renew and assign important concessions.

Art. 80

Cantonal Government mandates, decisions of principle

¹ The Cantonal Parliament may issue mandates to the Cantonal Government. Where the Cantonal Government must make the final decision, the mandate has the character of a directive.

² The Cantonal Parliament may make decisions of principle that lie within the scope of its powers.

Art. 81

Committees and factions

¹ The Cantonal Parliament may form committees in order to prepare for its deliberations.

² It may delegate certain of its individual decision-making powers to such

committees. The Cantonal Parliament must retain the power to make its own decision on any individual item of business.

³ In order that the committees may fulfil their tasks, the law confers on them the special right to information, rights of inspection and powers to conduct investigations.

⁴ The members of the Cantonal Parliament may form factions.

Art. 82

Status of members of the Cantonal Parliament

¹ The members of the Cantonal Parliament discuss and vote without instructions. They must disclose any public or private interest in any matter, subject to the reservation of professional confidentiality.

² They may express themselves freely in Parliament and may be held liable for parliamentary statements only in the cases specified by the law.

³ They are entitled to make the parliamentary requests specified by the law and to bring parliamentary initiatives.

⁴ They hold the special rights to information and of inspection in relation to the Administration that is provided by the law. The President of the Cantonal Parliament may inspect the files of the Cantonal Government at any time.

Art. 83

Status of the Cantonal Government in the Cantonal Parliament

¹ The Cantonal Government has the right to bring motions before the Cantonal Parliament.

² It participates in the sessions of the Cantonal Parliament in an advisory capacity.

³ It may be represented by its members.

5.3 The Cantonal Government

Art. 84

Composition

¹ The Cantonal Government comprises seven members.

² The Bernese Jura is guaranteed one seat. Any French-speaking person who is eligible to vote and who is resident in one of the three districts of Courtelary, Moutier or La Neuveville is eligible for election to that seat.

Art. 85

Election and term of office

¹ The members of the Cantonal Government are elected in accordance with a simple majority electoral system at the same time as the ordinary general election to the Cantonal Parliament and for the same term of office.

² The entire territory of the Canton forms a single constituency for the purpose of the election.

³ Subject to the reservation of the seat guaranteed to the Bernese Jura, candidates are elected to the Cantonal Government as follows:

a in the first ballot, in the order of the number of votes, those candidates who receive an absolute majority of the votes that are validly cast;

b in the second ballot, those candidates with the highest number of votes.

⁴ The votes received by candidates from the Bernese Jura are counted separately for the entire Canton and for the Bernese Jura. The seat reserved for the Bernese Jura is allocated to the candidate who receives the highest geometric mean of both results. For election in the first ballot, an absolute majority of the votes from the entire Canton is also required.

Art. 86

Planning and coordination

The Cantonal Government decides on the aims of state action, subject to the reservation of the powers of the Cantonal Parliament. It plans and coordinates the activities of the Canton.

Art. 87

Management of the Administration

¹ The Cantonal Government has charge of the Administration. It allocates the directorates among its members. Each member of the Cantonal Government is the head of one or more directorates.

² It decides on an appropriate organisational structure in accordance with the Constitution and the law, and ensures that administrative activities are carried out lawfully, efficiently and in a citizen-friendly manner.

³ It appoints all the authorities and cantonal staff subordinate to it, provided no other body is responsible for this under the Constitution or by law.

⁴ It renders account on the activities of the Administration to the Cantonal Parliament annually, or as often as the Parliament requires.

Art. 88

Legislation

¹ The Cantonal Government is normally responsible for the preliminary legislative procedures.

² It enacts ordinances where required to do so by the Constitution and other legislation.

³ In cases of urgency, it may regulate in an ordinance provisions that are required for the introduction of superordinate law. Emergency transitional provisions must be replaced by ordinary law without delay.

⁴ Subject to the reservation of the right of approval of the Cantonal Parliament, it may enter into intercantonal and international agreements. Intercantonal contracts that may be terminated at short notice and that either fall within the scope of its power to issue ordinances or are of secondary importance are the sole responsibility of the Cantonal Government.

Art. 89

Financial powers

¹ The Cantonal Government prepares the financial plan and approves the budget and the cantonal accounts for submission to the Cantonal Parliament.

² It decides on

- a* new non-recurrent expenditure of up to one million francs,
- b* new recurrent expenditure of up to 200 000 francs,
- c* related expenditure.

³ It decides on sales of real estate as well as on purchases of real estate for investment purposes.

⁴ It provides the required financial resources.

Art. 90

Further powers

The Cantonal Government is also responsible for

- a* representing the Canton in its internal and external relations;
- b* ensuring the maintenance of public order and security;
- c* preparing the business of the Cantonal Parliament, provided that the Parliament does not wish to deal with them alone;
- d* implementing legislation, the decrees of the Cantonal Parliament and legally enforceable judgements;
- e* approving consultation documents for submission to the federal authorities. In doing so it is bound by the opinion of the Cantonal Parliament;
- f* deciding on appeals, where the law so requires;
- g* deciding on adjustments to cantonal and communal boundaries;
- h* fulfilling additional tasks assigned to it in terms of the Constitution or other legislation.

Art. 91

Exceptional situations

The Cantonal Government may take measures not based on any statutory provision basis in order to counter ongoing or imminent disruptions to public order or security as well as social emergencies. Ordinances issued in such circumstances must be submitted immediately to the Cantonal Parliament for approval; they cease to have effect one year at the latest after coming into force.

5.4 The Cantonal Administration

Art. 92

Central Administration

¹ The Central Administration of the Canton is divided into directorates.

² The Cantonal Chancellery is the secretariat and liaison office for the Cantonal Parliament and the Cantonal Government.

³ An appropriate number of the staff must be French speakers.

Art. 93

District administration

¹ The districts are the administrative units of the Canton. They are designated by law.

² In each district, the electorate appoints a prefect. The law provides for a special form of organisation for large districts.

³ Within their districts, the prefects carry out the following tasks in particular. They

a represent the Cantonal Government;

b monitor the proper conduct of the district administration and supervise the communes;

c act as the authority for licensing, approval, administrative justice and enforcement in the cases designated by the law;

d act as the police authority and fulfil executive and coordination functions in exceptional situations.

⁴ The law determines the additional district authorities that are appointed by the electorate.

Art. 94

Regional fulfilment of cantonal duties

The law may provide that certain cantonal duties be fulfilled at regional level.

Art. 95

Other organisations entrusted with public tasks

¹ The Canton may

a establish institutions and other public or private law bodies;

b participate in public and private law bodies;

c assign public duties to private individuals and bodies outside the Administration.

² The law must in particular regulate

a the fundamental principles of the organisation and the duties of the institutions and bodies established by the Canton,

b the nature and extent of the delegation of legislative powers,

- c* the nature and extent of significant cantonal participations,
- d* the nature and extent of the delegation of a public duty in the event that a significant service or the power to restrict fundamental rights or to levy taxes or duties is involved.

³ Organisations entrusted with public duties are subject to the supervision of the Cantonal Government. The law shall ensure that the Cantonal Parliament has an appropriate right of participation.

Art. 96

Mediation service

The law may establish a cantonal mediation service.

5.5 Courts

Art. 97

General

¹ The independence of the courts is guaranteed.

² Court hearings are public. Judgements must be justified in writing. The law provides for the exceptions.

³ The districts are the judicial divisions of the Canton. The law may provide that two or more districts be combined to form one judicial division.

Art. 98

Civil courts

¹ Civil jurisdiction is exercised by

- a* the presidents of court,
- b* the Cantonal Supreme Court.

² Specific judicial authorities may be appointed by law, in particular to rule on disputes relating to employment, tenancy or commercial matters.

Art. 99

Criminal courts

¹ Criminal jurisdiction is exercised by

- a* the presidents of court,
- b* the district or divisional courts,
- c* the juvenile courts,
- d* the criminal court for economic offences,
- e* the Cantonal Supreme Court.

² Powers of administrative criminal justice may be assigned by law to the cantonal and communal administrative authorities. The right of judicial review is reserved.

Art. 100

Administrative court

¹ The administrative court rules as court of last instance on administrative law disputes, unless the law provides that final jurisdiction be the responsibility of another authority.

² Special judicial authorities may be appointed by law to rule on administrative law disputes.

6. Financial System

Art. 101

General principles

¹ The cantonal finances must be administered economically, efficiently and in a manner commensurate with the economic situation and the costs-by-cause principle. They should balance in the medium term.

² The Canton operates a comprehensive financial planning system, which is coordinated as far as possible with the financial planning system of the Confederation.

³ Before any new task is assumed, the Canton must ascertain how it is to be financed.

⁴ All tasks are reviewed periodically to verify their necessity and appropriateness as well as their financial repercussions and feasibility.

Art. 101a

Deficit brake

¹ The budget must not disclose any deficit.

² Any deficit in the cantonal accounts is carried forward to the budget of the year following the next year unless it is covered by the Canton's own capital.

³ The Cantonal Parliament may derogate from paragraph 1 if a minimum of three fifths of its members so decide. In the approval of the cantonal accounts, paragraph 2 does not apply to the extent of the deficit approved in the budget. The shortfall must be recouped within four years.

⁴ When approving the cantonal accounts, the Cantonal Parliament may derogate from paragraph 2 to an extent that must be determined in the event that a minimum of three fifths of its members so decide. Any shortfall must be recouped within four years.

Art. 101b

Tax increase brake

Any increase in the basic rate of taxation made by the Cantonal Parliament that leads to an overall increase in cantonal tax revenues requires the consent of the majority of its members.

Art. 102

Financial resources

The Canton obtains its financial resources in particular

- a* by levying taxes and other duties,
- b* from the proceeds obtained from its assets,
- c* from contributions made by the Confederation and third parties,
- d* through the uptake of loans and other borrowings.

Art. 103

Taxes

¹ The Canton levies

- a* an income and wealth tax on natural persons,
- b* a profit and capital tax on legal entities,
- c* a capital gains tax.

² It also levies an inheritance and capital transfer tax, a motor vehicle tax and further excise duties and transaction taxes in accordance with the law.

Art. 104

Principles of taxation

¹ The tax system is organised in accordance with the principles of general applicability, equality before the law and ability to pay.

² Taxes on natural persons must be levied in such a manner as to safeguard the financially weak, to ensure that individuals remain motivated to work and to promote private pension provision.

³ Taxes on legal entities must be levied in such a manner as to safeguard competitiveness and to take account of social benefits and efforts to secure full employment.

⁴ Tax evasion and tax fraud must be penalised effectively.

Art. 105

Expenditure

Every item of expenditure requires a legal basis, a budgetary credit and a formal decision to incur the expenditure from the responsible financial body.

Art. 106

Financial supervision

¹ The financial supervision of the Canton is the responsibility of independent control boards.

² The law regulates financial supervision over organisations and persons that receive payments from the Canton.

7. Communes

7.1 General Provisions

Art. 107

General Remarks

¹ The communes are public corporations with their own legal personality.

² The Canton of Bern recognises the following forms of commune:

a municipal communes,

b citizens' communes,

c mixed communes,

d parishes.

³ Communal sections and the public law associations of communes are in principle regarded as equivalent to communes. The law may make other public corporations subject to the law on communes.

⁴ Where this Constitution assigns duties to the communes, these must be fulfilled by the municipal communes and the mixed communes. They may also be fulfilled by other communes if cantonal law so permits.

Art. 108

Existence, territory and assets

¹ The existence, territory and assets of the communes are guaranteed.

² The Cantonal Parliament may by decree establish or dissolve a commune, or alter its territory. The communes concerned must be given a hearing.

³ The dissolution of a commune requires its consent.

Art. 109

Autonomy of the communes

¹ The autonomy of the communes is guaranteed. Its extent is determined by cantonal and federal law.

² Cantonal law shall grant the communes the broadest discretion possible in reaching their decisions.

Art. 110

Cooperation among the communes

¹ The Canton shall encourage cooperation among the communes.

² The communes may combine to form associations of communes or other organisations in order to fulfil their common tasks. The law may require them to do so.

³ The law determines what must be covered by the association regulations.

⁴ The rights of participation of the electorate and the authorities of individual communes must be protected.

Art. 111

Organisation

¹ The Canton regulates the fundamental principles of the organisation of the communes, the financial system and cantonal supervision.

² Unless the law provides otherwise, the communes are subject to the same provisions on liability as the Canton.

7.2 Special Provisions

7.2.1 Municipal Communes

Art. 112

Duties

¹ The municipal communes fulfil the duties that are assigned to them by the Confederation and the Canton.

² They may accept further duties provided the Confederation, Canton or other organisations are not exclusively responsible for these.

Art. 113

Taxes, System of financial equalisation

¹ The municipal communes levy income and wealth taxes, profit and capital taxes and capital gains taxes on the same assessment basis as applies to the cantonal taxes. They determine the basic rate of taxation.

² They may levy further taxes if the law so permits.

³ The fiscal capacity of the municipal communes is balanced by means of a system of financial equalisation, and efforts must be made to achieve a balance in the tax burden.

Art. 114

Right to vote

Everyone who is eligible to vote in cantonal matters and who has lived in the municipal commune for three months has the right to vote.

Art. 115

Elections

¹ The persons who are eligible to vote elect the communal Government and, if the organisational regulations provide for it, the communal parliament.

² In the appointment of authorities, care should be taken to ensure that minorities are represented.

Art. 116

Popular votes

¹ The organisational regulations are subject to a mandatory referendum. The law determines which matters must be covered by the organisational regulations.

² The law may designate additional fundamental and important matters that must be submitted to the vote of the electorate. Communes with a communal parliament may make such matters subject to an optional referendum. The number of signatures required for the referendum may not exceed five per cent of the electorate.

Art. 117

Popular initiatives

¹ By means of an initiative, ten per cent of the electorate may request the enactment, amendment or repeal of regulations or decrees that fall within the responsibility of the electorate or of the communal parliament.

² The organisational regulations may make further matters subject to the right to bring a popular initiative and reduce the number of signatures required.

³ An initiative must be submitted to the vote of the electorate if it relates to a matter that is subject to a mandatory referendum or if the communal authority concerned does not approve it.

Art. 118

Communal sections

¹ The municipal communes may establish communal sections with the consent of the Cantonal Government, and assign certain duties to them permanently.

² The communal sections may accept further duties provided the municipal communes do not fulfil these themselves.

7.2.2 Other Communes

Art. 119

Citizens' communes

¹ The citizens' communes act for the benefit of the general public in accordance with their means.

² They carry out their traditional duties.

Art. 120

Mixed communes

¹ A mixed commune is formed by the association of a municipal commune with one or more citizens' communes in the same place.

² They are governed by the same regulations as the municipal commune and fulfil its duties.

³ They manage the assets of the citizens' commune according to the applicable regulations.

8. Cantonal Churches and other Religious Communities

8.1 Cantonal Churches

Art. 121

General

¹ The Evangelical Reformed church, the Roman Catholic church and the Christian Catholic church are churches officially recognised by the Canton.

² They are public corporations with their own legal personality.

Art. 122

Autonomy, Right of motion

¹ The cantonal churches organise their internal affairs independently and in accordance with cantonal law.

² They regulate the right to vote of their members in their own affairs and in the affairs of their parishes.

³ They have a right of preliminary consultation and a right of motion in the cantonal and inter-cantonal matters that concern them.

Art. 123

Organisation, Finances

¹ The cantonal churches appoint their authorities according to democratic principles.

² They arrange themselves into parishes.

³ They finance their expenditure from contributions from their parishes and from the contributions made by law by the Canton.

Art. 124

Membership

¹ Membership of a cantonal church is governed by the church regulations.

² A member may leave the church at any time by making a written declaration.

Art. 125

Parish Councils

¹ Each parish council is made up of the members of the cantonal church concerned who are resident in that parish.

² The parish councils elect their own clergy.

³ They have the power to raise a church tax.

8.2 Jewish Communities and other Religious Communities

Art. 126

¹ The Jewish communities are recognised under public law. The law regulates the effect of such recognition.

² Other religious communities may be recognised under public law. The law regulates the requirements, the procedure and the effects.

9. Revisions of the Constitution

Art. 127

General

¹ The Constitution may be revised at any time, either completely or in part.

² The revision bill must be debated in two readings.

³ Unless the Constitution provides otherwise, revisions of the Constitution are carried out in accordance with the procedure for other legislation.

Art. 128

Partial revision

By means of a partial revision, a single constitutional provision, or two or more related provisions may be amended.

Art. 129

Complete revision

¹ The initiation of a complete revision of the Constitution is decided by the People. They also decide whether a constitutional commission or the Cantonal Parliament should prepare the revision.

² If the complete revision is to be prepared by a constitutional commission, then the commission must be appointed immediately in accordance with the provisions on the election of the Cantonal Parliament. The provisions on incompatibility and term of office do not apply. The constitutional commission adopts its own procedural rules.

³ Instead of an alternative proposal in accordance with Article 63, the constitutional bill may also contain variants on which the electorate must vote separately, either beforehand or at the same time as the main bill.

⁴ If the People reject the bill, the body entrusted with the revision prepares a second draft. If this is also rejected by the People, the revision decree lapses.

10. Transitional and Final Provisions

Art. 130

Commencement

¹ This Constitution comes into force on 1 January 1995.

² The new financial powers of the Cantonal Government in accordance with Article 89 paragraph 2 apply on the approval of this Constitution. Business that the Cantonal Government has already passed on to the Cantonal Parliament is dealt with according to the current law.

³ The general elections to the Cantonal Government in 1994 will be held in accordance with the provisions of this Constitution.

⁴ For prefects who also act as presidents of court, Article 68 paragraph 2 applies when the new legislative provisions on the organisation of the courts have been enacted, but at the latest on expiry of their ordinary term of office on 31 December 1998.

⁵ Article 117 on the right to bring a popular initiative in the communes applies when the corresponding communal regulations have been amended, but at the latest on 1 January 1997.

Art. 131

Repeal of current law

¹ The Cantonal Constitution of the Canton of Bern of 4 June 1893, the Amendment of 1 March 1970 to the Cantonal Constitution of the Canton of Bern concerning the Jura region and the Constitutional Basis of 5 December 1976 for the Canton of Bern in its new boundaries are repealed.

² Provisions of the current law that contradict the provisions of this Constitution are repealed.

Art. 132

Limited continued validity of the current law

¹ Legislation that has been enacted by an authority that is no longer competent or by a procedure that is no longer permitted remains in force for the time being. Any amendments are governed by this Constitution.

² The election and term of office of the President of the Cantonal Government are governed by Article 35 of the current Constitution until the statutory provisions come into force.

³ Articles 49 to 62 of the current Constitution on the judicial authorities apply until the entry into force of new statutory provisions, but at the latest until 31 December 1998.

⁴ Article 113 of the current Constitution on the oath and solemn promise continues to apply until a statutory regulation is enacted.

Art. 133

Enactment of new law

¹ If new law must be enacted in terms of this Constitution, this must be done immediately.

² The Cantonal Parliament shall issue a legislative programme.

Art. 134

Democratic rights

¹ The current law applies to popular initiatives that are submitted before 1 January 1995, as well as to requests for referendums that relate to legislative bills that are approved before the same date.

² Popular initiatives for the partial revision of the current Constitution that are submitted prior to the adoption of new Constitution shall be converted by the Cantonal Parliament into legislative bills for the partial revision of the new Constitution.

Art. 135

District of Laufen

¹ The secession of the district of Laufen from the Canton of Bern is governed by Articles 105 to 108 of the current Constitution.

² This provision comes into force as soon as the secession is approved in a federal referendum.

Bern, 10 November 1992

On behalf of the Cantonal Parliament
The President: *Zbinden*
The Cantonal Chancellor: *Nuspliger*

http://www.sta.be.ch/belex/d/1/101_1.html