Greece
Special Highest Court

Constitution

Voted by the fifth Revisionary Parliament of the Hellenes on the 9th of June 1975, entered into forced on the 11th of June 1975
- extracts -

Part Three
Organisation and Functions of the State

Section V
The Judicial Power

Chapter two
Organisation and Jurisdiction of the Courts

Article 93

...

4. The courts shall be bound not to apply laws, the contents of which are contrary to the Constitution.

Article 100

1. A Special Highest Court shall be established, the jurisdiction of which shall comprise:

a. The trial of objections in accordance with Article 58.

b. Verification of the validity and returns of a referendum held in accordance with Article 44, paragraph 2.

c. Judgment in cases involving the incompatibility or the forfeiture of office by a member of Parliament, in accordance with Article 55, paragraph 2 and Article 57.

d. Settlement of any conflict between the courts and the administrative authorities; or between the Council of State and the ordinary administrative courts on one hand and the civil or criminal courts on the other; or between the Comptrollers Council and any other courts.

e. Settlement of controversies on whether a law enacted by Parliament is fundamentally unconstitutional, or on the interpretation of provisions of such law when conflicting judgments have been pronounced by the Council of State, the Supreme Court or the Comptrollers Council.

f. The settlement of controversies related to the designation of rules of international law as generally acknowledged, in accordance with Article 28 paragraph 1.

2. The Court specified in paragraph 1 shall be composed of the President of the Council of State, the President of the Supreme Court and the President of the Comptrollers Council, four Councillors of State and four members of the Supreme Court chosen by lot for a two-year term. The Court shall be presided by either the President of the Council of State or the President of the Supreme Court depending on seniority.

In the cases specified under subparagraphs d and e of the preceding paragraph, the composition of the Special Court shall be expanded to include two ordinary law professors of the law schools of the country's universities, chosen by lot.

3. The organisation and function of the Court, the appointment, replacement of and assistance to its members, as well as the procedure to be followed shall be determined by special law.

4. The judgments of the Special Court shall be irrevocable.

Provisions of law declared unconstitutional shall be invalid as of the day of publication of the respective judgment, or as of the date specified by the ruling.

Law No. 345 of 9-10 June 1996 establishing the Special Highest Court provided for in Article 100 of the Constitution

- extracts -

Section 1

The “Code concerning the Special Highest Court provided for in Article 100 of the Constitution”, drawn up by the Revision Committee convened in accordance with Section 7, paragraph 2 of Law No. 255/1976 and by joint decision of the Prime Minister and the Ministers of the Presidency of the Council, Justice and the National Economy, is hereby instituted as set out below:

Code "Concerning the Special Highest Court provided for in Article 100 of the Constitution"

Chapter I
Organisation

Article 1

1. The Special Highest Court provided for in Article 100 of the Constitution, hereinafter referred to as the "Special Court", shall be composed of the President of the Council of State, the President of the Supreme Court and the President of the Comptrollers Council, four Councillors of State, four members of the Supreme Court, and the Registrar. In the cases specified under sub-paragraphs d and e of paragraph 1 of the aforementioned article of the Constitution, the composition of the Court shall be expanded to include two ordinary law professors of the law schools of the country. The members of the Special Highest Court, together with an equal number of substitutes, shall be chosen by lot every two years. The Special Court shall be presided by either the President of the Council of State or the President of the Supreme Court depending on seniority. Where the more senior of the two is absent or unavailable, the other shall act as President.

2. Whenever the Special Court is in closed session, it shall also include the professors mentioned in the foregoing paragraph.

3. The Special Court shall sit in Athens. The precise venue of its sessions shall be settled by decision of the Minister of Justice published in the Government Gazette.

Article 2

1. For the purpose of appointing the members of the Special Court, during the first ten days of the December of every second year, the Minister of Justice shall transmit to the President of the Council of State lists of serving Councillors of State, members of the Supreme Court and ordinary professors of the law schools of the country. The lists of professors do not include those also holding office as Councillors of State or members of the Supreme Court.

2. The drawing by lot shall take place between 10 and 20 December every two years, in the presence of all Councillors of State and in public session, on the basis of the aforementioned lists. The President of the Council of State shall accordingly sort the names of the Councillors of State, the members of the Supreme Court and the ordinary professors into separate lots. Then he shall draw eight names from each lot. The first four persons in each category whose names are drawn shall be the regular members of the Special Court, and the following four shall act as substitutes in the order drawn. Next, the President of the Council of State shall draw four names of ordinary professors. The first two persons whose names are chosen by lot shall be regular members of the Special Court when it performs its functions in accordance with sub-paragraphs d and e of Article 100, paragraph 1 of the Constitution; the following two shall act as substitutes in the order drawn.

3. The decision of the Minister of Justice relating to the composition of the Special Court shall be published every two years. The decision shall give the names of the regular and the substitute members. It shall be published in the Official Gazette and notified to the persons whose names have been drawn by lot, to the President of the Council of State, the President of the Supreme Court, the President of the Comptrollers Council and the Dean of the law school to which the professors whose names have been drawn belong.

4. Where the President of the Council of State, the President of the Supreme Court and the President of the Comptrollers Council are absent or unavailable in their capacity as members of the Special Court, they shall be replaced by the Vice-Presidents of the same bodies according to seniority. Where other regular members of the Special Court are absent or unavailable, they shall be replaced by the substitutes in the order drawn.

5. For the replacement of a regular or substitute member of the Special Court in the event of retirement or death, a fresh draw shall be held as stipulated in the foregoing paragraphs. Until such time as the new members of Special Court are appointed, it shall be lawfully constituted by the remainder of its members.

Article 5

1. The Special Court's Rules of procedure, adopted in closed session and published in the Official Gazette, shall govern the following:

a. the Special Court's structure, organisation and operation;

b. dates and times of sessions, not excluding special sessions;

c. working hours of its auxiliary staff and all other arrangements necessary for its operation.

Chapter II
Jurisdiction

Article 6

In accordance with Article 100, paragraph 1 of the Constitution, the Special Court's jurisdiction shall comprise:

a. settlement of cases referred to it by applications under Article 58 of the Constitution;

b. verification of the validity and the results of referenda held in accordance with Article 44, paragraph 2 of the Constitution;

c. decisions relating to incompatibilities or removal from office of a member of Parliament in accordance with Articles 55, paragraph 2 and 57 of the Constitution;

d. settlement of conflicts between the courts and the administrative authorities or between the Council of State and the ordinary administrative courts on one hand and the civil and criminal courts on the other, or between the Comptrollers Council and any other courts;

e. resolution of disputes concerning assessment of the constitutionality of a law or its interpretation where conflicting judgments have been delivered by the Council of State, the Supreme Court or the Comptrollers Council;

f. settlement of disputes over the designation of rules of international law as rules which are generally acknowledged in accordance with Article 28, paragraph 1 of the Constitution.

Chapter III
General points of judicial procedure

Article 7

Cases within the jurisdiction of the Special Court shall be brought:

a. by application, or

b. by another court's reference of a preliminary question.

Article 10

1. Immediately the application or reference is filed, the President of the Special Court shall designate one of its members as reporting judge and shall set the hearing date.

2. A copy of the application or reference, accompanied by the President's decision designating the reporting judge and setting the hearing date, shall be served by the Court Registry on the applicant and all other parties to the case at least twenty days before the hearing.

3. Notifications to the parties which are mandatory under the terms of this law shall be served according to the normal arrangements made by the Code of Civil Procedure. Notifications relating to outgoing members of Parliament may be addressed to the Speaker of the Parliament.

4. Except where Articles 28 and 30 are applicable, the parties shall be required to lodge with the Court Registry written memorials outlining their contentions, and to append any documentary evidence. These shall be lodged not later than ten days before the hearing.

Article 11

1. The reporting judge shall establish that all notifications prescribed have been duly made and that all material necessary for trying the case is to hand. He/she shall draw up a report on the case, containing all relevant points of law and fact.

2. All public bodies have the duty to furnish the reporting judge with such information or material as he/she may request, and to make a reasoned statement of their position regarding the case. Failure to

provide such assistance, once ascertained by the Court, shall constitute an administrative error entailing disciplinary action.

3. The aforesaid report shall be filed with the Court Registry five days before the hearing, and may be consulted by the parties. Late filing shall constitute a valid ground for postponement of the hearing if the parties so request.

Article 12

Supplementary memorials may be lodged through the delivery of the original to the Court Registry and the service of certified true copies on the applicant and the other parties by the intervening party, within twelve days before the hearing date initially set by the President of the Court. Failing this, and subject to the provisions of Article 25, paragraph 2, such supplementary memorials shall be inadmissible.

Article 13

1. Any person wishing to intervene and having a lawful interest in the case may be joined to the proceedings before the Court.

2. Intervention shall be made by writ filed with the Court Registry and served by the intervening party on the applicant and the other parties not later than twelve days before the hearing date initially set by the President of the Court, failing which it shall be inadmissible.

3. The request to be joined to the proceedings shall contain the items of the application specified in Article 9, paragraph 1, sub-paragraphs a, b, c and f, and a recital of all facts substantiating the intervening party's lawful interest. Paragraphs 2 to 4 of Article 9 are also applicable in this instance.

Article 14

1. The parties shall be represented before the Court by a lawyer attached to the Supreme Court or by a State legal adviser. However, in the specific case of an application contesting the election of a full member or substitute member of Parliament, the parties shall also be authorised to appear in person.

2. The power of attorney given to the lawyers by the parties for the purpose of representing them shall be assigned by special notarial act, or verbally in the course of the hearing by a declaration which is entered in the records.

3. Where power of attorney is given by an authority, it may also be assigned by that authority's written certification.

Article 16

1. Hearings shall begin with a reading by the reporting judge of his/her report.

2. The parties may submit memorials to the Special Court not later than three days before the hearing. In exceptional cases, the President may approve submission of memorials at a later stage.

3. At all events, provided that the notifications prescribed by this Law have been made, the case may be heard and decided even in the absence of the parties. Moreover, if the parties are present and do not plead the ground of improper notification, the Special Court may declare the proceedings open.

4. If one of the parties has not been summoned to appear, the Special Court shall adjourn the proceedings so that the notification prescribed by Article 10, paragraph 2 may be made in the meantime. The decision setting a new hearing date shall be notified to the parties at least twenty days before the hearing. A copy of the decision to adjourn shall also be transmitted by the Registrar to all parties at least twenty days before the hearing.

Article 17

1. If any of the parties, or their representatives or agents, has died during the proceedings, or if the personal situation of any one of them has changed in such a way as to impair their ability to plead or their power of attorney, unless the subject matter of the proceedings is voided as a result, they shall be suspended only where the Special Court deems it expedient.

2. Proceedings which have been suspended shall be resumed at the applicant's request or of the Special Court's own motion; the parties shall receive notice to appear at the hearing not later than twenty days in advance thereof.

Article 18

Discontinuance of the proceedings is not permitted.

Article 19

1. The Court's decisions shall be reached by majority vote of the judges hearing the case. Where the deliberations disclose a number of majority opinions, one of these shall be supported by any judges who hold a minority opinion. Where the minority opinions total an equal number of votes, an eliminatory vote shall be taken. The judges holding the opinion rejected by this vote shall support one of the other opinions, and so on until a majority opinion is formed.

2. The opinion held by the minority shall be recorded in the Court's decision as provided in Article 93, paragraph 3 of the Constitution and the laws enacted for its implementation.

Article 20

1. Where the Special Court considers that its final judgment requires the taking of additional evidence, it may simply deliver a provisional judgment ordering all appropriate measures for that purpose and specifying the matter to be proved, the party bearing the burden of proof, the types of evidence and the time-limits within which it must be adduced.

2. Examination of witnesses shall take place either before the reporting judge or before a special magistrate holding a life appointment to that function and called to participate in the proceedings by a previous decision of the Court. Witnesses shall only be examined after having been subpoenaed by the examining magistrate or his agents in the presence of the Registrar.

Article 21

1. The Special Court's decisions shall be irrevocable in accordance with Article 100 of the Constitution, third-party challenge being excluded. They shall have force *erga omnes* upon the publication of the judgement, unless otherwise decided.

2. Final judgments delivered in the cases specified by Article 6, subparagraphs b, d, e and f shall be published on the instructions of the President of the Court, with no other formality, in a special section of the Official Gazette.

Chapter VII
Disputes concerning assessment of the constitutionality of a law or its interpretation

1. Where conflicting judgments have been delivered by the Council of State, the Supreme Court or the Comptrollers Council as to the assessment of the constitutionality of a law or its interpretation, the Special Court shall resolve the conflict at the request of:

a. the Minister of Justice, the Supreme Court Prosecutor, the State Commissioner General to the Comptrollers Council or the Commissioner General for Administrative Justice;

b. any person having a lawful interest.

2. Should the Council of State, the Supreme Court or the Comptrollers Council wish to deliver a decision concerning assessment of the constitutionality of a law or its interpretation and conflicting with a previous decision of another of these authorities which has been invoked by one of the parties or is known to the authority so wishing, it shall refer to the Special Court by preliminary ruling. The case shall furthermore remain pending before the court requesting the preliminary ruling which, upon delivery of the Special Court's ruling, shall try the case again at the request of one of the parties or of its own motion, it being compelled to abide by the ruling of the Special Court which shall be transmitted to it by the Registrar of the Special Court.

3. The provisions in the foregoing paragraphs shall apply where at least one of the conflicting decisions has been published after the entry into force of the Constitution.

Article 49

1. With the exception of the applicants, the parties to the proceedings before the Special Court shall be all the parties in the case which prompted the referral to the Special Court for a preliminary ruling to resolve the dispute.

2. The writ instituting proceedings, together with the decision of the Special Court setting the hearing

date, shall be transmitted to the Minister of Justice who, though not a party in the case, is entitled to participate in the proceedings with no other formality.

Article 50

1. The Court's decision setting the hearing date shall be published in two newspapers of the national capital twenty days before the hearing, and shall be accompanied by a presentation of the subject-matter of the dispute.

2. A copy of the request for settlement of the dispute or the referral for a preliminary ruling, followed by the Court's decision setting the hearing date, shall be transmitted twenty days in advance thereof to the President of the Council of State, the Supreme Court Prosecutor, the Commissioner of the Comptrollers Council and the Commissioner General for Administrative Justice for the information of the various courts, as well as to the Minister of Justice. In the case of an application brought by an individual in accordance with Article 48, paragraph 1, sub-paragraph b, the reporting judge shall likewise notify any person concerned by the case.

3. Any court which has pending before it a case requiring the application of the provisions of a law concerning which litigation is pending before the Special Court as provided in Article 48, shall, after learning of such litigation by any means whatsoever, of its own motion refrain from delivering a final judgment until the Special Court has ruled.

Article 51

1. A decision by the Special Court resolving a dispute concerning assessment of the constitutionality of a law or its interpretation shall have force *erga omnes* as from its delivery in open court, subject to paragraph 4 of this article.

2. Any judgments and administrative acts which follow the delivery of the Special Court's decision as specified in the foregoing paragraph and which may infringe that decision shall be subject to the prescribed judicial remedies. In particular, if the infringing decision has been taken by the Council of State, the Supreme Court or the Comptrollers Council, this fact shall suffice to apply for the re-opening of the procedure which led to the decision. The application may be made by any party within ninety days following publication of the decision, under the normal procedure before each court.

3. The stipulations made in the foregoing paragraph shall also apply to decisions taken prior to publication of the Special Court's decision which are contrary to the provisions of Articles 48, paragraph 2 and 50, paragraph 3. In that case, the application for review shall be made within ninety days following publication of the Special Court's decision.

4. The Special Court may decide, by reasoned decision with effect *erga omnes*, that the provisions held unconstitutional are invalid even in respect of the period up to the publication of the decision.

5. Where a decision retroactively declaring a law unconstitutional is taken in accordance with paragraph 4 above, an application for review may be made in respect of any irrevocable judicial decision taken during that period and founded on provisions held unconstitutional. Such application may be made by any party within six months as from the publication of the Special Court's decision. For the remainder, the ordinary procedure before the court in question shall be upheld, and it shall disregard the provision declared unconstitutional.

6. The revocation of administrative acts which are founded on statutory provisions held unconstitutional and which have been performed during the period of retroactivity of the Special Court's decision shall be mandatory within six months following publication of the decision.

Iceland
Supreme Court

Constitution of the Republic of Iceland
- extracts -

Chapter one

Article 1

Iceland is a Republic with a constitutional government.

Article 2

The *Althingi* and the President of Iceland shall jointly exercise legislative power. The President and other governmental authorities pursuant to this Constitution and other laws of the land shall exercise executive power. The judges shall exercise judicial power.

Chapter five

Article 59

The organisation of the judiciary cannot be established except by law.

Article 60

The judges shall settle all disputes as to the extent of the power of governmental authorities. But no one seeking a ruling thereunto can evade obeying temporarily an order of the governmental authorities by submitting the matter to judicial decision.

Article 61

Judges shall in the performance of their official functions be guided solely by the law. Judges who do not also hold administrative posts cannot be discharged from office except by a court judgement, nor may they be transferred to another office against their will except in the event of re-organisation of the judiciary. [A judge who has reached the age of 65 may, however, be allowed to retire from office, but judges of the Supreme Court shall not suffer any reduction of salary][1].

[1] Constitutional Law No. 56/1991, Article 26

Chapter six

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[**Article 63**

Everyone has the right to establish a religious organisation and practise his beliefs in accordance with his convictions. However, nothing may be taught or practised which contravenes good morals or public order.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 1

[**Article 64**

No-one shall be deprived of any of his civil or national rights on account of his religion, nor may he refuse to carry out his civic duties on these grounds.

It is the right of the individual not to belong to a religious organisation. No-one is obliged to pay duties to a religious organisation of which he is not a member.

If an individual is not a member of a religious organisation he shall pay to the University of Iceland those duties he would otherwise have had to pay to his religious organisation. This may be altered by law.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 2

Chapter seven

[**Article 65**

Everyone shall be equal before the law and enjoy human rights irrespective of gender, religion, opinions, ethnic origins, race, colour, wealth, descent or position in any other way.

Equality of gender shall be observed in all matters.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 3

[**Article 66**

No-one may be deprived of Icelandic citizenship. Nonetheless it can be decided by law that a person loses Icelandic citizenship if he willingly obtains citizenship of another country. A foreign national will only be granted Icelandic citizenship by law.

An Icelandic national may not be prevented from entering the country nor may he be expelled from the

country. Immigration and residence rights of foreign nationals will be decided by law, and on what grounds they can be expelled from the country.

No-one can be prevented from leaving the country, except by the decision of a judge. However, by making a legal arrest a person can be stopped from going abroad.

All those legally resident in Iceland have freedom of dwelling and travel, within the restrictions established by law.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 4

[**Article 67**

No-one may be deprived of his liberty of person except pursuant to authority provided by law.

A person who is detained has the right to be informed at once of the reasons.

A person who is detained on suspicion of breaking the law shall be brought before a magistrate without delay. If he is not released immediately the magistrate shall, within twenty-four hours, determine by a reasoned judicial decree whether he should be held in custody. He may only be held in custody if the penalty for the offence he is charged with is heavier than a fine or detention. The law shall assure the detainee´s right to appeal to a higher court against the decree. A person shall never be held in custody for longer than is necessary, and may be released on bail set by a magistrate.

It is the right of a person detained for other reasons that a court decide the legality of the detention as soon as possible. If the detention has no legal grounds he shall be released immediately.

A person who has been detained without just cause has the right to claim damages.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 5

[**Article 68**

No-one may be subjected to torture or other inhuman or degrading treatment or punishment.

No-one shall be required to perform forced labour.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 6

[**Article 69**

No-one may be made to suffer a punishment unless he is guilty of conduct which was punishable by law when it occurred or may be wholly equated with such conduct. The penalty may not be more severe than that allowed by law when the conduct occurred.

The death penalty may never be imposed by law.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 7

[**Article 70**

Everyone is entitled to obtain a determination of his rights and obligations or of any charge against him for criminal conduct by a fair trial within a reasonable time before an independent and impartial court of law. Court hearings shall be public unless by the judge otherwise decides pursuant to law in order to protect morals, public order, national security or the interests of the parties.

Anyone charged with criminal conduct shall be presumed innocent until proven guilty.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 8

[**Article 71**

Everyone shall enjoy the sanctity of his private life, home and family.

An internal or external body search of a person or a search of his house or possessions may not be carried out except pursuant to a court order or special authority provided by law. The same applies to a search of documents and postal correspondence and a surveillance of telephone or other telecommunications, as well as any comparable breach of individual privacy.

Despite the provisions of paragraph 1, it shall be possible under special authority provided by law to limit by other means the sanctity of private life, home and family where expressly necessary in view of the rights of others.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 9

[**Article 72**

The right of ownership is inviolate. No-one may be obliged to surrender his property unless demanded by

the common good. Such surrender requires authorization by law, and full value must be rendered.

Foreign ownership of property or shares in companies in Iceland may be limited by law.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 10

[**Article 73**

Freedom of opinion and conviction is a general right.

Everyone has the right to express his thoughts, but must be ready to accept responsibility for them before the law. Censorship and other similar interference with the freedom of expression may never be legalised.

Restrictions on the freedom of expression may be imposed only by law in the interest of public order or national security, for the protection of health and morals or on account of the rights or reputation of others, and provided that they are held necessary and consistent with democratic traditions.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 11

[**Article 74**

The right exists to establish organisations for any lawful purpose, including political parties and trade unions, without applying for permission to do so. An organisation may not be disbanded by order of the authorities. An organisation which is held to have an unlawful purpose may be banned temporarily, but legal proceedings to have the organisation dissolved by a court judgement must be instigated without delay.

No-one may be forced to join an organisation. However, membership can be made obligatory by law provided that this is necessary to enable an organisation to fulfil a function prescribed by law on account of the common good or the rights of others.

The right exists for people to meet together unarmed. The police have the right to attend public meetings. Open-air meetings can be banned if there is reason to fear that they will lead to riot.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 12

[**Article 75**

Everyone shall be free to pursue the enterprise or employment of his choice. Such freedom may, however, be restricted by law for the sake of the common good.

The law shall provide for the right of persons to negotiate the terms of their employment and other rights related to work.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 13

[**Article 76**

Everyone in need thereof shall be secured in the law a right to assistance on account of illness, disability, old age, unemployment, destitution and similar circumstances.

Everyone shall be secured in the law a right to general education and teaching suitable to him.

Children shall be secured in the law the protection and care necessary for their well-being.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 14

[**Article 77**

Matters concerning taxes shall be decided by law. The decision whether a tax be introduced, changed or abolished may not be left to governmental authorities.

A tax may not be imposed unless it was sanctioned by the law at the time of occurrence of the circumstances by which tax liability is to be determined.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 15

[**Article 78**

Municipalities shall control their own affairs as provided by the law.

The law shall decide what the sources of municipal income are, and to what extent they may determine themselves whether they shall be used, and to what ends.][1]

[1] Law No. 97 of 28th June 1995 concerning the Constitution, Article 16

Law No. 75/1973 on the Supreme Court of Iceland as amended by Laws No. 24/1979, 67/1982, 91/1991 and 39/1994

- extracts -

Part 1

Article 1

The Supreme Court of Iceland is the highest court of jurisdiction of the Republic.

The Supreme Court sits in Reykjavík. Under special circumstances, however, it may sit elsewhere.

Article 2

[The Supreme Court consists of nine judges, appointed by the President of Iceland.][1]

[The judges of the Supreme Court elect a President and a Vice-President for a period of two years. The Vice-President carries out the functions of the President when he is indisposed or absent. He heads the bench when the President is not present. If neither the President nor the Vice-President is present the bench is headed by the Supreme Court judge who has served for longest in the Court. If two judges have sat for the same period of time, the bench is headed by the judge who has served longer overall in a judicial or official capacity.][2]

[1] Law No. 39/1994, Article 1
[2] Law No. 24/1979, Article 1

[**Article 3**][1]

[The court in session is composed of five judges, except as otherwise provided. In particularly important cases the court can decide that seven judges sit.][2]

[Where a complaint appeal is made against a decree relating to the procedure in a case before the district court, and the appeal proceeding is conducted in writing and does not involve interests of high importance, the court may be composed of one judge. Otherwise, the court shall be composed of three judges in a complaint appeal case, except in special circumstances. The court furthermore may be composed of three judges in a civil appeal case if the issues do not involve important interests in the opinion of the court. The court may likewise be composed of three judges in a criminal appeal case if the general penalty for the offense is not heavier than a fine, a detention[3] or an imprisonment of up to eight years.

The court decides how many judges should make up the bench in each case. When the court consists of five or seven judges, the judges will be those who have served longest in the Supreme Court. A judge will not be called to sit under Article 4 unless the requisite number of judges is not reached because of the indisposition or disqualification of the regular judges.][4]

[If the case is particularly complex, the court is permitted to appoint a Supreme Court judge, who is not due to adjudicate in the case, to listen to the hearing and take a seat on the bench if a judge becomes indisposed.][5]

[The decision to grant leave to appeal is given by three judges.][6]

[1] Law No. 91/1991, Article 162
[2] Law No. 67/1982, Article 2
[3] Detention here is lighter incarceration never going beyond 2 years.
[4] Law No. 39/1994, Article 2
[5] Law No. 24/1979, Article 2
[6] Law No. 91/1991, Article 162

Article 4

[If a Supreme Court judge is prevented by indisposition from attending court, is given a temporary leave of absence or vacates his seat for any other reason, the Minister of Justice will nominate a judge in his place, on the recommendation of the court, being a professor of law at the University of Iceland, a district court judge or a Supreme Court lawyer, who fulfils the requirements for appointment as a Supreme Court judge. The nomination shall be valid either for a particular case or a specified period of time. The nominee must accept the position.][1] [The same procedure may be followed in specific cases if there is an unusual work load, even though no Supreme Court judge's seat is vacant due to any of the above reasons.][2]

[In the circumstances described above, the Minister of Justice may also nominate, to serve for a specified period of time or on a particular case, someone who has retired as a Supreme Court judge on the grounds of age. The person nominated is not obliged to accept the position.][3]

[When a judge is nominated to the Supreme Court for a month or longer his salary shall be the same as that of a regular Supreme Court judge. The Supreme Court otherwise will decide a fee for each case in which he takes part in the court proceedings or in a judgement.][4] and 5

[1] Law No. 67/1982, Article 4
[2] Law No. 39/1994, Article 3
[3] Law No. 91/1991, Article 162
[4] Law No. 67/1982, Article 4
[5] Law No. 91/1991, Article 162

Article 5

Those appointed to the position of Supreme Court judge must:

1. fulfil the usual qualifications of a judge;

2. have passed the official law examinations with a first class grade;

3. have reached 30 years of age;

4. [have served for at least three years as a district judge, a Supreme Court lawyer, a Supreme Court Secretary, a professor of law at the University of Iceland, a police chief, a sheriff, the state prosecutor, the assistant state prosecutor, a prosecutor, the head of a Ministry, the administrative chief of the Ministry of Justice or the parliamentary Ombudsman.][1].

Relatives by blood or by marriage through the paternal or descendant line, the spouses of a marriage, an adoptive parent and child, a foster parent and child, or those related by blood once removed or by marriage directly or once removed, may not hold a seat on the Supreme Court at the same time.

The opinion of the court regarding the prospective judge shall be sought before an appointment is made.

[1] Law No. 91/1991, Article 162

Article 6

A Supreme Court judge must vacate his seat if:

1. He is party to the case or the case is of financial or moral concern to him;

2. He is the spokesman of one of the parties, has conducted the case or instructed a party in it;

3. He is related to the party of a case by blood, marriage or adoption through the paternal line, by descent or once removed, is the spouse or former spouse, a descendant of a sibling of a party or vice versa or related by marriage in the same way, a fiance or fiancée, a foster parent or foster child. Affinity by marriage is considered to continue even though the relationship itself is over;

4. He has given evidence in a case or been an assessor or valuer in a case;

5. He has been a judge on the district court, an arbitrator on the matter or has made his opinion on the case known in an official capacity;

6. He is related to a witness, as in paragraph 3, if a ruling has been called for concerning the duty or the right of a witness to testify or to confirm a statement. The same applies if a ruling is to be given on the duty or right of an assessor or valuer who is similarly related to make a report or solemnise it and on the duty of a similarly related person to produce evidence;

7. The case is of substantial financial or moral concern to a relative as in paragraph 3;

8. He is a blood relation or a relation by marriage through the paternal line to one of the lawyers involved, or is the descendant or spouse, the adoptive parent or child, or foster parent or child;

9. His attitude towards a party or the subject matter of a case is such as to imply a risk that he will not be able to regard the merits with impartiality.

Article 7

The parties, the judge himself or other judges on the Supreme Court can demand or instigate that a judge vacate his seat in a particular case for any of the reasons in Article 6.

The bench in its entirety will make a decision on these points.

Article 8

[The Supreme Court appoints a Secretary of the Court and engages specialist assistants and other staff.

The Supreme Court Secretary must fulfil the usual qualifications of a judge.][1]

[1] Law No. 67/1982, Article 5

Article 9

The Supreme Court Secretary carries out these tasks:

1. Issues summonses to the Supreme Court;

2. Keeps the Supreme Court records;

3. Reads out documents in court and issues court announcements, registrations, etc.;

4. Supplies copies of court records and documents;

5. Looks after the court's documents and records;

6. Receives the documents of a case and keeps them and supervises the court's accounts;

7. Performs other duties, according to the law, in the service of the court.

Article 10

The Supreme Court keeps these records:

1. A court record, in which a summary of the proceedings of a session is recorded;
2. A judgement register, in which all judgements and decrees are recorded;

3. A register of votes, where all votes for judgements and decrees are recorded;

4. A case list, in which is recorded a report of all the cases which are brought before the court, when a summons was issued for each case, on what day the case is recorded, whether new evidence has been presented, when the case was judged, and so on;

5. A journal;

6. A book of correspondence;

7. A book of miscellaneous receipts;

8. A records and registrations book.

Article 11

The Minister of Justice will decide, on the recommendation of the Supreme Court, on what day and at what time of day sessions will be held, and also the periods for recess of the court.

Law No. 91/1991 on Procedure in Civil Cases as amended by Law No. 38/1994

- extracts -

Part XXIV
Complaint appeals (Procedural appeals)

Article 143

1. The decrees of a district court judge on the following matters are subject to a complaint appeal to the Supreme Court:

a. whether he should vacate his seat on the case;

b. matters concerning statements made by a party or witness for the court;

c. matters concerning assessments;

d. the duty of a party or a possessor to produce a document or other visible evidence or to provide access to it;

e. if permission to compile evidence for another court is refused;

f. if permission to compile evidence when a case has not been instigated is refused;

g. an inconvenience fee, case costs or fee for a gratis-hearing, if not otherwise specified in the judgement;

h. that an adjournment be granted;

i. the refusal to reopen a case on the grounds of lawful absence from court;

j. that a case be dismissed from the court;

k. whether a case be discontinued;

l. whether permission for the parties to come to a court settlement be refused;

m. the refusal to issue a summons in a case of invalidation or ownership recognition;

n. the refusal to issue a summons for a case to be expedited;

o. insurance for case costs;

p. a court fine;

q. whether a case on which a judgement has been given be reopened;

r. whether the legal effect of a judgement or an affirmation on a writ of summons be annulled on the grounds of a case being reopened.

2. A complaint appeal may not be made to a higher court against the decree of a district court judge after the main hearing of a case has begun unless the decree concerns:

a. the duty of a witness to appear before the court or be questioned, in the case of the witness making the appeal;

b. the duty of a third party to produce a document or provide access to visible evidence, in the case of the third party making the appeal;

c. the case having been dismissed from the court;

d. the case having been discontinued;

e. permission to come to a court settlement has been refused;

f. a court fine.

3. Anyone who considers that a district court judge, in his capacity as such, has performed a breach against him has the right to present an accusation against him by complaint appeal to the Supreme Court, who may issue an admonition to the judge or impose on him by judgement the penalty of a fine to the State.

Article 144

1. If a person wishes to appeal against a court procedure he must present the district court judge with a written complaint within two weeks of the decree or of the court procedure if he or his agent was present at court, or within two weeks of the decree or court procedure being made known to him.

2. A witness or assessor who is present at court when the decree is read or when the procedure took place may make an oral appeal which will then be noted in the court record.

3. A complaint appeal suspends further proceedings on the basis of the decree until it has been settled by a higher court.

Article 145

1. A complaint shall state:

a. the court procedure which is being appealed against;

b. the claim for how it is to be changed;

c. the grounds for the appeal.

2. A complaint appeal may be based on new evidence. If the appellant wishes to produce new evidence he must mention it in the complaint, along with what he expects it to prove. The evidence must accompany the complaint in original or a certified copy.

3. The appellant must pay the district court judge the legal fee for the Supreme Court.

Article 146

1. If a complaint is made too late the district court judge will call upon the appellant to withdraw it.

2. If the complaint does not fulfil the stipulations of Article 145, paragraph 1 the district court judge will direct the appellant to make amendments to it.

3. If the district court judge considers there to be no grounds for the complaint he can insist that the appellant put forward security for any damage that the appeal may cause for the other party if the case is suspended. Security shall be paid within

two days of the appeal being made. If not, the complaint appeal will be dropped.

Article 147

1. Unless he decides to quash the decree himself the district court judge shall send the appeal to the Supreme Court as soon as possible along with copies in quadruplicate from the court record and of other case papers.

2. The district court judge may also send his written comments on the substance of the complaint with the papers to the Supreme Court.

Article 148

1. When a complaint has been presented the district court judge gives the appellant's opponent the opportunity to submit a written statement setting out the claims and facts of his case. He may base his case on new evidence, in which case the procedure in Article 145, paragraph 2 shall be followed.

2. The statement in paragraph 1 shall be sent to the Supreme Court if it was not submitted to the district court judge before he sent the case papers to the Supreme Court.

Article 149

1. The parties can send the Supreme Court their statements and new documents within a week of the case papers being received. After that time the Supreme Court can make a judgement on the appeal, although documents received from parties later shall be considered as long as the case is not closed.

2. If the complaint is not set out as explained in Article 145, paragraph 1, or the case presentation is in some other way incomplete, the Supreme Court can instruct the appellant to make revisions within a certain period of time. If the appellant does not do so the Supreme Court can reject the appeal case.

3. The Supreme Court can permit the parties to conduct the appeal case orally, giving them what he considers reasonable notice.

Article 150

1. The Supreme Court makes a judgement in a complaint appeal case based on the case papers and oral presentation if there is one. The judgement shall be given as soon as possible.

2. The Supreme Court decides the costs in a complaint appeal case.

3. After the judgement has been rendered the Supreme Court sends the district court judge a copy of the judgement. The district court judge notifies the parties of the outcome of the appeal case.

4. In other matters the rules concerning appeals to a higher court will be followed in procedural complaint appeal cases insofar as they are applicable.

Part XXV
Appeals to a higher court

Article 151

[1. Parties are permitted to make an appeal to the Supreme Court against a district court judgement, subject to the limitations following from other provisions of this Law. In an appeal, a reconsideration of decrees and decisions made in a district court may be sought.

2. If the substance of a case has been divided according to Article 31 each judgement must be appealed against separately before the case can continue.

3. A judgement can be appealed against so that it will be materially changed or confirmed, it will be quashed and the case sent to the district court or dismissed from the district court.

4. Both or all parties are permitted to appeal against a judgement. The case shall then be heard in unison before the Supreme Court.

5. The right to appeal a case may not be assigned, either verbally or silently, until a judgement has been rendered in the district court.][1]

[1] Law No. 38/1994, Article 5

Article 152

[1.If the case concerns a monetary claim an appeal can only be brought if the value of the claim is not less than ISK 300,000. This amount will change at the beginning of each year, and will be based on changes in the loan index from 1st July 1992. The amount is announced by the Minister of Justice in *Lögbirtingablaðið* (the Legal Gazette) not later than 10th December every year.

2.The appeal value shall be decided according to the principal amount of the claim in the appeal summons. If more than one claim is made in a case they shall be totalled when the value of the appeal is decided. If a counter claim has been made to equalise the debt it shall not be taken into account when the value of the appeal is decided.

3.If a case concerns a non-monetary claim the Supreme Court decides whether the value of the interests is equivalent to the appeal value. The Supreme Court may seek the opinion of the parties before making a decision.

4.If the claim does not equal the appeal value or the Supreme Court considers its value not sufficient to appeal, as in paragraph 3, the Court can still grant a request for leave to appeal if one of the following conditions is fulfilled:

a.the outcome of the case will be of considerable general significance;

b.the outcome of the case may affect important interests of the party seeking leave to appeal;

c.it is possible, taking into account the documents presented, that the judgement will be changed in material respects.][1].

[1] Law No. 38/1994, Article 6

Article 153

[1.An appeal against a judgement must be made to the Supreme Court within three months of when the judgement was pronounced.

2.The Supreme Court can grant a request for leave to appeal against a judgement which is received during the three months following the deadline given in paragraph 1 if the conditions of Article 152, paragraph 4 are fulfilled, as long as the delay in appealing is sufficiently justified.

3.If a party appeals against a judgement a counter-party is permitted to make a counter-appeal regardless of the appeal deadline, but a counter-appeal summons must be issued before the deadline to submit a statement to the Supreme Court, as in Article 158, paragraph 1, has expired.

4.If a case which has been appealed against to the Supreme Court within the deadline according to paragraphs 1 - 3 is not recorded, is discontinued or dismissed from the Supreme Court, a party may bring it again even though the appeal deadline has passed. An appeal summons must then be issued within four weeks of when the case should have been recorded or of the date of the judgement by which it was discontinued or dismissed. This authorization may not be used more than once in a case.][1]

[1] Law No. 38/1994, Article 7

Article 154

[1.A person seeking leave to appeal according to Article 152 or Article 153 must send a written application to the Supreme Court along with the appeal summons which he wants issued and a copy of the district court judgement. Detailed particulars must be submitted in the application of how the person believes the conditions for granting permission to appeal are fulfilled.

2.The Supreme Court can allow other parties the opportunity to give an opinion on the application before a decision is taken.

3.If the Supreme Court refuses permission to appeal the same party cannot make a second application.

4.If leave to appeal is granted the appeal summons submitted will be issued and endorsed with the permit. The Supreme Court may not be challenged on the reasons for their decision.

5.If permission to appeal is rejected the applicant will be informed in writing, and the grounds for rejection will be given.][1]

[1] Law No. 38/1994, Article 8

Article 155

[1.If a party wishes to appeal against a judgement he must submit to the Supreme Court Secretary an appeal summons along with a copy of the judgement. The following information shall appear in the appeal summons:

a.the name and number of the case in the district court, in which court the case was decided and when the judgement was rendered;

b.the names of the parties, their identity numbers and addresses and also, where appropriate, the names of persons representing them and their positions and addresses;

c.who will conduct the case for the appellant;

d.what the purpose of the appeal is and which claims are being made by the appellant;

e.the last date by which the defendant may notify the Supreme Court that he intends to defend the case. The Supreme Court Secretary will decide this date based on the date of the summons;

f.the consequences if the defendant does not notify the Supreme Court as in Section e.

2.Two copies of the appeal summons must be submitted to the Supreme Court Secretary, which are kept by the Supreme Court.

3.The Supreme Court Secretary will reject the appeal summons if he considers its form incorrect. If the appeal deadline is running out he may grant the appellant a short time limit to correct the summons. It may then be issued without appeal leave if it is submitted again in the correct form during this time limit, even though the appeal deadline has expired. The time limit in this case shall not be longer than one week and will only be granted once. The appellant can demand a decision from the Supreme Court on the refusal of the Supreme Court Secretary to issue the appeal summons.

4.The Supreme Court Secretary issues the appeal summons in the name of the court.

5.The appeal summons must be served on the defendant not later than a week before the deadline for the defendant, as in paragraph 1, Section e, runs out. The provisions of Part XIII otherwise apply to the service of an appeal summons.][1]

[1] Law No. 38/1994, Article 9

Article 156

[1.After the appeal summons has been served but before the defendant's deadline, as in Article 155, paragraph 1, Section e, has expired the appellant shall deliver the summons to the Supreme Court, along with proof of the service and a pleading statement on his part. At the same time he shall also submit the number of copies of the case papers decided by the Supreme Court. These papers comprise the documents and transcripts on which the appellant plans to base his case before the Supreme Court and which are already at hand. The case is then recorded by the Supreme Court.

2.The following shall appear in the appellant's statement:

a.To what purpose the appeal is made and in detail what claims the appellant is making before the Supreme Court, and whether the appeal also extends to having a particular decree or decision by a district court judge changed;

b.The facts on which the appellant is pleading his case before the Supreme Court. They shall be described in detail and in such way that it is clear on what grounds the appeal is based. The appellant may refer in this to particular case documents. If the appellant disagrees with the description of other facts in the district court judgement he shall in the same way explain how he feels they should be described;

c.References to the main inferences of law on which the appellant is supporting his case before the Supreme Court;

d.The evidence which the appellant is submitting to the Supreme Court, and evidence he feels he will need to obtain after that date.

3.When the case has been recorded the Supreme Court Secretary applies to the district court where the case was heard for the judgement papers to be submitted to the Supreme Court.

4.The Supreme Court will set more detailed regulations concerning case and judgement papers.][1]

[1] Law No. 38/1994, Article 10

[**Article 157**

1. If the plaintiff omits to submit to the Supreme Court the appeal summons, pleading statement or documents according to the instructions in Article 156 the case will be abandoned.

2. If the appellant does not attend court at a later stage the case will be discontinued by a judgement. If the defendant has submitted a pleading statement case costs may be awarded to him to be paid by the appellant.][1]

[1] Law No. 38/1994, Article 11

[**Article 158**

1. If the defendant intends to submit a pleading statement his written notification shall be received by the Supreme Court during the time-limit allowed him in the appeal summons. When the case is recorded the Supreme Court Secretary decides on a deadline of four to six weeks for the statement to be submitted and sends him a copy of the appellant's case papers. The appellant shall be notified of the deadline awarded to the defendant.

2. A counter-appeal does not give the defendant the right to an independent time-limit.

3. If the Supreme Court does not receive notification as in paragraph 1 or if the defendant does not submit a statement before his deadline expires it shall be assumed that he wishes the judgement of the district court to be confirmed. The case shall then be heard, but the appellant may be allowed a short period of time to finish compiling the evidence as mentioned in his statement. The Supreme Court gives a judgement on the case on the basis of the submitted papers without the case being presented orally.

4. If the defendant has submitted a statement but does not attend court at a later stage the appellant may be given the opportunity to reply to his defence in a written deposition and to finish compiling his evidence. The case shall then be heard and a judgement given based on the claims which have been made, the papers and the appellant's deposition, with reference to that which has been submitted by the defendant.

5. If the defendant has not submitted a statement the Supreme Court may permit him to defend the case with or without the agreement of the appellant, if the case could have serious consequences for him and his oversight is considered excusable. The same may apply if the defendant fails to attend court at a later stage.][1]

[1] Law No. 38/1994, Article 12

[**Article 159**

1. The following shall appear in the defendant's statement:

a. Who will present the case for the defendant;

b. The defendant's claims, in which it shall be clearly explained whether he is making changes and, if so, what changes, to the claims he made in the district court, and whether he agrees to any parts of the appellant's claims and, if so, to which;

c. The facts on which the defendant is pleading his case before the Supreme Court. They shall be described in detail and in such a way that it is clear on what grounds he is basing his case. If the defendant disagrees with the description of other facts of the case in the district court judgement or in the appeal summons he shall in the same way say how he feels they should be described;

d. References to the main inferences of law on which the defendant is supporting his case before the Supreme Court;

e. Comments on the appellant's case preparation if necessary;

f. Evidence which the defendant feels he will need to obtain later.

2. Along with his statement the defendant shall submit the number of copies of the case papers decided by the Supreme Court. These papers comprise the documents and transcripts on which he plans to base his case before the Supreme Court and which are already at hand, if the appellant has not already submitted them.

3.The clauses of Article 156, paragraph 4 apply to the defendant's case papers.][1]

[1] Law No. 38/1994, Article 13

[**Article 160**

1.The appellant shall be notified when the Supreme Court has received the defendant's statement and case papers and shall be sent a copy of them. If the parties have not already notified the court that they have finished compiling evidence they shall both be granted a further period of time to do so. This period shall not normally exceed one month. Each party shall have one opportunity to submit originals and photocopies or copies of new evidence as described in Articles 156 and 159. The Supreme Court will notify parties of evidence submitted during this period. When this period is over the compilation of evidence is considered complete unless a party's written request for more time has been accepted or the Court later suggests to a party that he may obtain a certain piece of evidence. The Supreme Court can, however, permit a party to submit new evidence after the compilation of evidence has been completed if it proved impossible to obtain it earlier or circumstances have changed significantly since that time.

2.As soon as all the evidence has been compiled each party shall notify the Supreme Court of how long he needs to make his oral presentation of the case.

3.If necessary the Supreme Court will deal with the case in a court session in order to finalise certain points regarding its procedure. In this case the parties shall be summoned to court with reasonable notice.][1]

[1] Law No. 38/1994, Article 14

[**Article 161**

1.When all the evidence has been compiled in a case where the defendant has submitted a statement the Supreme Court shall decide when it will be heard and gives the parties reasonable notice.

2.Normally the formalities of a case will be dealt with before the merits of the case are further heard. The Supreme Court can, however, decide that the formalities and the merits of a case will be heard at the same time, or resolve the formalities without a special hearing, if the parties have already had the opportunity to express their opinion about them.

3.If the defendant has submitted a statement in the case it will be presented orally. If special circumstances recommend, the Supreme Court can, however, decide that the case be presented in writing. The Supreme Court can also take into account the wish of both parties that the case be heard without any special presentation.

4.At the same time as the parties are summoned to present their case the Supreme Court can suggest that the parties, with a certain notice, exchange a short summary of the facts of the case in chronological order, the grounds for their cases and references to sources of law, along with the inferences of legal works and judgements with which they are supporting their presentations.

5.The Supreme Court can limit the length of time each party has for his oral presentation. When the parties are summoned to the hearing the length of time each party has as his disposal may be stipulated.][1]

[1] Law No. 38/1994, Article 15

[**Article 162**

1.Before the oral presentation of the case begins at the court session the conclusion of the district court and the appeal summons shall be read out, as far as the presiding judge deems necessary. After this the presentation speeches are made.

2.The appellant will make his opening speech first, followed by the defendant unless the presiding judge has determined a different order, and the parties will be notified of this order when they are summoned. After the opening speeches the parties will be entitled to make a brief reply in the same order. If an advocate makes a speech on behalf of a party the presiding judge may permit the party himself to make brief comments after his advocate's reply.

3.The following shall be explained in the parties' speeches: the claims, the subject of the parties' dispute, the facts being pleaded in the case and further grounds for the claims. The speeches shall be to the point and shall centre on the issues in dispute or on matters which elucidate the dispute.

4.The President or other presiding judge governs the court hearing. He can demand that a speaker keep to the point and abstain from discussing matters which are not in dispute or otherwise do not call for further exposition. The presiding judge can halt the presentation if the speeches become overly long or can set a time-limit and then stop the presentation.

5.When the case has been heard the Supreme Court takes the case under deliberation and pronouncement of judgement.][1]

[1] Law No. 38/1994, Article 16

[**Article 163**

1.Judgements of the Supreme Court shall be based on evidence which has been presented and which has been proved or admitted. The clauses of Article 111 apply to judgements of the Supreme Court.

2.If a party puts forward a claim or a pleading of facts which he did not present in the district court, the Supreme Court can take them into account in considering the case if they appeared in the party's statement, they do not disrupt the basis of the case, it is justifiable that they were not alleged in the district court and it would be a denial of justice to the party if they were not taken into account.][1]

[1] Law No. 38/1994, Article 17

[**Article 164**

1.If some matter of the procedure of a case before the Supreme Court needs to be resolved, the Court will issue a ruling on the matter, regardless of whether the parties are in disagreement on it or not, provided that the ruling does not conclude the case before the Court. Particular reasons for the ruling do not have to be given, but it shall be noted in the court record as necessary.

2.The Supreme Court resolves other matters by pronouncing a judgement. If a case is discontinued or dismissed from the Supreme Court the reasons therefor alone shall be stated in the judgement, as well as the case costs if any. The same applies if a district court judgement is invalidated and a case referred back or the case is dismissed from the district court.

3.If the judgement provides for a resolution of a case in a way other than those mentioned in paragraph 2, the judgement shall explain the claims of the parties to the extent necessary to ensure that the conclusion is clear. If the description of facts in the district court was unsatisfactory, this shall be remedied in the Supreme Court's judgement. If and to the extent that the conclusion of the district court is changed, the Supreme Court's judgement shall specify the reasons for the changes. If the Supreme Court is in agreement with the judgement of the district court but not with the reasons given, they can explain their reasons insofar as they deem necessary.

4.In other matters the clauses of Article 114 apply to judgements of the Supreme Court as far as they are applicable.][1]

[1] Law No. 38/1994, Article 18

[**Article 165**

1.A judgement shall be rendered as soon as possible after the case has been taken under deliberation and never later than after four weeks have elapsed. If this is not possible and the case was presented orally the case hearing shall be repeated as far as the Supreme Court deems necessary.

2.Immediately after the hearing the judges shall discuss *in camera* the reasons and conclusions of the court. Before the hearing the President or other presiding judge nominates one of the judges to be the first speaker at this meeting, but the presiding judge leads the deliberations, asks questions, makes sure that the opinions of all the judges are made clear, and counts their individual votes. The quantum of votes decides the outcome. After these discussions the presiding judge requests the first speaker to write the opinion for judgement. If the judges are divided into a majority and minority, the first speaker writes the opinion for the division he sides with, while the other judges decide who will write their opinion. A judge who is in favour of quashing a district court order or in favour of a case being dismissed and who is in the minority must also give an opinion on the merits of the case. The judges complete the judgement together, with or without individual opinions.

3.When the judgement is pronounced the court's conclusion shall be read in public in court. Any individual opinions shall be mentioned.

4.All Supreme Court judgements, the reasons of the district court in the same cases and any other information deemed necessary from the district court judgement shall be published in the judgement register of the Supreme Court so that its judgements are sufficiently clear. If individual opinions in the Supreme Court go to a different conclusion from that of the majority judgement they shall also be published. If not, it is sufficient to mention that there was disagreement over the grounds for the conclusion. A summary of a judgement may be published if it gives sufficient information about the issues and facts of the case. The Supreme Court will make further regulations about the judgement register.][1]

[1] Law No. 38/1994, Article 19

[**Article 166**

Insofar as they are applicable, the regulations concerning the conduct of a case in a district court are followed in the conduct of an appeal case.][1]

[1] Law No. 38/1994 Article 20

Part XXVI
The reopening of a non-appeal case

[**Article 167**][1]

1.If a district court judgement has been rendered in a case and has not been appealed against and the appeal deadline has passed the Supreme Court may agree to a request that the case be reopened in the district court if the following conditions are fulfilled:

a.there is shown to be a strong likelihood that the facts of the case were not made properly known when the case was heard in the district court, and that the party was not at fault;

b.there is shown to be a strong likelihood that new evidence will lead to a change of conclusion in significant respects;

c.other circumstances argue in favour of permission being granted, among them being that interests of overwhelming importance to the party are at stake.

2.A party may not assign to someone else the right to request the reopening of a case.

[1] Law No. 38/1994, Article 21

[**Article 168**][1]

1.A written request for the reopening of a case shall be submitted to the Supreme Court. This shall contain a detailed explanation of the alleged grounds for the reopening. All necessary information shall accompany the request.

2.If the request is obviously without foundation the Supreme Court shall refuse the reopening forthwith. In other cases the request and the accompanying information will be sent to the other party and a written report of his views requested from him within a certain time-limit.

3.The Supreme Court shall decide whether the case be reopened. If the Supreme Court agrees to the request it shall at the same time decide whether the effect of the previous judgement be invalidated while the case is being heard. The reopening does not hinder execution on the basis of the judgement unless its effect has been invalidated in this manner.

4.If a case has been reopened but the party seeking the reopening does not attend the new proceedings of the case in the district court, the proceedings shall be discontinued and the previous judgement remain unchanged. On the other hand, a judgement shall be given in the case even though the other party does not attend the proceedings.

5.The new proceedings in the case in the district court otherwise shall be conducted according to the provisions of this Law.

[1] Law No. 38/1994, Article 21

[**Part XXVII**
The reopening of a case which has been tried in the Supreme Court][1]

[1] Law No. 38/1994, Article 22

[**Article 169**

1. The Supreme Court can agree to the request of a party that a case which has been adjudicated in the Supreme Court be reopened for a new hearing and judgement, if the following conditions are fulfilled:

a. there is shown to be a strong likelihood that the facts of the case were not made properly known when the case was heard in its time in the Supreme Court, and that the party was not at fault;

b. there is shown to be a strong likelihood that new evidence will lead to a change of conclusion in significant respects;

c. other circumstances argue in favour of permission being granted, among them being that interests of overwhelming importance to the party are at stake.

2. A party may only apply once for a case to be reopened according to paragraph 1. A party may not assign to someone else the right to request the reopening of a case.

3. The clauses of Section 168 paragraphs 1-3 apply to the request for a case to be reopened, the handling of the request, the decision thereon and the effects of the reopening.

4. If a case has been reopened but the party seeking the reopening does not attend the new proceedings of the case in the Supreme Court, the proceedings shall cease and the previous judgement remain unchanged. On the other hand, a judgement shall be given in the case even though the other party does not attend court.

5. The new hearing of the case before the Supreme Court otherwise shall be conducted pursuant to the provisions of Part XXIV or XXV of this Law as applicable.][1]

[1] Law No. 38/1994, Article 22

Law No. 19/1991 on Procedure in Criminal Cases, as amended by Law No. 37/1994

- extracts -

Part XVII

Complaint appeals (Procedural appeals) to a higher court

Article 141

1. The parties to a complaint appeal case are on the one hand the prosecutor or the investigator who has sought the court decision that is being appealed against, and on the other hand the accused or other party whom the appealed decision concerns.

Article 142

2. Insofar as this Law does not otherwise provide, complaint appeals against decrees and decisions of a district court judge can be made to the Supreme Court, except those on the following:

a. whether co-judges be summoned to the case;

b. that an expulsion from the court session, a closure of the court or a ban on publicising the proceedings of the court be declared;

c. that a person be arrested;

d. that a defence counsel be appointed;

e. that an adjournment be refused;

f. whether a case be heard orally or in writing;

g. the further hearing of a case, as in Article 131;

h. whether cases be joined or one case divided into several;

i. that a dismissal of a case be refused;

j. that a case be reopened, as in Article 126, paragraph 3.

2. After the main hearing of a case, as in Article 129, has begun, and insofar as this Law does not state otherwise, appeals can not be made to the Supreme Court against decrees and decisions of the judge, except those on the following:

a. that a case be dismissed, discontinued or suspended;

b. enforcement measures, as in Parts X, XI and XIII;

c. whether a witness be called, a question be asked of a witness or a witness be made to answer;

d. matters otherwise affecting a person not a party to the case.

3. An appeal against the decree of a judge can not be made if a procedure specified in the decree has already been carried out or a state that is the result of a provision of the decree has already come about. The same applies to decisions by the judge.

4. If an appeal has been made to the Supreme Court against a decree or decision and the situation in paragraph 3 arises after that time but before the judgement in the appeal case has been given, the case shall be dismissed from the Supreme Court.

Article 143

1. A complaint appeal against a decree on enforcement measures, as in Parts X - XIII, does not suspend the process of a case.

2. In other situations a complaint appeal suspends the implementation of further investigation or hearing of a case, except when a judge considers, for special reasons, that the implementation cannot bear the delay of waiting for the Supreme Court's conclusion.

Article 144

1. A judge shall instruct the interested parties as to their rights to make a complaint appeal against a resolution of the court and as to the time-limit therefor. He shall ascertain forthwith as far as is possible whether an appeal will be made.

2. The appellant shall put forward his complaint within three days of being notified about the resolution that he wishes to appeal against.

3. The complaint shall be put forward in writing to the judge or by noting it in the court record and shall explain to what purpose the appeal is being made and what claims are being made, along with other comments and explanations that the appellant deems necessary.

Article 145

1. The judge shall send the Supreme Court the complaint along with a transcript of the court proceedings and other case papers, unless he deems right to invalidate the resolution complained of himself. The judge shall send the papers in quadruplicate, with his comments if he so wishes.

2. If a complaint is presented by an investigator or a prosecutor he shall notify the accused or other involved person of the appeal. If the complaint is presented by another person the judge shall notify the prosecutor or the investigator of the appeal, whichever is concerned.

3. The parties to a complaint appeal case may send their written comments about the case to the court within three days of the Supreme Court having received the appeal.

Article 146

1. The Supreme Court will give its judgement in the matter when the time-limit mentioned in Article 145, paragraph 3 has expired or when it has received the parties' statements. If a complaint appeal suspends the implementation of a resolution the Supreme Court must give a judgement within ten days from when the documents were received, unless the case is particularly complex or the court deems unavoidable that new papers be provided. The judgement must not be delayed more than three weeks from when all case papers, including new ones, have been received by the Court.

2. An appellant may be obliged to pay a fine to the State for making a complaint which has no foundation.

3. The district court judge will be sent a copy of the Supreme Court judgement and he shall notify the parties at once of the outcome of the appeal.

Part XVIII
Appeals to a higher court

Article 147

[According to the provisions of this Part, an appeal may be made to the Supreme Court against a district court judgement in a criminal case in order to obtain:

a. a reappraisal of the determination of a penalty;

b. a reappraisal of conclusions based on the interpretation or application of the law;

c. a reappraisal of conclusions based on the significance as proof of evidence other than a verbal testimony before the district court;

d. the quashing of a district court judgement and a referral of the case back to the district court;

e. the dismissal of a case from the district court.][1].

[1] Law No. 37/1994, Article 7

Article 148

[The State Prosecutor can appeal against a district court judgement if he deems the accused wrongly found not guilty or the punishment or other penalty excessively lenient, see however Article 150. He may also appeal against a judgement for the benefit of the accused.][1]

[1] Law 37/1994, Article 8

Article 149

[1. An accused who has been found guilty in a district court may appeal against the district court judgement, see however Article 150.

2. If the accused is a minor, his guardian shall represent him in decisions concerning an appeal.

3. If the accused is deceased his spouse or his parent, sibling, child or such by adoption can make an appeal on his behalf.][1]

[1] Law 37/1994, Article 9

Article 150

[1. If the accused did not attend the proceedings of the district court and the case was tried in his absence, as in Article 126, paragraph 1, only points of law or the penalty can be appealed against and only with the leave of the Supreme Court.

2. A sentence of guilty can only be appealed against with the leave of the Supreme Court if the accused has neither been sentenced to a detention or imprisonment nor to a fine or a confiscation of property which is higher than the appeal value in a civil case.

3. The request for leave to appeal according to paragraphs 1 or 2 shall be made in writing and supported in detail, and shall reach the Supreme Court before the appeal deadline expires. If an accused seeks leave to appeal his request shall be directed to the State Prosecutor along with a notification, as in Article 151, paragraph 2. The request for leave interrupts the time limit for appeal. The Supreme Court gives the other party the opportunity to express an opinion about the request within a certain time limit. Leave to appeal will not be granted except where special reasons recommend.][1]

[1] Law No. 37/1994, Article 10

Article 151

[1. If the accused is present when the judgement is pronounced in the district court the judge shall inform him of his right to appeal and within what time limit he must do so. If not, this shall be seen to by the person who serves notice of the judgement which is appealed against. It shall be noted in the court record or the report of service that this has been done.

2. The accused shall notify the State Prosecutor of his appeal in writing within four weeks of the notice of the judgement. This notification shall specify the purpose of the appeal, including claims according to Part XX if applicable. It is the duty of the State Prosecutor and other prosecuting counsel to assist the accused in writing the notification if he so requests.

3. If the State Prosecutor has not received a notification of appeal from the accused within the time-limit set in paragraph 2 it shall be assumed that the accused wishes to accept the district court judgement.][1]

[1] Law No. 37/1994, Article 11

Article 152

[If the State Prosecutor intends to appeal against a district court judgement the appeal summons shall be issued within eight weeks of the judgement being pronounced. If the accused appeals against a judgement the State Prosecutor can make an appeal against it on the part of the prosecution even though this deadline has expired.][1]

[1] Law No. 37/1994, Article 12

Article 153

[1.The State Prosecutor shall take the actor side in the presentation of the case before the Supreme Court, regardless of whether he himself or the accused made the appeal.

2.When an appeal has been decided the State Prosecutor shall issue an appeal summons in which the following shall be stated:

a.the title and number of the case in the district court, in which court the hearing took place and when the judgement was pronounced;

b.the name, identity number or date of birth and address of the accused, and the name of the person appealing on his behalf, as in Article 149 paragraph 2 or 3, if this is applicable;

c.whether the appeal is made on behalf of one of the parties or both, and exactly to what purpose, including whether the case is appealed against concerning a civil claim as in Part XX, if the merits of the claim were tried in the district court;

d.that the accused is summoned before the Supreme Court and that the case be heard there with the minimum of delay and without further summoning.

3.The State Prosecutor shall serve notice of the appeal summons on the accused who will at the same time be given the opportunity to name the defence counsel he wishes to take the case. The State Prosecutor shall send the Supreme Court the summons, with proof of its having been notified, along with a copy of the district court judgement. The Supreme Court shall appoint the accused a defence counsel unless he wishes to present the case himself. This he may do if the court deems him capable.

[1] Law No. 37/1994, Article 13

Article 154

[1.When the appeal has been decided the district court where the case was decided shall comply with the State Prosecutor's request to hand over the judgement documents.

2.When the State Prosecutor has received the documents mentioned in paragraph 1 and a defence counsel has been appointed, he shall prepare the case papers in consultation with such counsel. These will consist of counterparts of the documents and transcripts which the parties consider necessary for purposes of resolution of the case considering the nature of the appeal. The case papers shall be submitted to the Supreme Court in the requisite number of copies, along with the judgement documents.

3.The Supreme Court shall set further regulations concerning case papers and judgement documents.][1]

[1] Law No. 37/1994, Article 14

Article 155

[1.When the case papers have been submitted the Supreme Court Secretary shall set a deadline by which the instigating party of the appeal case should submit a written statement and any documents which he feels are missing and on which he wishes to base his case before the Supreme Court. When the statement and documents have been received the Supreme Court Secretary sets a deadline by which the other party should submit a statement and documents. Both parties shall send the other a copy of his statement and documents at the same time as they submit them to the Supreme Court.

2.The following shall appear in the statement of each party:

a.what claims he is making before the Supreme Court;

b.whether he is in agreement with the district court's description of the facts of the case and the supporting reasons for the conclusion. If not, he must explain clearly and concisely on what matters he disagrees and broadly how he supports his claim for the district court judgement to be changed;

c.his comments on the other party's presentation of his case, if necessary;

d.whether he still intends to present new evidence to the Supreme Court and, if so, broadly what that evidence is.

3.The parties may present new evidence to the Supreme Court, but it must be submitted to the Supreme Court Secretary and the other party must be notified at least one week prior to the hearing. In special circumstances the Supreme Court can make an exception on this point, if the parties are in agreement on new evidence being presented with a shorter notice. The State Prosecutor may submit a new certificate from the public record of criminal offences of the accused at the beginning of the hearing.][1]

[1] Law No. 37/1994, Article 15

Article 156

[1.The Supreme Court may give a judgement that a case be dismissed from the Supreme Court because of errors in the presentation of the case before the Court without the case being previously heard. The Supreme Court may, in the same way, quash a district court judgement if significant errors were made in the handling of the case before the district court and may dismiss it from the district court if the preparation of the case for trial was substantially inadequate.

2.If the case presentation is inadequate, although not to such an extent that it is considered necessary to dismiss the case or quash the district court's judgement, the Supreme Court may order the party or parties to provide evidence on certain points to clarify them or take other measures to amend the situation.

3.Before the case hearing the Supreme Court may, if necessary, take the case up in a court session in order to conclude certain points concerning the handling of the case. In this event, the parties shall be summoned before the Court with reasonable notice.][1]

[1] Law No. 37/1994, Article 16

Article 157

[1.In normal circumstances a Supreme Court case shall be presented orally. However, the Supreme Court can decide that a case be presented in writing where special reasons recommend. The Supreme Court can likewise decide that a case be taken for judgement without any particular presentation if this is the unanimous wish of both parties or if it is only a penalty which is being appealed against.

2.If the case is to be presented orally each of the parties shall notify the Supreme Court, after submitting their statements, as to how long they require to make their presentation speeches. The Supreme Court shall decide when the oral presentation will take place and shall give the parties reasonable notice. The parties will be informed of how long they are allowed to make their speeches, if the length of time they requested was not agreed to. At the same time the Supreme Court can ask each party to provide a short summary of the events of the case in chronological order, their main supporting arguments and the legal references and judgements on which they intend to base their presentation.

3.The Supreme Court can decide to have an oral presentation of evidence take place before the Court, if it has particular reason to expect in the circumstances that such presentation might affect the outcome of the case.][1]

[1] Law No. 37/1994, Article 17

Article 158

[1.Before the oral presentation of the case begins at the court session, the final judgement of the district court and the appeal summons shall be read out, to the extent that the President or other presiding judge deems necessary in order to explain the case presentation. The opening speech on behalf of the prosecution shall then be made, followed by that of the accused, unless the presiding judge has decided a different order and the parties were notified thereof when they were summoned. After the completion of the opening speeches the parties, in the same order, may present a short reply. If the defence counsel makes the speech on behalf of the accused the presiding judge can allow the accused himself to comment when defence counsel has finished his reply.

2.The presentation shall specify those points of the district court's conclusions which the appeal seeks to have changed, the claims being made in that respect, and the grounds therefor. It shall avoid digression and restrict itself to these issues and to the clarification of other matters as necessary in that context.

3.The President or other presiding judge governs the court session. He can demand that a speaker keep

to the point and abstain from discussing matters which are not to be reconsidered or which otherwise do not call for further exposition. The presiding judge can halt the presentation if the speeches become overly long or can set a time-limit and then stop the presentation.

4.At the conclusion of the hearing the Supreme Court takes the case under deliberation and pronouncement of judgement.][1]

[1] Law No. 37/1994, Article 18

Article 159

[1.The Supreme Court may not impose on the accused a more severe punishment or penalty unless the prosecution has appealed against the district court judgement for that purpose.

2.If the prosecution has appealed and not the accused, the Supreme Court nevertheless can alter the judgement in favour of the accused.

3.If an appeal goes to the substancet of a judgement, the Supreme Court will not alter the penalty imposed by the district court judgement, unless it is outside the limits of the relevant provisions of penal legislation or substantially inappropriate to the offence of the accused.

4.The Supreme Court cannot reassess the district court's conclusions about the value as proof of an oral statement unless the witness in question or the accused has given testimony before the Court itself.

5.If the Supreme Court considers it likely that the conclusion of a district court judge about the value as proof of an oral statement before the court was wrong and that this may have materially affected the outcome of the case, and if the witness or the accused in question has not given testimony before the Court itself, then the Supreme Court can invalidate the district court judgement and the handling of the case in the district court, so that an oral presentation of proof can take place and the case can be decided afresh.][1]

[1] Law No. 37/1994, Article 19

Article 160

1.In its judgement in a criminal case, the Supreme Court can impose a fine on the district judge, to be paid to the State, for delaying the case or committing some other error in the handling thereof, if the judge has been issued with a summons for the purpose.

2.The accused has the right to demand that a judge be summoned to answer for his handling of a criminal case. In this event it is the State Prosecutor's duty to include this demand in his appeal summons. The State Prosecutor can also of his own accord include such a demand in his appeal summons. The judge shall be given the opportunity to express his opinion on the demand.

3.If a judge is summoned before the Supreme Court for legal responsibility and is found not guilty, the Court can then sentence the accused or the State, depending on who made the accusation, to pay costs to the judge.

Article 161

If the prosecuting or defence counsel are thought to be guilty of negligence or some other error in the preparation or presentation of a criminal case in the Supreme Court, the court can impose a fine on him, to be paid to the State.

Article 162

The Supreme Court can, if and as it deems necessary, admonish a district judge, prosecuting counsel, defence counsel or other involved party if it finds them guilty of making mistakes which are nonetheless not sufficiently serious to warrant a fine.

Article 163

[In other respects, the provisions of the Law on Procedure in Civil Cases and the provisions of this Law on the procedure in the district court shall apply to the handling and resolution of criminal cases before the Supreme Court, as far as applicable.]

[1] Law No. 37/1994, Article 20

Part XXII
Reopening of cases on which judgement has been passed

Article 183

If a judgement of a district court from which no appeal has been made or a judgement of the Supreme Court has been rendered in a criminal case the case cannot be reopened unless the conditions of this Part are met with.

Article 184

1. Upon the demand of a convicted person who believes himself to have been found guilty while innocent or found guilty of a crime considerably more serious than that which he committed, his case may be reopened:

a. if new evidence has appeared which might have made a significant difference in the conclusion of the case if it had been presented to the judge before a judgement was given;

b. if there is reason to believe that a judge, a prosecutor, an investigator or other person may have engaged in punishable conduct in order to bring about the actual outcome of the case, such as if a false witness or falsified documents have been produced, or witnesses or others knowingly have made false reports, and this has resulted in an erroneous judgement.

2. If anything mentioned in paragraph 1 comes to the attention of a person engaged pursuant to law with investigating or handling criminal cases, or he has reason to suspect the same, he is obliged to notify the convicted person.

Article 185

1. The State Prosecutor may demand the reopening of a case in which the accused was found not guilty or guilty of a crime considerably lesser than that he was accused of:

a. if, after judgement was pronounced, the accused has confessed to having committed the crime he was accused of or other evidence has been produced which points without doubt to his guilt;

b. if it appears possible that the outcome of the case was brought about partly or completely through false evidence or the conduct described in Article 184, paragraph 1, subparagraph b.

2. It is the State Prosecutor's duty to seek redress for the convicted party by requesting that a case be reopened if he believes the situation described in Article 184, paragraph 2 exists.

Article 186

1. The decision to reopen a case is taken by the Supreme Court and a request for the reopening of a case shall be sent to the Court. A convicted person who is applying for the reopening of his case shall address his request to the Supreme Court and send it to the State Prosecutor.

2. If the applicant is serving a prison sentence the prison governor shall accept and record his request and forward it. If the applicant so wishes he must then be appointed a representative who will ensure that his legal rights are observed.

3. The request must state those points of the judgement which are being challenged and the grounds alleged for the challenge. If possible, the request shall be accompanied by supporting documents.

Article 187

1. The State Prosecutor shall send the Supreme Court the request, together with the case documents and his proposals. If the judgement of a district court judge is in question, he shall also send the judge's comments.

2. The Supreme Court may order any evidence it considers pertinent to the reopening request to be produced, as in the provisions of [Article 156, paragraph 2.][1]

3. If investigation reveals that the request for a case to be reopened does not reach far enough, the applicant shall be permitted to modify it accordingly.

[1] Law No. 37/1994, Article 21

Article 188

The Supreme Court shall decide whether a request for a case to be reopened be granted or not. If a request is granted for the reopening of a case in which final judgement was passed in a district court, the State Prosecutor shall take steps for a case appeal to be made. The handling of the case and the hearing before

the Supreme Court shall be conducted according to the clauses of Part XVIII of this Law.

Article 189

If the Supreme Court does not find sufficient grounds in support of changing a judgement, the request for reopening shall be dismissed from the Court. Otherwise the Court will render a judgement on the substance of the case.

Article 190

If a convicted person applies for a case to be reopened and his request is granted, the new judgement may never be less favourable towards him than the original one.

Article 191

1. If a case is reopened at the demand of the State Prosecutor, costs are paid according to the provisions of Articles 165 and 166.

2. If a case is reopened at the request of a convicted person, costs are paid by the State, unless the person convicted has obtained his request by using documents he knew to be false. In that case he shall be made to pay the costs of the case.

Article 192

1. Unless the Supreme Court so orders, the implementation of a judgement will not be suspended by the request or decision to reopen a case.

2. A case can be reopened even though the convicted person has borne the full penalty of the original judgement.

Law No. 90/1989 on Execution Proceedings

- extracts -

Part XIII
Procedure for a case on a request for execution

Article 84

...

A referral to a higher court of the decree of a district court judge according to this Part does not suspend an execution proceeding, unless a demand for this has been agreed to in the decree.

[The decrees of a district court judge according to this Part are subject to a complaint appeal to the Supreme Court. The rules concerning civil cases apply to the time limit for appeal, the complaint appeal itself and its handling in the district and Supreme courts.][1]

[1] Law No. 92/1991, Article 102

Part XIV
Resolution of disputes arising during the implementation of an execution proceeding or on the reopening thereof

Article 91

...

A referral to a higher court of the decree of a district court judge according to this Part does not suspend an execution proceeding, unless a demand for this has been agreed to in the decree.

[The decrees of a district court judge according to this Part are subject to a complaint appeal to the Supreme Court. The rules concerning civil cases apply to the time limit for appeal, the complaint appeal itself and its handling in the district and Supreme courts.][1]

[1] Law No. 92/1991, Article 102

Part XV
Resolution of disputes after the completion of an execution proceeding

Article 95

...

A referral to a higher court of the decree of a district court judge pursuant to this Part does not suspend further proceedings for satisfaction, unless a demand for this has been agreed to in the decree.

[The decrees of a district court judge according to this Part are subject to a complaint appeal to the Supreme Court. The rules concerning civil cases apply to the time limit for appeal, the complaint appeal itself and its handling in the district and Supreme courts.][1]

[1] Law No. 92/1991, Article 102

Law No.20/1991 on the Division of estates, and other matters

- extracts -

Part XVIII
Appeals to a higher court

Article 133

Except as otherwise provided in this Law, the decrees and decisions of a district court judge under the Law are subject to a complaint appeal to the Supreme Court. An appeal cannot, however, be made against decrees or decisions which are passed or taken in the course of handling of the case and would not be subject to appeal if it were a civil action tried according to ordinary procedure. An appeal also cannot be made against decrees of a district court judge which constitute his final resolution of the matter in dispute except where the general conditions for ordinary appeal in a civil case are met.

The rules concerning complaint appeals in ordinary civil cases apply to the time-limit for appeals, the complaint itself and its handling in the district and Supreme courts.

A complaint appeal has the same effect on the handling of the case in the district court as in an ordinary civil action, unless otherwise specified in this Law.

Law No. 21/1991 on Bankruptcy Proceedings and other matters

- extracts -

Part XXV
Appeals to a higher court

Article 179

Except as otherwise provided in this Law, the decrees and decisions of a district court judge under the Law are subject to a complaint appeal to the Supreme Court. An appeal cannot, however, be made against decrees or decisions which are passed or taken in the course of handling of the case and would not be subject to appeal if it were a civil action tried according to ordinary procedure. An appeal also cannot be made against decrees of a district court judge which constitute his final resolution of the matter in dispute except where the general conditions for ordinary appeal in a civil case are met.

The rules concerning complaint appeals in civil cases apply to the time-limit for appeals, the complaint itself and its handling in the district and Supreme courts, except as otherwise specified in this Law.

A complaint appeal has the same effect on the handling of the case in the district court as in an ordinary civil action, unless otherwise specified in this Law.

Law No.90/1991 on Sales by order of the Court

- extracts -

Part XIII
Resolution of disputes as to whether a forced sale should proceed, et al

Article 79

The decrees and decisions of a district court judge in cases pursuant to this Part are subject to a complaint appeal to the Supreme Court. An appeal cannot, however, be made against decrees or decisions which are passed or taken in the handling of the case and which would not be subject to appeal if it were a civil action tried according to ordinary procedure. An appeal also cannot be made against decrees of a district court judge which contain his final resolution of the matter in dispute unless where the normal conditions for appeal in a civil case are met.

The rules concerning complaint appeals in civil cases apply to the time-limit for appeals, the complaint itself and its handling in the district and Supreme courts.

A complaint appeal against a decree according to the provisions of this Part does not suspend steps towards a sale by order of the court unless a demand for this has been agreed to in the decree.

Part XIV
Resolution of disputes as to the validity of a forced sale

...

Article 85

As regards referral to a higher court, the provisions of Article 79, paragraph 1 and 2 do apply.

A complaint appeal against a decree pursuant to the provisions of this Part will suspend further action in relation to the forced sale.

Japan
Supreme Court

Constitution
November 3, 1946
(Unofficial translation)
- extracts -

Chapter I – The Emperor

...

Article 6

The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Chapter IV – The Diet

...

Article 64

The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

Chapter VI – Judiciary

Article 76

The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77

The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78

Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administrated by any executive organ or agency.

Article 79

The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favours the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80

The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81

The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82

Trials shall be conducted and judgment declared publicly.

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

Diet Law

(Unofficial translation)
- extracts -

Chapter XVI – Impeachment Court

Article 125

Impeachment of a judge shall be heard by the Impeachment Court which is composed of members elected in equal number in each House from among its Members.

The President of the Impeachment Court shall be elected by the members of the Court from among themselves.

Article 126

Removal proceedings against a judge shall be instituted by the Indictment Committee which is composed of members elected in equal number in each House from among its Members.

The Chairman of the Indictment Committee shall be elected by its members from among themselves.

Article 127

A member of the Impeachment Court may not become concurrently a member of the Indictment Committee.

Article 128

When the members of the Impeachment Court or of the Indictment Committee are elected in each House, their substitutes shall also be elected.

Article 129

Matters relating to the Impeachment Court and the Indictment Committee other than those provided for in this Law shall be prescribed by a separate law.

Court Organization Law

Law No. 59, April 16, 1947
(Unofficial translation)
- extracts -

Article 1
Object of this Law

The Supreme Court and the inferior courts prescribed in the Constitution of Japan shall be provided for by this Law.

Article 2
Inferior courts

1. The inferior courts shall mean High Courts, District Courts, Family Courts and Summary Courts.

2. The establishment, abolition and territorial jurisdiction of inferior courts shall be provided for elsewhere by law.

Article 3
Jurisdiction of courts

1. Courts shall, except as expressly, provided for in the Constitution of Japan, decide all legal disputes and shall possess such other powers as are specifically provided for by law.

2. The provisions of the preceding paragraph shall in no way prevent preliminary determinations by executive agencies.

3. The provisions of this Law shall in no way prevent the establishment of a jury system for criminal cases elsewhere by law.

Article 4
Binding power of decision of superior court

A conclusion in a decision of a superior court shall bind courts below in respect of the case concerned.

Article 5
Judges

1. The judges of the Supreme Court shall be a chief judge who is called the Chief Justice of the Supreme Court and other judges who are called the Justices of the Supreme Court.

2. The judges of inferior courts shall be a chief judge of a High Court who is called the President of High Court and other judges who are called judges, assistant judges, and judges of the Summary Court.

3. The number of the justices of the Supreme Court shall be fourteen and the number of the judges of inferior courts shall be fixed elsewhere by law.

Article 6
Location

The Supreme Court shall be located in the Metropolis of Tokyo.

Article 7
Jurisdiction

The Supreme Court shall have jurisdiction over the following matters:

1. Appeal (*j_koku*);

2.Complaint (*k_koku*) prescribed specially in codes of procedure.

Article 8
Other powers

The Supreme Court shall have power specially provided for by other laws in addition to those prescribed in this Law.

Article 9
Grand Bench and Petty Benches

1.The Supreme Court shall conduct hearing and render decisions through a Grand Bench or a Petty Bench.

2.The Grand Bench shall be a collegiate body comprised of all judges, and a Petty Bench shall be a collegiate body of judges whose number shall be specified by the Supreme Court. However, a Petty Bench shall be composed of three or more judges.

3.One of the judges of each of the various collegiate bodies shall be the presiding judge.

4.The various collegiate bodies may conduct hearings and render decisions if there are present the number of judges determined by the Supreme Court.

Article 10
Examinations of the Grand Bench and Petty Benches

Regulations of the Supreme Court shall determine which cases are to be handled by the Grand Bench and which by Petty Benches; however, in the following instances, a Petty Bench cannot render a decision:

1.Cases in which a determination is made of the constitutionality of a law, ordinance, regulation or disposition, as a result of the contention of a litigant (excluding cases where the opinion is the same as that of a decision previously rendered through a Grand Bench in which the constitutionality of the law, ordinance, regulation or disposition is recognized);

2.Cases other than those mentioned in the preceding item when the unconstitutionality of a law, ordinance, regulation or disposition is recognized;

3.Cases in which an opinion concerning the interpretation and application of the Constitution or of any other laws or ordinances is contrary to that of a decision previously rendered by the Supreme Court.

Article 11
Expression of opinions of judges

The opinion of every judge shall be expressed in written decisions.

Article 12
Judicial administrative affairs

1.In its conduct of judicial administrative affairs, the Supreme Court shall act through the deliberations of the Judicial Assembly and under the general supervision of the Chief Justice of the Supreme Court.

2.The Judicial Assembly shall consist of all Justices, and the Chief Justice of the Supreme Court shall be the chairman thereof.

Article 13
General Secretariat (*Jimu-s_kyoku*)

The Supreme Court shall have a General Secretariat which shall administer the miscellaneous affairs of the Supreme Court.

Article 14
Legal Training and Research Institute

A Legal Training and Research Institute shall be established in the Supreme Court in order to manage affairs relating to the research and training of judges and other court officials and to the education of judicial apprentices.

Article 14-2
Research and Training Institute for Court Clerks

A Research and Training Institute for Court Clerks shall be established in the Supreme Court in order to manage affairs relating to the research and training of court clerks and court stenographers and to their education.

Article 14-3
Institute for Family Court Probation Officers

An Institute for Family Court Probation Officers shall be established in the Supreme Court in order to manage affairs relating to the research and training of family court probation officers and to their education.

Article 14-4
Supreme Court Library

In the Supreme Court, the Supreme Court Library shall be established as a branch library of the National Diet Library.

Article 39
Appointment and dismissal of Justices of the Supreme Court

1. The Emperor shall appoint the Chief Justice of the Supreme Court as designated by the Cabinet.

2. Justices of the Supreme Court shall be appointed by the Cabinet.

3. The Emperor shall attest the appointment and dismissal of Justices of the Supreme Court.

4. The appointment of the Chief Justice of the Supreme Court and of Justices of the Supreme Court shall be reviewed by the people in accordance with laws which provide for popular review.

Article 41
Qualifications for appointment of Justices of the Supreme Court

1. Justices of the Supreme Court shall be appointed from among persons of broad vision and extensive knowledge of law, who are not less than 40 years of age. At least 10 of them shall be persons who have held one or two of the positions mentioned in item 1 or 2 for not less than 10 years, or one or more of the positions mentioned in the following items for the total period of 20 years or more:

1. Presidents of the High Court;

2. Judges;

3. Judges of the Summary Court;

4. Public Prosecutors;

5. Lawyers;

6. Professors or assistant professors in legal science in universities which shall be determined elsewhere by law.

2. In the application of the provisions of the preceding paragraph, if positions such as those of assistant judge, judicial research official, Secretary-General of the Supreme Court, secretaries of a court, teachers of the Legal Training and Research Institute, teachers of the Research and Training Institute for Court Clerks, Vice-Minister of the Ministry of Justice, secretaries of the Ministry of Justice or educational official of the Ministry of Justice have also been held by persons who have held the positions mentioned in items 1 and 2 of the preceding paragraph for at least five years, or by persons who have held, for not less than 10 years, one or more of the positions mentioned in items 1 to 6 inclusive of the preceding paragraph, such positions shall be deemed to be those mentioned in items 1 to 6 inclusive of the said paragraph.

3. In the application of the provisions of the preceding two paragraphs, the period of service in the positions enumerated in items 3 to 5 inclusive of paragraph 1 and in the preceding paragraph shall be computed as from the time when study as a judicial apprentice has been finished.

4. In cases where a person has, for three years or more, held a position as professor or assistant professor of legal science in a university mentioned in item 6 of paragraph 1, and also has held a position as judge of the Summary Court, public prosecutor (excluding an assistant public prosecutor) or lawyer, the provisions of the preceding paragraph shall not apply to the period of service in such positions.

Article 46
Grounds for incompetency for appointment

In addition to those persons who are incompetent to be appointed ordinary government officials according to other laws, no person falling under any of the following categories shall be appointed a judge:

1. a person who has been punished with imprisonment or a graver punishment;

2. a person whose dismissal from office has been decreed by an impeachment court.

Article 47
Assignment to position

Judges of inferior courts shall be assigned to positions by the Supreme Court.

Article 48
Guarantee of status

A judge shall not, against his will, be dismissed, or be transferred from one court to another, or be suspended from exercising his judicial function, or have his salary reduced, except in accordance with the provisions of law relating to public impeachment or national review or unless, in accordance with provisions made elsewhere by law, he is declared mentally or physically incompetent to perform official duties.

Article 49
Disciplinary punishments

When a judge has swerved from his duty, neglected his duty or degraded himself, he shall be subjected to disciplinary punishment by decisions as provided for elsewhere by law.

Article 50
Age of retirement

Justices of the Supreme Court shall retire upon the attainment of 70 years of age, judges of High Courts, District Courts or Family Courts shall retire upon the attainment of 65 years of age and judges of Summary Courts shall retire upon the attainment of 70 years of age.

Article 51
Salary

The Salary received by judges shall be fixed by law.

Article 52
Prohibition of political activities, etc.

Judges shall not, while in office, do any of the following acts:

1. To become members of the Diet or of assemblies of local public entities or actively to engage in political movements;

2. To hold another salaried position without obtaining the permission of the Supreme Court;

3. To carry on any commercial business or a business which aims at pecuniary gain.

Norway
Supreme Court

Constitution
- extracts -

D – The Judicial Power

Article 86

The Court of Impeachment *(Riksrett)* pronounces judgment in the first and last instance in such proceedings as are brought by the *Odelsting* against Members of the Council of State, or of the Supreme Court or of the *Storting*, for criminal offences which they may have committed in their official capacity.

The specific rules concerning indictment by the *Odelsting* in accordance with this Article shall be determined by law. However, the limitation period for the institution of indictment proceedings before the Court of Impeachment may not be set at less than 15 years.

The permanent Members of the *Lagting* and the permanently appointed Members of the Supreme Court are judges of the Court of Impeachment. The provisions contained in Article 87 shall apply to the composition of the Court of Impeachment in the particular case. In the Court of Impeachment the President of the *Lagting* shall preside.

Any person sitting in the Court of Impeachment as a Member of the *Lagting* shall not resign from the Court if the period for which he is elected as a representative to the *Storting* expires before the Court of Impeachment has concluded the trial of the case. If he ceases, for any other reason, to be a Member of the *Storting*, he shall resign as a judge of the Court of Impeachment. The same applies if a Justice of the Supreme Court, who is a Member of the Court of Impeachment, retires as a Member of the Supreme Court.

Article 87

The accused and the person acting on behalf of the *Odelsting* in the proceedings have the right to challenge as many Members of the *Lagting* and of the Supreme Court as will leave remaining fourteen Members of the *Lagting* and seven Members of the Supreme Court as judges in the Court of Impeachment. Each party in the proceedings may challenge an equal number of the Members of the *Lagting*, although the accused has the preferential right to challenge one more, if the number to be challenged is not divisible by two. The same shall apply to the challenging of the Members of the Supreme Court. If there are several accused in such proceedings, they exercise the right of challenge collectively in accordance with rules prescribed by law. If the right of challenge is not exercised to the extent permitted, as many Members of the *Lagting* and of the Supreme Court as are in excess of fourteen and seven respectively retire following the drawing of lots.

When the case comes up for judgment, as many judges of the Court of Impeachment shall retire following the drawing of lots that the Court due to render judgment is left with fifteen Members, of whom at most ten are Members of the *Lagting* and five Justices of the Supreme Court.

The President of the Court of Impeachment and the President of the Supreme Court shall in no case retire following the drawing of lots.

If the Court of Impeachment cannot be composed of as many Members of the *Lagting* or of the Supreme Court as prescribed above, the case may nevertheless be tried and judgment rendered, provided that the Court numbers at least ten judges.

Specific provisions as to the procedure to be followed in the composition of the Court of Impeachment shall be laid down by law.

Article 88

The Supreme Court pronounces judgment in the final instance. Nevertheless, limitations on the right to bring a case before the Supreme Court may be prescribed by law.

The Supreme Court shall consist of a President and at least four other Members.

Article 89

Repealed

Article 90

The judgments of the Supreme Court may in no case be appealed.

Article 91

No one may be appointed a member of the Supreme Court before reaching 30 years of age.

E – General provisions

Article 92

To senior official posts in the State may be appointed only Norwegian citizens, men or women, who speak the language of the Country, and who at the same time

a. either were born in the Realm of parents who were then subjects of the State;

b. or were born in foreign country of Norwegian parents who were not at that time subjects of another State;

c. or hereafter have resided for ten years in the Realm;

d. or have been naturalized by the *Storting*.

Others may, however, be appointed as teachers at the university and institutions of higher learning, as medical practitioners and as consuls in places abroad.

Article 93

In order to safeguard international peace and security or to promote the international rule of law and cooperation between nations, the *Storting* may, by a three-fourths majority, consent that an international organisation to which Norway adheres or will adhere shall have the right, within objectively defined fields, to exercise powers which in accordance with this Constitution are normally vested in the Norwegian authorities, although not the power to alter this Constitution. For the *Storting* to grant such consent, at least two thirds of the Members of the *Storting* shall be present, as required for proceedings for amending the Constitution.

The provisions of this Article do not apply in cases of membership in an international organisation, whose decisions only have application for Norway purely under international law.

Article 94

The first, or if this is not possible, the second ordinary *Storting*, shall make provision for the publication of a new general civil and criminal code. However the currently applicable laws of the State shall remain in force, provided they do not conflict with this Constitution or with such provisional ordinances as may be issued in the meantime.

The existing permanent taxes shall likewise remain operative until the next *Storting*.

Article 95

No dispensations, protection from civil arrest, moratoriums or redresses may be granted after the new general code has entered into force.

Article 96

No one may be convicted except according to law, or be punished except after a court judgment. Interrogation by torture must not take place.

Article 97

No law must be given retroactive effect.

Article 98

When special fees are paid to officials of the Courts of Justice, no further payment shall be made to the Treasury in respect of the same matter.

Article 99

No one may be taken in custody except in the cases determined by law and in the manner prescribed by law. For unwarranted arrest, or illegal detention, the officer concerned is accountable to the person imprisoned.

The Government is not entitled to employ military force against citizens of the State, except in accordance with the forms prescribed by law, unless any assembly disturbs the public peace and does not immediately disperse after the Articles of the Statute Book relating

to riots have been read out clearly three times by the civil authority.

Article 100

There shall be liberty of the Press. No person may be punished for any writing, whatever its contents, which he has caused to be printed or published, unless he wilfully and manifestly has either himself shown or incited others to disobedience to the laws, contempt of religion, morality or the constitutional powers, or resistance to their orders, or has made false and defamatory accusations against anyone. Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever.

Article 101

New and permanent privileges implying restrictions on the freedom of trade and industry must not in future be granted to anyone.

Article 102

Search of private homes shall not be made except in criminal cases.

Article 103

Asylum for the protection of debtors shall not be granted to such persons as hereafter become bankrupt.

Article 104

Land and goods may in no case be made subject to forfeiture.

Article 105

If the welfare of the State requires that any person shall surrender his movable or immovable property for the public use, he shall receive full compensation from the Treasury.

Article 106

The purchase money, as well as the revenues of the landed property constituting ecclesiastical benefices, shall be applied solely to the benefit of the clergy and to the promotion of education. The property of charitable institutions shall be applied solely to the benefit of the institutions themselves.

Article 107

Allodial right *(Odel)* and the right of primogeniture *(Åsæte)* shall not be abolished. The specific conditions under which these rights shall continue for the greatest benefit of the State and to the best advantage of the rural population shall be determined by the first or second subsequent *Storting*.

Article 108

No earldoms, baronies, entailed estates or fideicommissa may be created in the future.

Article 109

As a general rule every citizen of the State is equally bound to serve in the defence of the Country for a specific period, irrespective of birth or fortune.

The application of this principle, and the restrictions to which it shall be subject, shall be determined by law.

Article 110

It is the responsibility of the authorities of the State to create conditions enabling every person capable of work to earn a living by his work.

Specific provisions concerning the right of employees to co-determination at their work place shall be laid down by law.

Article 110 a

It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.

Article 110 b

Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.

The State authorities shall issue further provisions for the implementation of these principles.

Article 110 c

It is the responsibility of the authorities of the State to respect and ensure human rights. Specific provisions for the implementation of treaties hereof shall be determined by law.

Article 111

The form and colours of the Norwegian Flag shall be determined by law.

Article 112

If experience shows that any part of this Constitution of the Kingdom of Norway ought to be amended, the proposal to this effect shall be submitted to the first, second or third *Storting* after a new General Election and be publicly announced in print. But it shall be left to the first, second or third *Storting* after the following General Election to decide whether or not the proposed amendment shall be adopted. Such amendment must never, however, contradict the principles embodied in this Constitution, but solely relate to modifications of particular provisions which do not alter the spirit of the Constitution, and such amendment requires that two thirds of the *Storting* agree thereto.

An amendment to the Constitution adopted in the manner aforesaid shall be signed by the President and the Secretary of the *Storting*, and shall be sent to the King for public announcement in print, as an applicable provision of the Constitution of the Kingdom of Norway.

Court of Justice Act

Act No. 5 of 13 August 1915
- extracts -

Chapter 1
The Courts

§ 3

The Supreme Court sits in the capital of the Kingdom unless special circumstances prevent it. The Court comprises a president and as many additional judges as may be determined at any time.

§ 4

If the number of cases requires it, the Supreme Court may be divided into several divisions on the decision of the King. If the President sits in a division he shall also be president of that division, otherwise the senior judge in the division shall be president.

§ 5

In each case the Supreme Court sits with five judges. In complicated cases, however, the President of the Court may decide that one or two additional judges shall attend the proceedings to assist the Court in case of absence.

If the President of the Court is not present at the proceedings, the senior judge present shall act as president.

§ 6

When the Supreme Court has to pass decisions which do not concern specific cases, five members shall make the decision, unless otherwise determined by law.

In the decisions mentioned in Section 7, second sentence and Section 8, second paragraph, all judges should be present, but decisions can be made although some of the judges are unable to attend.

§ 7

The President of the Supreme Court is responsible for running the Court; he sets the timetable for sessions and the handling of cases and distributes the cases between the members of the Court and where necessary between the divisions. The Court can lay down general rules on these matters in internal rules of procedure.

If the President is unable to attend, the senior judge shall take his place unless somebody else is appointed.

§ 8

The Interlocutory Appeals Committee of the Supreme Court *(Høyesteretts kjæremålsutvalg)* consists of three Supreme Court judges nominated by the President by turns according to the provisions set out in the Court's rules of procedure.

When the Supreme Court finds it necessary, it can appoint several Interlocutory Appeals Committees. If so, the Court shall establish general regulations for the distribution of cases between the Committees.

The President of the Supreme Court is the Chairman of the Interlocutory Appeals Committee when he is a member of the Committee, otherwise the senior Supreme Court judge present is Chairman of the Committee.

§ 9

The Supreme Court shall have a leading court registrar to administer the Office of the Supreme Court, and as many additional court registrars as required by the number of cases.

Civil Procedure Act

Act No. 6 of 13 August 1915
- extracts -

Part four
Appeals, Interlocutory Appeals and Retrials

Chapter 25
Appeals to the High Court *(lagmannsretten)* and the Supreme Court

§ 355

The court decisions which can be made subject of an independent appeal are judgments and such orders, for which it is specifically provided that they may be the subject of appeal.

In connection with an appeal against a judgment or order a party may also appeal against preceding orders relating to the handling of the case.

Orders relating to the handling of the case may not be appealed or used as a ground of appeal if they are unchallengeable by their nature, or pursuant to special statutory provisions, unchallengeable.

§ 356

Appeal to the High Court cannot be made without the consent of the presiding judge of the High Court, if the appeal relates to an asset of less value than NOK 20 000.

§ 357

Appeal to the Supreme Court cannot be made without the consent of the Interlocutory Appeals Committee of the Supreme Court if the appeal relates to an asset of less value than NOK 100 000.

§ 358

The decisive moment for determining the value of the subject-matter of the appeal will be the time the appeal is received by the court.

The calculation shall not include claims and demands that did not form part of the decisions of the lower court nor any awards made to the appellant. If the appeal concerns an application to amend the judgment, neither claims nor parts of claims shall be included that have been decided in favour of the other party and which are not disputed in the appeal.

The value of the usufruct or an easement in respect of immovable property shall be calculated according to the value it has for the possessor if he is the one appealing and according to the loss of value of the property if the owner is appealing.

Moreover, the provisions of Sections 9, 10, 11, 13, 14, 15 and 16 apply correspondingly, however so that the appellant shall make the evaluations mentioned in Section 14.

§ 359

As a rule, consent to appeal without regard to the value of the subject-matter of the appeal may only be given when the decision has a significance beyond the current case or when the case according to the appellant's situation or for other reasons is especially important for him. Consent shall be refused if there are defects in the appeal that must lead to its summary dismissal or if it is to be assumed that it will not succeed for other reasons.

An application for consent shall be made at the same time as the notice of appeal and be forwarded together with the documents relating to the case to the presiding judge of the High Court or the Interlocutory Appeals Committee of the Supreme Court. Before consent is given, the other party shall have the opportunity to express his views. Once the application has been decided, the documents relating to the case

shall be returned to the court whose decision has been challenged.

Decisions pursuant to this section may not be challenged by an interlocutory appeal or an appeal.

§ 360

The time-limit for an appeal is two months unless otherwise provided by law.

If an appeal is summarily dismissed for a error that can be amended, the court shall grant a short time-limit for a new notice of appeal, unless it is to be assumed that the error was intentional or the time-limit for amending the error was set in advance according to Section 97. An additional time-limit may not be granted by the court more than once, unless this is justified by special circumstances. A decision granting a new time-limit may not be challenged by an interlocutory appeal or an appeal.
The court shall, of its own motion, ensure that notice of appeal has been lodged in time.

§ 361

The right to appeal may justifiably be waived. This may also be done in advance if both parties waive this right. If so, an appeal may nevertheless be lodged for one of the reasons specified in Section 384.

The waiver of the right of appeal must be clearly expressed.

§ 362

If one party appeals in order to have the substance of the decision changed, the other party may also lodge an appeal against that decision, even if he has waived his right of appeal or allowed the time-limit for an appeal to expire or if he lacks an independent right of appeal owing to the value of the subject-matter of the appeal. Such a cross-appeal must be lodged within the time-limit granted by the president of the court in accordance with Section 370. It is unnecessary to lodge a cross-appeal when the other party is only demanding an amendment to the decision in respect of costs.

If the main appeal is dismissed, the cross-appeal lapses, unless it fulfils the conditions for an independent appeal.

§ 363

If the appeal has been lodged because a person who is not a party has wrongly been exempted from making statement or assurance or from presenting or allowing access to written evidence or other documents, that person shall to this extent be considered a party to the appeal.

§ 364

Notice of appeal shall be given either in writing or orally to the court whose decision has been challenged.

Notice of appeal given in writing must be signed or countersigned by a lawyer.

§ 365

The notice of appeal shall state:

1. the name of the court of appeal, the parties to the appeal and their legal representatives, if any;

2. the judgment or court order which is appealed;

3. whether the appeal relates to the whole subject-matter of the dispute or only a part thereof;

4. the errors relating to the procedure or the decision on which the appeal is based, as well as the claim which will be asserted;

5. the circumstances decisive of the right of appeal.

The notice of appeal should further state:

6. the position, residence and processual status of the parties and their legal representatives, and the name of the appellant's counsel, if any;

7. the precise circumstances that will be adduced in support of the appeal and the evidence which will be presented. If any of these circumstances or the evidence have not been urged previously, this should be especially mentioned, likewise what the new evidence is to establish and how it is proposed to be produced;

8. whether the appellant requests that the court shall include lay judges, and his views concerning the time and place of the appeal hearing, and concerning the notice;

9. the documents accompanying the notice of appeal and whether they are in original or in copy.

The notice of appeal may not contain any exposition of law or evidence to a greater extent than is necessary to explain the connection.

§ 366

A demand concerning an already adjudicated claim may only be extended if the extension is plausibly based on circumstances that arose or did not become known to the party until after the main hearing, or if the other party consents thereof.

Claims not decided on in the judgment may only be submitted if they have their origin in the subject-matter of the appeal or in the other party's connections after the main hearing to the object or the right to which the case relates. Unless there are any procedural provisions to the contrary, the subject-matter may nevertheless be changed when the notice of appeal includes:

1. a claim for a declaratory judgment in accordance with Section 54, if it involves a circumstance disputed in the case and this may constitute a decisive factor for the result of the appeal;

2. a claim linked to one already made when it is plausibly established that a change is justified by circumstances which arose or did not become known to the party until after the main hearing, or if the other party consents thereof;

3. a claim only submitted for the purpose of a set-off, if it is plausibly established that it either arose or did not become known to the party until after the main hearing, or if the other party consents thereof.

§ 367

Once the notice of appeal has been served to the other party no new demands or claims specified in Section 366 may be made, unless the other party consents thereof or the court considers that he does not have sufficient reason to oppose the alteration. However, claims may be made at any time after the appeal has been lodged if they are based on the subject-matter of the appeal or on the other party's connections after the notice of appeal to the object or the right to which the case relates.

An alteration may also take place if the object initially claimed is replaced by a claim for its equivalent value or another performance, if it is plausibly established that the alteration is justified by circumstances that arose or did not become known to the party until after the appeal was lodged. The same applies to the extension of the demand in respect of a claim already made.

§ 368

The Supreme Court may at any time refuse to deal with new claims or demands if the case would become more extensive or if the evidence could not be admitted in an appropriate manner before the Court.

§ 369

If the court receiving the appeal considers that it was lodged out of time or that the court of appeal, of its own motion, must refuse to allow the appeal to proceed for other reasons, it shall draw attention to this. However, if the appeal is not withdrawn, the court shall nevertheless deal with the case in the usual way.

§ 370

The court shall confirm to the appellant that the appeal has been duly lodged. The appeal shall be served on the other party without delay. If consent to appeal or to bring the case directly before the Supreme Court has been given, this shall be served at the same time.

The court shall inform the other party what to do according to Section 371, and grant a time-limit for a reply. The time-limit should, as a rule, not exceed three weeks.

§ 371

Before the time-limit for a reply has expired, the respondent should, in a preparatory submission, mention the evidence he intends to adduce, what he wishes to achieve by adducing it and how he intends to do this. If he wants to contest the appeal by citing any fact that has not previously been cited or that has been rejected or was not decided in the judgment appealed against, he should mention this in his reply.

If he has any objections to the appeal being allowed to proceed he must submit them within the time-limit for his reply.

Within the same time-limit, he should consider whether he has any comment to make on the time and place for the appeal hearing, on the advance notice and appointment of lay judges.

§ 372

After the time-limit for the reply has expired, the documents relating to the case shall be forwarded to the court of appeal. In the case of an appeal to the Supreme Court they shall be sent to the Interlocutory Appeals Committee of the Supreme Court.

If any of the documents is still needed by the lower court, copies shall be used instead.

If the reply is received, the appellant shall be duly informed.

§ 373

The appeal may be decided without a hearing

1. when it has such errors that it must be summarily dismissed;

2. when the court unanimously considers that the decision appealed against must be set aside according to a reason the court, of its own motion, shall give effect.

In case of an appeal to the Supreme Court, such decisions shall be make by the Interlocutory Appeals Committee of the Supreme Court.

The Interlocutory Appeals Committee of the Supreme Court may, after allowing the appellant to express his view, deny to proceed the appeal as a whole or for a limited part of it, when the Committee unanimously:

1. finds it clear that the appeal will not achieve its object;

2. or finds that the appeal cannot be upheld unless the Supreme Court departs from the decision appealed against on points with regard to which it must be considered of decisive importance that the lower court has had the opportunity directly to hear the evidence given by parties or witnesses, or to carry out a direct examination of evidence, which cannot be undertaken by the Supreme Court;

3. or finds that the appellant has not convincingly demonstrated that it is through no fault of his own that new evidence as mentioned in item 2 now invoked for the first time, has not been submitted directly to the court which has previously adjudged the case;

4. or finds that neither the decision's importance outside the case in question, nor any other grounds, make it reasonable for the appeal to be decided by the Supreme Court.

§ 374

If the appeal is not decided in accordance with Section 373, the appeal hearing shall be prepared under the direction of the president of the court or another judge in accordance with the provisions of Sections 320 and 321. Judicial recording of evidence may be taken in advance of the appeal hearing in accordance with the same rules as govern the judicial recording of evidence in advance of main hearings in the first instance. In the case of an appeal to the High Court, a hearing may be held to prepare the main hearing. If so, Sections 375, 376, first paragraph, and 381 and Sections 304, 305, first paragraph, 307, 308, first paragraph, and 309-312 shall apply accordingly.

In cases brought before the Supreme Court, the parties and witnesses shall be heard and examinations conducted in accordance with the provisions governing the hearing of the parties and the judicial recording of evidence outside the main hearings. The parties themselves shall file an application with the District Court or City Court requesting a judicial recording of the evidence they wish to adduce. They shall send a copy of the appeal and the decision appealed against and state the nature of the evidence to be recorded. The president of the court shall grant a time-limit for obtaining the evidence.

Experts may also be directly examined by the Supreme Court. Inquiry may be conducted by the Supreme Court if it does not require inspection of the place in question.

In cases brought before the Supreme Court, decisions specified in Section 166 may be made by the judge preparing the appeal hearing or, upon his recommendation, by the Interlocutory Appeals Committee of the Supreme Court.

§ 375

When the president of the court or the judge in charge of preparing the appeal hearing considers the case ready, he shall inform the parties that a date will be granted for the appeal hearing or, in the case of written proceedings, that a time-limit will be set for the submission of the first pleadings, if the parties within a specific time-limit have no further statements to make.

After this time-limit has expired no new grounds of appeal may be presented unless the other party consents thereof or the court considers that he does not have sufficient reason to oppose the alteration. The same applies to new facts and evidence, whether it be the appellant or the opposite party that offers them.

After the time-limit has expired, the parties may furthermore not request that the court sits with lay judges.

§ 376

The president of the court shall fix the time and place for the appeal hearing and have the summons served on the parties with reasonable advance notice. In the summons he shall order the parties to bring with them any written evidence and other items of evidence. It shall be expressly mentioned that the judgment or order may be delivered in accordance with the provisions in Section 381 if any of the parties fails to appear.

In the case of a summons to appear before the Supreme Court, the president of the court shall fix the earliest date possible for the appeal hearing.

If a party has requested, in accordance with Section 157 (cf. Section 164), that the grounds for the decision appealed against be amended in respect of a point that has also been challenged in the appeal, the hearing shall be suspended until the request has been decided.

§ 377

At the appeal hearing the rules applying to the main hearing in the court of first instance shall apply accordingly, unless otherwise provided.

§ 378

The appellant is entitled to speak first. If both parties have appealed, the president of the court will decide who shall speak first.

When a party has stated his claims, grounds of appeal or objections, and the court considers that they cannot achieve their object, it may exclude further proceedings in respect of these statements.

§ 379

When the appeal relates both to the procedure and the substance of the decision, the appeal concerning the procedure shall, as a rule, be dealt with first and a separate decision given.

If the appeal concerning the procedure is allowed, the hearing on the substance of the decision will no longer apply, unless Section 388 is applicable.

§ 380

If the appeal only relates to the procedure or the application of the law, the court may decide that the case shall be dealt with in writing.

The written proceedings shall be conducted by the judge appointed by the president of the court. No more than two sets of pleadings may be allowed each party.

After the exchange of pleadings has been completed, the president of the court shall forward the case to the judges who are to pronounce the judgment. The court may then order a final oral hearing.

The judgment should be pronounced at the sitting where the deliberations and the vote take place, unless anything prevents this. In any case, it must be pronounced within a week thereafter.

The High Court shall not sit with lay judges when it deals with an appeal pursuant to the provisions in this section.

§ 381

When a default judgment is pronounced because the appellant has failed to appear, the decision appealed against shall be upheld.

When a default judgment is pronounced because the other party has failed to appear, the decision shall be based on the appellant's presentation of the facts in the case as far as these facts have been communicated to the absent party and do not contradict notorious facts. Moreover, the decision shall be based on the presentation in the decision appealed against.

If the court decides the appeal by issuing a default order, the provisions governing default judgments shall apply accordingly.

The provisions in Section 344, last paragraph and in Sections 345 to 354 concerning a retrial shall apply correspondingly, whether the appeal is decided by a judgment or an order.

§ 382

The appellant may withdraw the appeal prior to the commencement of the hearing of the appeal and, with the consent of the opposite party, at any time prior to its conclusion. However, he is then prevented from lodging a new appeal.

The withdrawal may be declared through a pleading or orally to the judge. The judge shall arrange for the withdrawal to be served on the other party.

§ 383

The court of appeal shall examine the decision appealed against as far as it has been legally appealed.

If it turns out that the part of the decision appealed against contains one of the errors specified in Section 384, items 1 to 6 or errors which cannot be rectified with the consent of the parties, the court shall, of its own motion, consider that the error influenced the decision. This shall also apply to other parts of the case which the error is considered to have affected.

§ 384

A procedural error will only be taken into consideration if it is deemed to have affected the substance of the judgment.

The following errors shall unconditionally be deemed to have had such an effect:

1. when the court was not lawfully constituted; nevertheless an effect shall not unconditionally be attributed to the fact that the case has been erroneously adjudicated with lay judges, that there were not an equal number of lay judges of each sex, that the case has been adjudicated with lay judges from the general panels instead of the special panel, or with lay judges who were appointed instead of being drawn by lot, and the error has not been made a ground of appeal;

2. when judgment was pronounced by a court that had no jurisdiction in the case, not even with the consent of the other party;

3. when the case does not fall under the courts;

4. when a legally enforceable decision has already been made in the case;

5. when the decision is self-contradictory or contains ambiguities or errors that prevent the examination of the appeal and this cannot be rectified in the manner specified in Section 156;

6. when a person treated as a party in the decision was either not legally summoned or had a lawful absence. However, this does not apply when the person has accepted the decision or failed to invoke the error to the court of appeal although he was legally represented in or summoned to the court.

The errors mentioned in items 1 to 6 shall be considered to have had an effect on the decision even if the appeal for the rest cannot be heard because the other party was not legally summoned.

§ 385

If the decision appealed against contains errors that are deemed to have had effects as mentioned in Section 384, it shall be set aside by order either as a whole or in part. The same applies to the procedure as far as it is affected by the grounds for setting aside the decision as well.

An appeal may be lodged against the order.

§ 386

If the decision appealed against is set aside because the case has been incorrectly examined by the lower court, it shall be summarily dismissed from the lower court as well.

When the decision appealed against is set aside either in full or in part owing to an error in the procedure, the case shall be remitted to the lower court for rehearing or adjudication if one of the parties requests this to be done or the court of appeal orders it.

The court of appeal may also decide that the main hearing shall be repeated either in full or in part, although it is not affected by the grounds for setting aside the decision. This decision may not be challenged by an interlocutory appeal or an appeal.

§ 387

Instead of remitting the case to the same court, the court of appeal may, of its own motion, remit it to another court if the members of the first court are prejudiced.

The court may do likewise at the request of a party when, for particular reasons, it must be considered inappropriate to remit the case to the first court.

If the lower court has several divisions, the court of appeal may decide that the case shall be dealt with by another division than the one that made the decision.

The court's decision pursuant to the second and third paragraphs may not be challenged by an interlocutory appeal or an appeal.

§ 388

Instead of summarily dismissing the case from the lower court or remitting it to the lower court, the High Court may hear the case itself if this does not go against the interests of the other party and the case falls under the superior court.

§ 389

The requests specified in Sections 386 to 388 may be made at any time prior to the end of the hearing preceding the order setting aside the decision.

§ 390

If the appeal only relates to the procedure but no grounds of invalidity exist, it shall be dismissed by order.

If the appeal relates both to the procedure and the substance of the decision and it has been separately decided that no grounds of invalidity exist, the appeal concerning the procedure shall be dismissed by order.

An appeal may be lodged against a dismissal of an appeal by order concerning the procedure.

§ 391

When examining the issue of the procedure, the Supreme Court will not be not bound by decisions passed in response to interlocutory appeals.

§ 392

When an appeal is lodged against the substance of the decision challenged and it is not set aside on the grounds of invalidity, the appeal shall be decided by a judgment.

When, in order for the Supreme Court to pass a judgment, it is necessary to rule on controversial issues on which the lower court has not ruled, the Supreme Court may, instead of pronouncing a new judgment, set aside the decision challenged and remit the case to the lower court for continued hearing, if this is found to be necessary with respect to the production of evidence. The same applies when the Supreme Court otherwise considers it necessary to remit a particular case with respect to the production of evidence.

The Interlocutory Appeals Committee of the Supreme Court may decide that the appeal hearing shall be provisionally limited to a consideration of one or more controversial issues if it considers it likely that other controversial issues should, with regard to the production of evidence, be dealt with by remitting the matter to the court that adjudicated the case.

§ 393

When the case has been decided by the court of appeal, the documents relating to the case shall be returned to the court of first instance together with a copy of the decision. The court of appeal shall ensure that the decision is served or otherwise communicated to the parties in accordance with Section 154 or Section 164.

§ 394

If the case has been remitted to the lower court, the latter shall, of its own motion, examine it unless the appeal has been waived. If an appeal is lodged against an order issued by the court of appeal which sets aside the decision, the case must be suspended until the appeal is decided.

At the rehearing the court shall follow the interpretation of the law on which the decision of the court of appeal is based. In situations as mentioned in Section 392, second paragraph, the case shall be limited in accordance with Section 383, first paragraph, and Sections 366 and 367.

§ 395

If the decision appealed against has been set aside because of errors in the procedure, this will not prevent the evidence and statements available to be used at the rehearing unless they suffer from errors themselves which deprive them of their probative force or legality.

Criminal Procedure Act

Act No. 25 of 22 May 1981
- extracts -

Part VI
Judicial remedies

Chapter 23
Appeal

§ 306

Appeals against judgments of the District Court *(herredsretten)* or the City Court *(byretten)* or the High Court *(lagmannsretten)* may be brought by the parties to court of appeal indicated in Sections 6 to 8.

Error in the assessment of evidence in relation to the question of guilt cannot be a ground of appeal to the Supreme Court.

As regards a judgment of the High Court in a case that is tried with a jury, no appeal, to the detriment of the person charged, may be brought against the application of law with regard to the question of guilt unless the ground of appeal is that the recorded explanation by the president of the court of the legal principles applicable was wrong.

§ 307

Any person who has been acquitted may not appeal unless the court has found it proved that he committed the unlawful act referred to in the indictment.

Any person acquitted by a judgment of the High Court in a case that is tried with a jury may not appeal unless the question of guilt has been decided against him.

§ 308

If the person charged is dead, his spouse, relatives in a direct line of ascent or descent, siblings and heirs may appeal in his stead.

§ 309

The prosecuting authority may appeal in favour of the person charged. This applies even if the judgment is legally enforceable and even if the person charged is dead.

§ 310

The time-limit for an appeal is two weeks from the date on which judgment is delivered.

If the person charged is not present when judgment is delivered, the time-limit for him runs from the service of the judgment.

If the official in the prosecuting authority who is entitled to appeal is not present when judgment is delivered, the time-limit for the said authority runs from the date when the judgment is received in its office.

§ 311

If one party appeals, the other party may lodge a cross-appeal within one week. For the person charged the time-limit runs from service of notice of the prosecuting authority's appeal. For the said authority the time-limit runs from the date when notice of appeal by the person charged reaches the official who is entitled to appeal.

If the main appeal is withdrawn, summarily dismissed, or not allowed to proceed, the cross-appeal lapses unless it fulfils the conditions for an independent appeal.

§ 312

An appeal by the person charged shall be submitted in writing or orally to the court that has pronounced the judgment or to the prosecuting authority. If the person charged is in custody, the appeal may also be submitted to the prison authority concerned.

An oral notice of appeal which is not submitted when judgment is delivered shall be reduced to writing on the spot, dated and signed by the appellant and the recipient.

If the court or the prison authority receives the notice of appeal, it shall be forwarded to the prosecuting authority without delay.

An appeal by the prosecuting authority must be delivered for service on the person charged before the time-limit for an appeal expires.

§ 313

If the person charged has an official defence counsel, the latter shall on request advise on the question of an appeal.

Defence counsel shall also assist the person charged with the notice of appeal. Corresponding assistance may be required by any authority specified in Section 312.

§ 314

The notice of appeal shall state:

1. the judgment that is being appealed against, whether the appeal relates to the whole judgment or only some counts, and whether it includes any decision relating to confiscation or a declaration that a statement is null and void;

2. whether the appeal relates to procedure, the assessment of evidence in relation to the question of guilt, the application of law with regard to the question of guilt, or the decision concerning a penalty or sanction specified in Section 2, first paragraph, item 1;

3. when the appeal relates to procedure, what error is alleged.

There should also be stated:

1. in an appeal against the application of law, the error on which the appeal is based;

2. new evidence that must be invoked;

3. the alteration demanded.

§ 315

Procedural decisions cannot be used as a ground of appeal when they are by their nature or pursuant to special statutory provisions unchallengeable.

In defamation cases it cannot be a ground of appeal that a decision made during the preparatory proceedings concerning the production of evidence was wrong.

In trying procedural issues the court of appeal is not bound by decisions made pursuant to an interlocutory appeal. However, the High Court is bound by the interpretation of the law on which a decision of the Interlocutory Appeals Committee of the Supreme Court is based.

§ 316

The prosecuting authority shall without delay send the notice of appeal and the other documents relating to the case to the court of appeal.

§ 317

The court of appeal will try the issue whether the appeal has been lodged in time and otherwise fulfils the legal requirements.

§ 318

An appeal that is submitted after the time-limit for an appeal has expired shall be summarily dismissed unless the court finds that the appellant should not be held liable for exceeding the time-limit. In any case an appeal must be submitted within two weeks after the conclusion of the matter that has caused the delay.

The court may omit to decide the question of summary dismissal if it finds that the appeal shall not be allowed to proceed pursuant to Section 321, second or third paragraph, or that consent shall be denied pursuant to Section 321, first paragraph, or Section 323.

§ 319

An appeal shall also be summarily dismissed if it does not fulfil the requirements of Section 314, first paragraph, or it is subject to some other error that prevents it from being heard. The provision in Section 318, second paragraph, shall apply correspondingly.

An attempt should be made to remedy unintentional errors. If necessary, the appellant may be granted a short period in which to amend his notice of appeal.

§ 320

In the case of appeals to the Supreme Court, the Interlocutory Appeals Committee of the Supreme Court will make decisions pursuant to Sections 317 to 319.

§ 321

An appeal to the High Court concerning matters in regards to which the prosecuting authority has not demanded and there has not been imposed any sanction other than a fine or confiscation may not be allowed to proceed without the consent of the court. Such consent shall only be given when there are special reasons for doing so. Consent is not, however, necessary when the person charged is a business enterprise (cf. Chapter 3a of the Penal Code).

An appeal to the High Court may otherwise not be allowed to proceed if the court finds obvious that the appeal will not succeed. An appeal by the prosecuting authority that is not in favour of the person charged may also not been allowed to proceed if the court finds that the appeal concerns questions of minor importance, or that there is otherwise no reason for the appeal to be heard.

An appeal concerning a felony punishable by law with imprisonment for a term exceeding six years may not be allowed to proceed only in cases referred to in the second sentence of the second paragraph. An increase of the maximum penalty because of repeated offences, a concurrence of felonies, or the application of Section 232 of the Penal Code shall not be taken into account.

A decision to refuse consent or to refuse to allow an appeal to proceed requires unanimity. A refusal may be reversed in favour of the person charged if there are special reasons for doing so.

Decisions pursuant to this section shall be made by a court decision and may be limited to part of the case.

An interlocutory appeal concerning any refusal pursuant to this section or any rejection of an application for the reversal of such a refusal may be brought on the basis of procedural error. Otherwise decisions pursuant to this section may not be challenged by an interlocutory appeal or used as a ground of appeal.

§ 322

An appeal against a judgment of the District Court or the City Court may be decided without an appeal hearing when the High Court unanimously finds it clear:

1. that the judgment should be set aside;

2. that the person charged must be acquitted because the matter prosecuted is not criminal or criminal liability has lapsed; or

3. that the judgment should, in accordance with the appeal, be altered in favour of the person charged if the evidence in relation to the question of guilt is not in issue.

The High Court may also set aside the judgment when the court unanimously finds that the judgment would

be altered to the detriment of the person charged, because the statutory provisions relating to the determination of a penalty or other sanction have been wrongly applied or because information of essential significance for such determination was lacking.

If an appeal is brought concerning the assessment of evidence in relation to the question of guilt and the prosecution is dropped, the court will pronounce a judgment of acquittal without an appeal hearing.

§ 323

An appeal to the Supreme Court may not proceed without the consent of the Interlocutory Appeals Committee of the Supreme Court. Such consent shall only be given when the appeal is concerned with issues whose significance extends beyond the current case, or it is for other reasons especially important to have the case tried in the Supreme Court.

The matter shall be decided by a court decision. Consent may be limited to part of the case. A decision to refuse consent shall be unanimous. It may be reversed in favour of the person charged if there are special reasons for doing so.

§ 324

Decisions pursuant to Sections 318 to 323 shall be made without party proceedings. The court may, however, allow the parties to express their views in writing.

If one of the parties has in a statement relating to the appeal pleaded new facts that are not obviously without significance, the court shall inform the opposite party of any such statement.

§ 325

If an appeal is not decided according to the aforesaid provisions, it shall be referred to an appeal hearing. The decision to refer may not be challenged by an interlocutory appeal or serve as a ground of appeal.

§ 326

If an appeal concerning the same matters is brought by the same or different parties over both the assessment of evidence in relation to the question of guilt and other aspects of the judgment, the court will first try the issue of referring the appeal relating to the evidence. The court may, however, omit to decide the issue of referring an appeal if pursuant to the provisions of Section 322 there are grounds for setting aside the judgment or an acquittal without an appeal hearing.

If the appeal relating to the evidence is referred to a appeal hearing, but withdrawn or summarily dismissed, the case shall nevertheless proceed to an appeal hearing if other grounds for an appeal still subsist.

§ 327

An appeal hearing shall be prepared and carried out according to the rules applicable to the hearing at first instance in so far as such rules are appropriate and it is not otherwise provided below. The provisions in Section 275, first paragraph, second and third sentences, shall not apply.

§ 328

When an appeal is referred, a defence counsel shall be appointed immediately.

The person charged shall at the same time be informed of the appointment. In the case of an appeal to the Supreme Court he shall also be informed that the case will be heard in the Supreme Court as soon as possible, and that he will not be summoned to attend the hearing, but will be notified thereof.

§ 329

If the issue of the evidence in relation to the question of guilt is to be tried, the court shall send the documents relating to the case to the prosecuting authority with an order to forward the documents to defence counsel within a fixed time-limit. The court shall determine a time-limit for the parties to submit a summary of evidence.

If there is no appeal relating to the evidence, the court shall send the documents to the person who, pursuant to the provisions of Section 339, shall be entitled to speak first at the hearing, with an order to forward such documents to the opposite party within a fixed

time-limit. The court shall if necessary determine a time-limit for submitting a summary of evidence.

As regards the preparation of extracts, Act No. 2 of 14 August 1918 relating to extracts in civil disputes and criminal cases applies.

§ 330

If the appeal is not related to the assessment of evidence in relation to the question of guilt, the court will decide what evidence it must be deemed necessary to produce. The question of the amount of evidence to be produced may be dealt with in the High Court before the appeal hearing pursuant to the provisions of Section 272 (cf. Section 274).

§ 331

If the appeal hearing in the High Court is to include the assessment of evidence in relation to the question of guilt, a completely new trial of the case shall be held in so far as it has been referred.

The indictment may be extended if the person charged consents thereto or makes a unreserved confession which is corroborated by the other evidence. The indictment may be altered within the limits of the same criminal matters. A new or altered indictment shall be served on the person charged.

If only a part of the assessment of evidence in the judgment is contested, the production of evidence may be limited to that part.

What has been recorded in the court record of the evidence given by witnesses or experts before the District Court or the City Court may, besides in the cases specified in Sections 296 and 297, be read aloud if none of the parties requests a fresh examination.

§ 332

For an appeal hearing that includes the assessment of evidence in relation to the question of guilt or the assessment of sentence for a felony punishable by law with imprisonment for a term exceeding six years, the High Court shall be constituted with four lay judges. Section 321, third paragraph, second sentence, shall apply correspondingly. In complex cases, the president of the court may decide that one or more deputy members for the lay judges shall follow the proceedings and join the court if any of the lay judges is unable to attend. In cases in which it is necessary, the president of the court may decide that two of the lay judges shall be experts. They shall be appointed pursuant to Section 87 or 88 of the Court of Justice Act.

The present section does not apply to cases that are to be tried with a jury pursuant to Chapter 24.

§ 333

If an appeal to the High Court is not related to the assessment of evidence in relation to the question of guilt or the assessment of sentence for a felony punishable by law with imprisonment for a term exceeding six years, the court may with the consent of the parties decide that the case shall be dealt with in writing. Section 321, third paragraph, second sentence, shall apply correspondingly.

The written proceedings shall be conducted by the judge appointed by the presiding judge of the High Court.

Each party shall be allowed to sets of pleadings.

The court may reverse the decision that the case shall be dealt with in writing.

A decision to have written proceedings may not be challenged by interlocutory appeal or used as a ground of appeal.

§ 334

If the High Court shall only try issues of procedure or application of law, the person charged shall not be summoned to attend the appeal hearing unless the court finds that there are special reasons for doing so. If the court is only to try the issue of a penalty or other sanction, a summons may be omitted if the presence of the person charged is considered superfluous.

The person charged shall not be summoned to attend an appeal hearing in the Supreme Court.

In all cases the person charged shall as far as possible be notified of the appeal hearing.

§ 335

If on an appeal from the person charged the High Court shall try the issue of the evidence in relation to the question of guilt, it shall be stated in the writ of summons that his appeal against the assessment of evidence will be summarily dismissed if he does not appear. Otherwise the person charged shall be summoned in accordance with the provisions of Section 87.

§ 336

If the person charged is summoned in accordance with Section 335, first sentence, and does not appear without it being shown to be clear or probable that he has a lawful excuse, his appeal against the assessment of evidence shall be summarily dismissed. The same applies if it has not been possible to serve such a summons on him because he has absconded. The summary dismissal is no bar to a trial of appeal which the court may undertake regardless of any ground of appeal.

If on an appeal by the prosecuting authority the High Court shall try the issue of evidence in relation to the question of guilt, the case may proceed in the absence of the person charged if the conditions pursuant to Section 281 are fulfilled and imprisonment for a term exceeding one year has not been imposed in the judgment appealed against.

If the court shall not try the issue of evidence in relation to the question of guilt, the case may always proceed in the absence of the person charged unless he is summoned or shall be summoned to attend the appeal hearing and it is shown to be clear or probable that he has a lawful excuse.

§ 337

An order of summary dismissal pursuant to Section 336, first paragraph, first sentence, may be reversed if the person charged shows it to be probable that he had a lawful excuse for his absence and that he cannot be blamed for having omitted to give notice in time. An order pursuant to Section 336, first paragraph, second sentence, may be reversed if the person charged shows it to be probable that he had not absconded.

An application for reversal must be submitted before the expiry of the time-limit for an interlocutory appeal. The provisions of Section 318, first paragraph, shall apply correspondingly.

§ 338

When one party in a case before the Supreme Court finds it necessary to have evidence taken judicially or to have a judicial inquiry carried out, the said party may apply for a judicial recording of evidence.

An application for evidence to be judicially recorded shall be submitted to the Interlocutory Appeals Committee of the Supreme Court, which will decide whether the application shall be granted.

The provisions of Section 271 shall apply correspondingly.

§ 339

At an appeal hearing that is not concerned with the assessment of evidence in relation to the question of guilt, the appellant shall be entitled to speak first. If both parties have appealed, the president of the court will decide who shall speak first.

If the person charged is present during an appeal hearing in the High Court, he is in all cases entitled to speak before the hearing is concluded. In the Supreme Court the court may allow the person charged to speak.

§ 340

In the Supreme Court evidence shall be submitted by reading aloud from the documents relating to the case. Experts may, however, be directly examined before the Supreme Court. An inquiry may be conducted by the Supreme Court if it does not require an inspection of the scene of the crime.

§ 341

The appellant may withdraw the appeal at any time prior to the commencement of the hearing of the appeal and, with the consent of the opposite party, at any time prior to its conclusion.

§ 342

If the court of appeal shall try the issue of the assessment of evidence in relation to the question of guilt, it is bound by the grounds of appeal that are stated in the appeal (cf. Section 314, first paragraph).

Regardless the ground of appeal, the court may nevertheless:

1. try the issue whether the criminal legislation has been correctly applied;

2. for the benefit of the person charged, review the decision concerning a penalty or sanction specified in Section 2, first paragraph, item 1;

3. set aside the judgment on the ground of a procedural error which may be deemed to have affected the substance thereof, to the detriment of the person charged;

4. according to the circumstances set aside the judgment on the ground of any error specified in Section 343, second paragraph.

For the benefit of the person charged, the court may find that an error has also affected parts of the case not covered by the appeal if the said error is significant for such parts too. The same applies if the error is significant for other persons charged who have been convicted in the same case, but who are not covered by the appeal.

§ 343

A procedural error will only be taken into consideration if it is deemed to have affected the substance of the judgment.

The following errors shall unconditionally be deemed to have had such an effect:

1. when a necessary application for a prosecution is lacking;

2. when the case was not brought by the proper authority;

3. when the court was not lawfully constituted; nevertheless an effect shall not unconditionally be attributed to the fact that a case has been erroneously adjudicated with lay judges, that there were not an equal number of lay judges of each sex, that a case has been adjudicated with lay judges from the general panels instead of the special panel, or with lay judges who were appointed instead of being drawn by lot;

4. when judgment was pronounced by a court that had no jurisdiction in the case;

5. when a legally enforceable decision has already been made in the case;

6. when the case was proceeded with in the absence of the person charged contrary to the law;

7. when the person charged had no defence counsel even though this was legally necessary;

8. when the grounds for judgment have defects that hinder the hearing of the appeal.

The errors specified in items 1, 2, 6 and 7, however, only have an unconditional effect in so far as the judgment constitutes a conviction.

§ 344

If the application of the law is upheld, the court shall not alter the penalty imposed, unless it finds that the penalty is obviously disproportionate to the criminal act committed.

§ 345

If the hearing is concerned with the assessment of evidence in relation to the question of guilt, the appeal shall be decided by a judgment pursuant to the provisions of Section 40.

If the court in other cases finds no reason to alter or set aside the judgment appealed against, the appeal shall be dismissed by order. In the opposite case the court shall pronounce a new judgment if the necessary preconditions are fulfilled; otherwise the judgment appealed against shall be set aside by order.

§ 346

An order made by the High Court pursuant to Section 345 is subject to appeal. The provisions concerning appeals against judgments shall apply correspondingly.

§ 347

When a judgment is set aside, the main hearing shall also be set aside unless the court finds that the setting aside should only apply to the judgment.

If the ground for setting the judgment aside applies only to part of it, the court will decide whether the setting aside shall be limited to this part or include the whole judgment.

§ 348

If the person charged has been convicted of two or more offences by the judgment appealed against, and the issue of the assessment of evidence in relation to the question of guilt shall be tried only for some of them, the court shall in the event of a convicting judgment determine a joint penalty for all the offences. If the person charged is acquitted, the court shall determine a new penalty for the offences to which the conviction continues to apply.

If the person charged is convicted of two or more offences by the judgment appealed against, and no appeal is brought against the assessment of evidence in relation to the question of guilt, the court shall in the event of a setting aside of the judgment or an acquittal in regard to some of the offences determine a new penalty for the offences to which the conviction continues to apply. If there is no appeal against sentence, the penalty imposed may not exceed the total penalty imposed in the judgment appealed against.

§ 349

When the appeal is decided, the documents relating to the case shall, together with the decision, be sent to the prosecuting authority, which shall ensure that they are served on the person charged and any other parties as far as is necessary and that the court that made the decision appealed against is duly informed.

§ 350

If the case is retried after the judgment is set aside, new lay judges shall take part. The court shall follow the interpretation of the law on which the decision in the appeal case is based.

If the judgment set aside applies to two or more matters, and the ground for setting it aside applies only to some of them, the court shall for the other matters apply the decision of the question of guilt which was made in the first judgment.

§ 351

An appeal by the prosecuting authority in favour of the person charged cannot lead to any alteration that is detrimental to him. If the prosecuting authority has only appealed against a contravention of procedural rules exclusively made for the protection of the person charged, this is in all cases deemed to be an appeal in his favour.

Slovakia
Constitutional Court

Constitution of the Slovak Republic
3 September 1992
- extracts -

Part Six
Executive power

Chapter One
The President of the Slovak Republic

...

Article 107

The President may be prosecuted only for treason in which case he shall be arraigned by the National Council of the Slovak Republic and his case shall be adjudicated by the Constitutional Court.

Part Seven
The judicial power

Chapter One
The Constitutional Court of the Slovak Republic

Article 124

The Constitutional Court shall be an independent judicial authority vested with the mandate to protect the integrity of constitutional principles.

Article 125

The Constitutional Court shall have jurisdiction over constitutional conflicts between:

a. laws and the Constitution or constitutional statutes;

b. regulations passed by the Government or generally-binding rules passed by the Ministries or other authorities of the central government and the Constitution, constitutional statutes, or other laws;

c. generally-binding rules passed by local self-government bodies and the Constitution or other laws;

d. generally-binding rules passed by local government authorities and the Constitution, other laws or other generally binding rules; and

e. generally-binding rules and international instruments promulgated as prescribed by law.

Article 126

The Constitutional Court shall decide on disputes over powers distributed among central government authorities, unless these disputes are to be decided by another governmental authority as provided by law.

Article 127

The Constitutional Court shall review the challenges to final decisions made by central government authorities, local government authorities and local self-government bodies in cases concerning violations of fundamental rights and freedoms of citizens, unless the protection of such rights falls under the jurisdiction of another court.

Article 128

1. The Constitutional Court shall be responsible for the interpretation of constitutional statutes in conflicting cases. The terms shall be provided by law.

2. The Constitutional Court shall not comment as to whether proposed legislation is consistent with the Constitution and constitutional statutes.

Article 129

1. The Constitutional Court shall review challenges to decisions that confirm or abrogate the seat of a Member of the National Council of the Slovak Republic.

2. The Constitutional Court shall decide whether the elections to the National Council of the Slovak Republic and to local self-governing bodies have been held in conformity with the Constitution and the law.

3. The Constitutional Court shall review challenges to the results of a public referendum.

4. The Constitutional Court shall decide whether a decision dissolving a political party/movement or suspending political activities thereof is consistent with the constitutional statutes and other laws.

5. The Constitutional Court shall decide cases of treason allegedly committed by the President of

the Slovak Republic following an accusation by the National Council of the Slovak Republic.

Article 130

1. The Constitutional Court shall commence proceedings upon a petition submitted by:

a. no less than one-fifth of all members of the National Council of the Slovak Republic;

b. the President of the Slovak Republic;

c. the Government of the Slovak Republic;

d. any court;

e. the Attorney-General; and

f. any person whose rights shall be adjudged as defined in Article 127.

2. The law shall specify who can commence proceedings under Article 129.

3. The Constitutional Court may commence proceedings upon information presented by an individual or a corporation claiming violation of their rights.

Article 131

All members of the Constitutional Court shall decide in cases set forth in Articles 107, 125, subSections a and b; Article 129, Sections 2 and 4; Article 136, Section 2; Article 138, Sections 2 and 3, and matters regarding its internal procedures.

Article 132

1. In cases where the Constitutional Court finds any contradictions in statutory rules as defined by Article 125, these rules, parts or clauses thereof shall become ineffective. The authorities that passed these rules shall be obliged to bring them into conformity with the Constitution and constitutional statutes not later than six months following the finding of the Constitutional Court; or in the case of rules defined by Article 125, subsection b, also with other laws; or in cases of rules defined by Article 125, subsection c, also with other laws, international instruments, regulations passed by the Government of the Slovak Republic, and with the generally binding rules issued by Ministries and other central government authorities. Otherwise these rules, parts or clauses thereof shall become ineffective after six months following the decision of the Constitutional Court.

2. The decisions of the Constitutional Court made under Section 1 shall be promulgated as prescribed by law.

Article 133

There shall be no appeal against a decision of the Constitutional Court.

Article 134

1. The Constitutional Court shall be composed of ten judges.

2. The judges of the Constitutional Court shall be appointed by the President of the Slovak Republic for a seven-year term from among the twenty nominees approved by the National Council of the Slovak Republic.

3. A judge of the Constitutional Court must be a citizen of the Slovak Republic, eligible to be elected to the National Council of the Slovak Republic, not younger than forty years, and a law-school graduate with fifteen years of experience in the legal profession.

4. A judge of the Constitutional Court shall be sworn in by the President of the Slovak Republic as follows:

"I do solemnly affirm that I will faithfully protect the inviolable natural human and civil rights, the rule of law, abide by the Constitution and constitutional statutes and decide cases independently and impartially to the best of my abilities and conscience."

5. Upon taking this pledge, the judge shall assume the duties of judicial office on the Constitutional Court.

Article 135

The Constitutional Court shall be headed by a President who may be represented by a Vice-President. The President and the Vice-President shall be appointed by the President of the Slovak Republic from among the judges of the Constitutional Court.

Article 136

1. The judges of the Constitutional Court shall enjoy the same immunity as members of the National Council of the Slovak Republic.

2. The judges of the Constitutional Court may be prosecuted and held in pre-trial detention only with the consent of the Constitutional Court.

3. The Constitutional Court shall decide upon the legitimacy of the prosecution and pre-trial detention of the President and Vice-Presidents of the Supreme Court of the Slovak Republic.

Article 137

1. Judges appointed to the Constitutional Court shall resign from membership in a political party or movement prior to their solemn vow.

2. The judges of the Constitutional Court shall hold their offices as a profession. The performance of this profession shall be incompatible with:

a. any business activities and paid jobs except for one that concerns the administration of their own property, scientific activities, teaching, or literary and publishing activities;

b. any post or employment in another public office.

3. On the day a judge assumes his or her judicial office, his or her position as a parliamentary representative or member of the Government of the Slovak Republic shall expire.

Article 138

1. Any judge of the Constitutional Court may resign from his or her office.

2. The President of the Slovak Republic can remove a judge of the Constitutional Court upon a conviction by a court of law for a malicious offence or upon a disciplinary decision made by the Constitutional Court for misconduct, or for conduct incompatible with the exercise of the office of a judge of the Constitutional Court.

3. The President of the Slovak Republic shall remove a judge of the Constitutional Court from office if it is established that the said judge has not participated in the work of the Constitutional Court for more than twelve months, or if the judge has been incapacitated by a court decree.

Article 139

In the case of a vacancy resulting from the resignation or removal from office of a judge of the Constitutional Court, the President of the Slovak Republic shall appoint another judge for a new term from two nominees approved by the National Council of the Slovak Republic.

Article 140

The details of the structure of, and proceedings before, the Constitutional Court, and the status of judges therein shall be specified by law.

Part Nine
Transitional and final provisions

Article 152

1. The constitutional statutes, laws and other generally binding rules shall remain in force in the Slovak Republic unless they are in contradiction with this Constitution. They can be derogated and abrogated by the appropriate authorities of the Slovak Republic.

2. Laws and other generally binding regulations passed in the Czech and Slovak Federal Republic shall become inoperative on the ninetieth day after the publication of a decision made by the Constitutional Court of the Slovak Republic on their invalidity and according to promulgation procedures fixed by law.

3. The power to invalidate legislation shall be vested in the decision of the Constitutional Court of the Slovak Republic under the provisions defined in Article 130.

4. Constitutional statutes, laws and other generally binding rules shall be interpreted and applied in conformity with this Constitution.

Act on the organisation of the Constitutional Court of the Slovak Republic, on the proceedings before the Constitutional Court and the status of its Judges

Act of the National Council of the Slovak Republic of 20 January 1993

Part one
Organisation of the Constitutional Court

Article 1

1. The Constitutional Court of the Slovak Republic (hereinafter only "Constitutional Court") is an independent judicial body charged with the protection of constitutionality.

2. The seat of the Constitutional Court is Košice.

Article 2

1. The Constitutional Court consists of 10 Judges.

2. There is a President at the head of the Constitutional Court, who may be represented by a Vice-President.

3. The Constitutional Court shall make its decisions in Plenary Session or in Senate.

4. The Plenary Session of the Constitutional Court consists of all Judges of the Constitutional Court (hereinafter only "Judges").

5. A Senate of the Constitutional Court (hereinafter only "Senate") consists of the Chairman of the Senate and of two Judges.

The Plenary Session of the Constitutional Court

Article 3

In the Plenary Session, the Constitutional Court shall decide on cases set forth in Articles 107, 125, subsections a and b, Article 129, paragraphs 2 and 4, Article 136, paragraph 2, Article 138, paragraphs 2 and 3 of the Constitution of the Slovak Republic (hereinafter only "Constitution") and on the regulation of its internal matters.

Article 4

1. The President of the Constitutional Court shall call the Plenary Session, fix the agenda for and direct the discussion.

2. The Constitutional Court in the Plenary Session is able to proceed and pass resolutions if at the discussion and at the decision-making there are present at least seven Judges.

3. The Plenary Session of the Constitutional Court shall pass resolutions on the basis of a simple majority of more than half of all Judges. If this majority is not reached, the motion shall be dismissed.

4. The discussion of the Plenary Session of the Constitutional Court is not public, unless this Act provides otherwise. Appointed members of staff of the Chancellery of the Constitutional Court and other persons may participate in the discussion if their presence is indispensable for procedural reasons.

5. The Plenary Session of the Constitutional Court may also agree on other persons being present at the discussion or a part thereof.

6. The President of the Constitutional Court may encharge any of the Judges with preparing the materials necessary for decision-making in the Plenary Session of the Constitutional Court and with reporting upon this material at its session (hereinafter only the "Rapporteur").

7. The President of the Constitutional Court shall direct the discussion of the Plenary Session of the Constitutional Court in such a way that all the controversial questions are discussed and that every Judge can decide on them in compliance with his or her judicial opinion.

Senate of the Constitutional Court

Article 5

1. The Senate shall decide on matters which do not belong within the scope of the Plenary Session of the Constitutional Court.

2. Concerning the presence of persons at discussions of the Senate and the encharging of a Rapporteur with the preparation of the proceedings, the provisions of Article 4, paragraphs 4 to 6 shall be observed, as appropriate.

3. The Plenary Session of the Constitutional Court shall appoint the permanent members of the Senate for a period of one year. The President and the Vice-President can not be permanent members of the Senate.

4. The permanent members of the Senate shall elect the Chairman of the Senate. When absent, the Chairman shall be represented by the member of the Senate who is most senior in age.

5. When absent, a member of the Senate shall be represented temporarily by another Judge appointed by the President of the Constitutional Court. The same procedure applies if a member of the Senate is excluded from the exercise of his or her judicial duties.

Article 6

If one Senate in connection with its decision-making activity adopts a legal principle different from the legal principle of other Senate of the Constitutional Court expressed according to Article 128, paragraph 1 of the Constitution, then this Senate shall submit the question to the Plenary Session of the Constitutional Court for judgement. The Senate shall be bound in its further activity by the standpoint of the Plenary Session.

The President of the Constitutional Court

Article 7

The President and the Vice-President of the Constitutional Court shall be appointed from among the Judges of the Constitutional Court by the President of the Slovak Republic.

Article 8

1. The President of the Constitutional Court shall perform the administrative work of the Court, and in particular shall ensure the regular course of its activities in the field of personnel administration, organisation, economic and financial management.

2. The Vice-President of the Constitutional Court shall represent the President of the Constitutional Court to a defined extent, and in the time of the latter's absence to the full extent. If both the President and Vice-President are absent, they shall be represented by the Judge of the Constitutional Court who is most senior in age.

The Chancellery of the Constitutional Court

Article 9

1. The Chancellery of the Constitutional Court shall perform the tasks connected with the organisational and personnel administration, and the administrative and technical support for the activity of the Constitutional Court (hereinafter only the “Chancellery”).

2. The Head of the Chancellery shall be appointed and dismissed by the President of the Constitutional Court.

3. The Head of the Chancellery shall perform the function of the head of staff regarding the employees of the Constitutional Court, with the exception of its Judges.

4. Details of the organisation and the activity of the Chancellery and on the position of its employees shall be defined by the rules of organisation of the Chancellery, which are approved by the Plenary Session of the Constitutional Court.

Article 10

Judicial counsellors

1. There shall be judicial counsellors of the Constitutional Court (hereinafter only “Counsellors”) who shall be active at the Constitutional Court. They are to be graduates of a university law school and have ten years' practical experience in the legal profession.

2. The President of the Constitutional Court, the Chairman of the Senate and the Judge may encharge the Counsellor with performing some duties which pertain otherwise to the Judge, particularly to examine witnesses and experts, and to procure the documents needed for the decision-making. The Counsellor may not examine the parties to the proceedings, nor their legal representatives.

Part two
Appointment of Judges of the Constitutional Court and the termination of their function

Article 11

Appointment of Judges

1. Proposals for candidates for election to the position of Judge may be submitted to the National Council of the Slovak Republic by:

a. all Members of the National Council of the Slovak Republic;

b. the Government of the Slovak Republic;

c. the President of the Constitutional Court of the Slovak Republic;

d. the President of the Supreme Court of the Slovak Republic;

e. the Attorney-General of the Slovak Republic;

f. professional bodies of lawyers;

g. academic institutions.

2. The National Council of the Slovak Republic shall submit to the President of the Slovak Republic the proposal of twenty candidates to the position of Judge at least three months before the termination of the period of office of Judges appointed earlier. Within one month of receiving the list of candidates, the President of the Slovak Republic shall appoint ten Judges and from among them the President and the Vice-President of the Constitutional Court for a term of seven years. after the date on which the list of nominees was submitted.

3. Persons nominated for and appointed to the judicial office shall be citizens of the Slovak Republic who meet the criteria for being elected to the National Council of the Slovak Republic, have reached the age of 40, possess a university law degree and have worked for at least 15 years in the legal profession.

4. The judges shall take the oath of office prescribed by the Constitution, placing it into the hands of the President of the Slovak Republic. With the act of taking the oath, judges assume their office.

5. Employment conditions for judges become effective on the date of their being sworn in. Unless the present Act provides otherwise, the employment conditions of judges shall be governed by applicable provisions of the Labour Code. The employment conditions of judges with the organisations in which they worked prior to taking the oath of office shall be maintained.

Termination of judicial office

Article 12

1. Judicial office shall terminate with the expiry of the term for which the judge had been appointed.

2. Judges may resign from his office. They shall notify in writing the President of the Constitutional Court of their resignation. The office of the judge shall become extinct two calendar months after the date on which the President of the Constitutional Court received the notice of the judge's resignation.

3. If a judge takes a seat in Parliament or becomes member of the Government, his or her office shall become extinct as from the date on which he/she took the oath of office as a member of Parliament or the Government.

4. Employment conditions of judges shall expire on the date of the termination of their office.

Article 13

1. The President of the Slovak Republic may recall any judge who is conclusively sentenced for committing a deliberate criminal offence or against whom the Constitutional Court has adopted a disciplinary ruling, imposed in respect of conduct that is incompatible with office at the Constitutional Court.

2. The President of the Slovak Republic shall recall a judge when the President of the Constitutional Court notifies of the judge's failure to take part in the proceedings of the Constitutional Court for more than one year or if the judge is divested of his legal capacity by means of a final court decision.

3. If a judge is engaged in activities that are incompatible with judicial office, the President of the Constitutional Court shall require the judge to abstain from such activities within ten days from the date on which the requirement is communicated.

4. If a motion is filed to recall a judge or if criminal prosecution is pending against a judge, he or she may be temporarily suspended from the performance of judicial office until a decision is issued to remove him or her from office or until criminal proceedings have been terminated.

5. The decision on temporary suspension of the judge's office shall be made by the President of the Constitutional Court. The decision on a temporary suspension of the Constitutional Court President's or Vice-President's office shall be made by the President of the Slovak Republic, based on opinion requested from the full Constitutional Court.

Status of Constitutional Court judges

Article 14

1. The judges shall decide independently and shall be bound by the Constitution and constitutional statutes.

2. When taking decisions on conformity between:

a. government decrees, generally binding legal regulations passed by the ministries or other central public administration bodies and the Constitution, constitutional statutes, and other laws;

b. generally binding regulations passed by local self-governing bodies and the Constitution or the laws;

c. generally binding regulations passed by local public administration authorities and the Constitution, laws, and other generally binding regulations;

d. generally binding regulations and international instruments promulgated as provided by law,

the Constitutional Court shall be also bound by laws.

3. The judges may be prosecuted and held in custody only with the consent of the Constitutional Court. If the Constitutional Court fails to give such consent, the judge concerned shall never be prosecuted on the same grounds.

4. If a judge has been caught and apprehended while committing a criminal offence, the competent authority shall immediately notify the Constitutional Court. If the Constitutional Court does not grant its consent with placing the judge in custody, the judge shall be immediately released.

5. A judge shall not be prosecuted in respect of the conduct that has the characteristics of misdemeanour or similar unlawful behaviour laid down under separate regulations.

Article 15

1. The judges shall perform their judicial office consciously and, both in their office and personal life, they shall refrain from any conduct that might weaken the respect for the Constitutional Court, the prestige of the judicial office, and confidence in the Constitutional Court.

2. The judges shall be obliged to keep professional secrecy and shall continue to have this obligation also after the termination of their office. The judges may be relieved of the secrecy obligation by the President of the Constitutional Court. The President of the Constitutional Court may be relieved of his secrecy obligation by the President of the Republic.

3. The provision of paragraph 2 above shall also apply to the staff of the Constitutional Court.

Article 16

Disciplinary responsibilities of judges

1. The President of the Constitutional Court may submit to the full Constitutional Court a motion to initiate disciplinary proceedings against a judge who has deliberately neglected his or her official responsibilities or whose conduct has weakened the prestige of judicial office or confidence in the Constitutional Court, or who has continued to perform acts incompatible with judicial office in spite of having been requested to refrain from such acts.

2. The full Constitutional Court shall hear the judge against whom the complaint has been lodged. If it rules that the motion is unsubstantiated, the Court shall reject it. If the motion is substantiated, the Court shall elect a three-member disciplinary chamber.

3. The full Court has the right to suspend a judge during the period between the appointment of the disciplinary chamber and the termination of the proceedings.

4. The disciplinary measure imposed in respect of conduct under paragraph 1 may have the form of a reprimand. If the disciplinary chamber rules that

the judge is not guilty of conduct under paragraph 1, it shall close the disciplinary proceedings.

5. A judge or the President of the Constitutional Court may submit their objections against the decision of the disciplinary chamber within 15 days from the date of the reception of the notification about the decision; the decision concerning the objections shall be taken by the full Constitutional Court.

6. If a judge acts in such a way that continuation in the performance of judicial office would be contrary to the role of the Constitutional Court and the status of its judges, the full Constitutional Court may apply to the President of the Slovak Republic to remove the judge from office. The ruling concerning such motion shall be taken by at least seven Judges of the Constitutional Court.

7. Unless the present Act provides otherwise, disciplinary proceedings shall be governed by provisions of Articles 10 to 17 and Articles 20 and 21 of Act No. 412/1991 on the disciplinary responsibilities of judges. Other aspects of disciplinary proceedings are regulated by administrative rules and Rules of Procedure of the Constitutional Court.

Article 17

Judges' monthly salaries, allowances and other benefits shall be determined by the National Council of the Slovak Republic under a separate law.

Part III
Proceedings before the Constitutional Court

Chapter 1
General provisions

Article 18

1. The Constitutional Court shall open proceedings on a petition that has been filed by:

a. at least one fifth of the Members of the National Council of the Slovak Republic;

b. the President of the Slovak Republic;

c. the Government of the Slovak Republic;

d. a court;

e. the Prosecutor-General of the Slovak Republic;

f. any person whose right is to be adjudged as set out in Article 127 of the Constitution of the Slovak Republic.

2. The Constitutional Court may open proceedings also on the basis of a petition submitted by legal entities or natural persons alleging violation of their rights.

3. The proceedings shall be opened:

a. on the date on which the petition is delivered to the Constitutional Court;

b. with the acceptance of the petition at a preliminary hearing.

Article 19

Within the meaning of Article 18 paragraph 1 letter d, the court is a chamber or a single judge[1].

[1] Article 4, paragraph 1, Act No. 335/1991 on the Courts and Judges.

Article 20

1. A petition to open proceedings shall be filed with the Constitutional Court in writing. The petition shall specify the case concerned, the name of the plaintiff, the decision sought by the plaintiff, the grounds for the petition and the proposed evidence. The petition shall be signed by the plaintiff(s) or his (their) legal representatives.

2. The provision of paragraph 1 above also applies to the filing of a motion.

Article 21

1. Parties to the proceedings are the plaintiff and persons as laid down in the present Act.

2. Secondary parties to the proceedings are persons who are granted such status under the present Act, unless they waive this status. They have equal rights and responsibilities in the proceedings as the parties to the proceedings; they, however, act only on their own behalf.

3. Public authorities as parties to the proceedings or secondary parties to the proceedings shall be represented in oral hearings by legal

representatives of their choice. Unless the legal representative represents a legislative body, he/she is required to have the university-level legal education.

4. If the party to the proceedings is a court that filed a petition in connection with its decision-making [(Article 18, paragraph 1, letter d)], the court chamber concerned shall be represented by its presiding judge.

Article 22

If parties to the proceedings and secondary parties to the proceedings are legal entities or natural persons, they shall be represented in the proceedings before the Constitutional Court by an attorney or a commercial lawyer. The power of attorney shall explicitly state that it has been issued for the purpose of representation before the Constitutional Court.

Article 23

Natural persons may use their mother tongue in oral hearings or other personal communication. Translation costs shall be borne by the Constitutional Court.

Article 24

1. A petition shall be considered inadmissible if it is related to a matter in respect of which the Constitutional Court had already made a ruling.

2. A petition shall be considered inadmissible if the Constitutional Court has already opened proceedings on the same matter; if the petition was filed by an entitled plaintiff, he/she has the right to take part in the proceedings concerning the previously filed petition as a secondary party to the proceedings.

3. If in doubt as to the legitimacy of the exercise of the right to act as a secondary party to the proceedings, the matter shall be settled by the Constitutional Court.

Article 25

1. The Constitutional Court shall subject each petition to a preliminary review at a closed hearing in the absence of the petitioner.

2. The Constitutional Court may reject petitions related to matters for which the Court does not have the jurisdiction, petitions that do not meet the statutory requirements, inadmissible petitions or petitions filed by parties that are clearly not entitled to do so. If the Constitutional Court notifies the petitioner about such irregularities, its ruling need not contain any justification.

3. If the petition is not rejected, it is admitted for further proceedings.

Article 26

In reviewing petitions, the Constitutional Court shall not be obliged to follow the order in which they have been received, if it considers certain petitions to be of particular urgency.

Article 27

1. Judges shall be excluded from exercising their judicial function in the proceedings if there are reasonable grounds to doubt their impartiality vis-a-vis the case concerned, parties to the proceedings or their representatives.

2. A judge shall notify the President of the Constitutional Court forthwith of the reasons for any exclusion under paragraph 1.

Article 28

1. At the beginning of the oral hearing at the latest, a party to the proceedings may refuse a judge on the grounds of his prejudice or bias. The refusal must contain a justification. The judge who is objected to shall then be obligated to make a comment on the refusal.

2. If the proceedings are conducted before the full Constitutional Court, the decision on disqualifying a judge on the grounds of bias shall be taken by the full Constitutional Court; the judge concerned shall abstain from voting. If the proceedings are conducted before a Constitutional Court Senate, the disqualification decision adopted on the grounds of bias shall be taken by the Senate; the member in question shall abstain from voting. In the event of an equality of votes, the presiding judge shall have a casting vote.

3. If a judge declares personal bias in the given case and states the reasons, paragraph 2 provisions shall be followed.

Article 29

1. A petition filed with the Constitutional Court shall be assigned by its President to one of the judges who shall act as a rapporteur.

2. If the petition involves a matter which requires a decision of the full Constitutional Court, the President of the Constitutional Court shall assign the petition to any of the judges; if the judge concerned is a permanent member of a Senate, the President shall consult the presiding judge of the Senate concerned, regarding the assignation of the petition.

3. The petition to be decided by a chamber shall be assigned for preliminary review to a judge from the Senate which is in charge of the area concerned in accordance with the system of dividing the court agenda.

4. The rapporteur shall prepare the case for preliminary hearing. If the petition is accepted as admissible, it shall be heard in a Senate or in full Court.

5. The rapporteur shall ensure that the petition be submitted forthwith to other parties to the proceedings or secondary parties to the proceedings for their comments within the prescribed time-limit.

6. The rapporteur may request any party to the proceedings to submit to the Constitutional Court, within the prescribed time-limit, the necessary number of duplicates of their petitions, observations or other motions for the use of the Constitutional Court or other parties to the proceedings; if a party fails to do so, such documents shall be produced at the cost of that party.

Article 30

1. Oral hearings shall be conducted in respect of matters reviewed by the Constitutional Court as laid down in Articles 125, 126, 127, 129, paragraphs 4 and 5 of the Constitution.

2. The Constitutional Court may, with the consent of parties to the proceedings, waive the oral hearing if there are reasonable grounds to believe that oral hearing would not bring any clarification of the reviewed case.

3. Parties to the proceedings, secondary parties to the proceedings, and their legal representatives shall have the right to be present at the oral hearing.

4. Oral hearings in matters laid down in Articles 125, 126, 129, paragraph 4 of the Constitution shall be held in public. Oral hearings in other matters shall also be held in public unless the Constitutional Court, because of important considerations, excludes the public from participating in the entire proceedings or part thereof.

5. Public character of oral hearings shall be governed, *mutatis mutandis*, by the provisions of the Code of Civil Judicial Procedure or, in case of constitutional complaints against decisions adopted in criminal proceedings, the Code of Criminal Procedure.

6. Following oral hearings, the rulings of the Constitutional Court shall be publicly announced.

Article 31

1. The Constitutional Court shall take such evidence as may be necessary for establishing the facts of the case. It may entrust a particular judge with the examination of certain evidence outside of oral hearing. It may also request another court to examine certain evidence and to take certain actions.

2. Any court, public administration body and other state body shall, upon request, provide assistance to the Constitutional Court in the procurement of supporting documents needed for the latter's decisions.

3. Witnesses or experts shall not claim their statutory secrecy obligation if the Constitutional Court adopts a ruling whereby it divests them of the secrecy obligation in the case concerned.

4. The service of and the expiry of time-limits for summons and injunctions, obligation to testify, ban on interrogation, the right to refuse to testify, entitlement to a witness fee, the taking of evidence, voting and the particulars of the decisions shall be governed, *mutatis mutandis*, by provisions of the Code of Civil Judicial Procedure or the Code of Criminal Procedure.

Article 32

1. Judges who disagree with the decision of the full Court or a chamber of the Constitutional Court shall have the right to request that their dissenting opinions be briefly recorded in the minutes of the voting.

2. Only the judges and the recording clerk may be present at the voting on a decision by the full Court.

3. The vote on matters set out in Article 136, paragraphs 2 and 3 of the Constitution shall be by secret ballot.

Article 33

1. The Constitutional Court shall decide cases by issuing findings or delivering judgments and, unless the present Act provides otherwise, it shall decide other matters by adopting resolutions.

2. If the Constitutional Court establishes a conflict in connection with matters as laid down in Article 125 of the Constitution, the judgment segment shall be published in the Collection of Laws.

3. The decisions on cases shall also include the justification and shall be announced “In the name of the Slovak Republic”.

4. If the legal opinion of the Constitutional Court, expressed in a finding or in a judgment related to interpretation under Article 128, paragraph 1 of the Constitution, has general application, the Constitutional Court may decide to publish this legal opinion in the Collection of Laws.

5. The Constitutional Court shall publish, at least once a year, the body of its findings and judgments related to interpretation under Article 128, paragraph 1 of the Constitution, issued in the course of the previous year, for public benefit; before the publication date, they are available for public inspection at the Constitutional Court.

Article 34

1. Parties to the proceedings or their legal representatives shall be served all the decisions of the Constitutional Court issued in the reviewed case.

2. The Constitutional Court shall decide which secondary parties to the proceedings shall be served the decisions.

Article 35

The proceedings before the Constitutional Court shall not be liable to the payment of court fees unless the present Act provides otherwise.

Article 36

1. The costs of proceedings before the Constitutional Court, incurred by a party to the proceedings, shall be borne by that party.

2. In justified cases the Constitutional Court may, depending on the results of the proceedings, adopt a ruling in which it shall impose on a party to the proceedings the obligation to reimburse fully or partly the costs incurred by another party to the proceedings.

Chapter 2
Special provisions

Title I
Proceedings on points of law

Article 37

1. If the persons specified in Article 18, paragraph 1, letters a to e come to the conclusion that a regulation of lower legal force is in conflict with a regulation of higher legal force (Article 125 of the Constitution), they may file a petition with the Constitutional Court to proceedings.

2. The petition to open proceedings must contain, in addition to general particulars stipulated in Article 20,

a. the name of the regulation being challenged due to conflict with a regulation of a higher force, stating whether the petitioner challenges the regulation as a whole or only a part or even a provision thereof,

b. the name of the regulation of a higher force, its part or provision, alleged to be in conflict with the challenged regulation.

Article 38

If the petition is filed by a court in connection with its decision-making, the parties to the proceedings held before the court which has filed the petition become secondary parties to the proceedings; in case of criminal proceedings, secondary parties to the proceedings are represented by the entity against whom the proceedings are conducted and by a public prosecutor.

Article 39

Before deciding a case under this Title, the President of the Constitutional Court shall request the opinion of the authority that had issued the challenged generally-binding legal regulation. The President may also request opinions from the President of the Supreme Court of the Slovak Republic or the Prosecutor-General of the Slovak Republic.

Article 40

If the Constitutional Court, deciding on matters under Article 125 of the Constitution, establishes a conflict between the reviewed regulation of lower legal force and a regulation of higher force and, at the same time, establishes a conflict between the latter regulation and another regulation of an even higher legal force, it shall also review the lawfulness of the latter regulation and shall issue a ruling concerning its unlawfulness.

Article 41

1. The decision of the Constitutional Court by means of which the Court establishes a conflict between legal regulations shall be called a finding.

2. The finding, accompanied by the justification, shall be served on the petitioner and the authority that issued the regulation concerned.

3. A ruling to the effect that the Constitutional Court did not comply with the petition shall be served on the petitioner.

Title II
Proceedings on conflicts of legal competence

Article 42

The petition to open proceedings may be filed by the central authority claiming that it has the legal competence to decide, or the central authority that denies it has such competence. Documentary material that the Constitutional Court needs for the decision shall have to be attached to the petition.

Article 43

Secondary parties to the proceedings held in respect of the determination of legal competence shall be natural persons or legal entities which demonstrate their legal interest in the decision on the matter.

Article 44

The Constitutional Court shall decide on the above matters by issuing a finding.

Title III
Interpretation of constitutional statutes

Article 45

The Constitutional Court shall provide the interpretation of constitutional statutes only in those cases which are controversial.

Article 46

1. Persons entitled to file a petition shall be persons set out in Article 18, paragraph 1, letters a to e above.

2. The state authority which the petitioner alleges to have wrongly interpreted the constitutional statute shall also be a party to the proceedings.

3. If the petition has been filed by a court in connection with its decision-making, secondary parties to the proceedings shall be the parties to the proceedings held before the court which has filed the complaint.

Article 47

In addition to general stipulations set out in Article 20, a petition to open proceedings must specify which constitutional statute, its part or provision is to be interpreted, why the matter is contentious and which state authority the petitioner alleges to have made an incorrect interpretation of the constitutional statute.

Article 48

The petition demanding interpretation shall be heard by a Senate of the Constitutional Court in closed session and the decision shall be in the form of a ruling.

Title IV
Proceedings on constitutional complaints

Article 49

Constitutional complaints may be filed by natural persons or legal entities alleging the violation of their fundamental rights or freedoms as a result of a final decision of a body laid down in Article 127 of the Constitution, unless the protection of such rights and freedoms lies within the jurisdiction of another court.

Article 50

In addition to general stipulations set out in Article 20, a petition to open proceedings must specify the fundamental rights or civil freedoms whose violation the petitioner alleges and the procedure as a result of which the violation occurred. A copy of the final decision shall be attached to the complaint.

Article 51

1. Parties to the proceedings shall be the complainant and the public administration body or local self-government authority against whom the complaint is directed.

2. The Constitutional Court may grant the status of a secondary party to the proceedings to those persons who have demonstrated their legal interest in the outcome of the proceedings.

Article 52

Unless the present Act specifies otherwise, constitutional complaints shall be governed by the provisions that regulate the petitions to open proceedings, and the complainant shall be governed by the provisions concerning the petitioners.

Article 53

1. Constitutional complaints shall be deemed inadmissible if the complainants have not exhausted regular legal remedies afforded by the law for the protection of their rights.

2. The Constitutional Court shall not reject a constitutional complaint as inadmissible even if the precondition set out in the preceding paragraph is not fulfilled, if the complaint is so important that it significantly transcends the personal interests of the complainant.

3. The time-limit for lodging a constitutional complaint is two months. This time-limit starts to lapse on the day on which the decision becomes effective or the date on which the complainant is notified of the result of an appeal and, in the absence thereof, the date when the complainant's fundamental right or freedom was infringed.

Article 54

1. A chamber of the Constitutional Court may rule to reject a constitutional complaint if the complaint is lodged after the time-limit or if it is clearly unsubstantiated.

2. The ruling on rejecting a constitutional complaint does not have to specify grounds for the rejection. The decision to this effect shall be communicated to the complainant in writing, stating the grounds for rejecting the complaint pursuant to paragraph 1. The same applies to the ruling on the inadmissibility of a complaint pursuant to Article 24, paragraphs 1 and 2.

3. If a complainant withdraws his constitutional complaint, the Constitutional Court shall terminate the respective proceedings.

Article 55

1. The filing of a constitutional complaint shall not have a suspensive effect.

2. The Constitutional Court may, however, on the proposal of the complainant, suspend the enforcement of the challenged decision, unless this would be in conflict with a serious public interest, and if the damage inflicted on the complainant as a result of the enforcement of the decision or the exercise of an authorization granted by the decision to a third party would be considerably greater than the damage that might be caused to other persons as a result of the suspension of the enforcement.

Article 56

Unless the Constitutional Court decides otherwise, it shall base its decision on the facts established in the previous proceedings on the case.

Article 57

If the Constitutional Court complies with a constitutional complaint, it shall state in its ruling which fundamental right or freedom and which provision of the Constitution or constitutional statute have been violated and which procedure led to the violation, and shall repeal the challenged decision.

Article 58

1. If a constitutional complaint is rejected as inadmissible or clearly unsubstantiated, a chamber of the Constitutional Court may impose a penalty of up to 5,000 crowns on the complainant.

2. If there are serious grounds to doubt the admissibility of the constitutional complaint, the Constitutional Court may request the complainant to pay, within one month, an advance payment according to paragraph 1.

3. If the constitutional complaint is admitted, this advance payment shall be returned to the complainant.

4. The Constitutional Court shall reject the constitutional complaint if the complainant fails to deposit the advance payment within the time-limit stipulated in paragraph 2. The provision of Article 54, paragraph 2 applies correspondingly.

Title V
Proceedings in electoral matters

Article 59

1. A complaint that alleges unconstitutionality or unlawfulness of elections to the National Council of the Slovak Republic or to a self-governing body, or the result of election may be lodged, besides complainants stipulated in Article 18, paragraph 1, letters a to e, by a political party running in the election, by 10 % of the electorate of a constituency or a candidate who obtained at least 10 % of the votes in a constituency.

2. A complaint challenging the results of elections to the National Council of the Slovak Republic or to a local self-governing body may also be lodged by a counter-candidate who obtained at least 10 % of the votes. The complaint may also be filed by at least 10 % of the electorate of the respective constituency; signatures and addresses of these persons shall be attached to the complaint.

Article 60

1. The petition to open proceedings must contain, in addition to the general stipulations set out in Article 20:

a. a statement by the complainant specifying whether he/she is challenging elections over the whole territory of the Slovak Republic or only in a certain constituency;

b. the reasons for challenging the results of elections and identification of evidence.

2. A complaint pursuant to paragraph 1 must be filed within ten days after the announcement of the results of elections.

Article 61

If the complaint challenges elections to the National Council of the Slovak Republic, the Constitutional Court shall notify the remaining political parties that gained seats in the National Council of the Slovak Republic in the elections; in case of elections to a local self-governing body, it shall also notify the member of the local self-governing body whose election was challenged; it shall give these parties the opportunity to give their opinion on the complaint within the statutory time-limit.

Article 62

The Constitutional Court shall request all election documents and reports.

Article 63

1. The Constitutional Court may:

a. declare elections invalid;

b. annul the challenged election result;

c. annul the decision of the electoral commission and declare the election of the duly elected candidate;

d. reject the complaint.

2. The decision taken by the Constitutional Court in cases set out in paragraph 1, letters a to c shall be in the form of a finding.

3. The finding by means of which elections are declared invalid shall be served forthwith, with the specification of the grounds, to the National Council of the Slovak Republic and to the Ministry of the Interior of the Slovak Republic.

4. The Constitutional Court shall communicate the decision under paragraph 1, letters b and c to the National Council of the Slovak Republic or to the local self-governing body concerned and to the political parties as well as to a member of the body specified in Article 61.

5. The ruling on the rejection of the complaint shall be communicated only to the complainant.

Title VI
Proceedings on the dissolution or suspension of a political party or movement

Article 64

The proceedings pursuant to Article 129, paragraph 4 of the Constitution shall be governed, *mutatis mutandis*, by the provisions on the proceedings under Title Four of the present Act.

Article 65

1. A motion to review the decision on the dissolution of a political party or movement may be filed, in addition to the petitioners set out in Article 18, paragraph 1, letters a to e, also by a political party or a political movement. The motion to open proceedings shall have a suspensive effect.

2. A motion to review a decision on the rejection of an application for the registration of a political party or political movement may be filed also by the preparatory committee of a political party or a political movement.

3. Before deciding on the matter, the President of the Constitutional Court or the presiding judge of a chamber shall request statements from the Ministry of the Interior of the Slovak Republic and the Prosecutor-General of the Slovak Republic.

4. The decision of the Constitutional Court shall be served on the petitioner and on the Ministry of the Interior of the Slovak Republic.

Title VII
Proceedings on complaints challenging the results of a referendum

Article 66

1. Unless this Act stipulates otherwise, the proceedings on complaints challenging the results of a referendum shall be governed by provisions concerning petitions to open proceedings.

2. The complaint may be filed by:

a. at least 1/5 of Members of the National Council of the Slovak Republic;

b. the President of the Slovak Republic;

c. the Government of the Slovak Republic;

d. the Prosecutor-General of the Slovak Republic;

e. at least 350 thousand citizens of the Slovak Republic.

Article 67

State authorities and bodies that take part in the organisation of a referendum and in the determination of its results shall provide the Constitutional Court, upon request, with the information and submit the documents related to the referendum.

Article 68

1. The President of the Constitutional Court and judges forming a chamber shall have the right, in the presence of the chairman of the respective central referendum commission, to open the sealed file which contains the documents on voting and to carry out the procedures necessary for reviewing the constitutionality of the referendum.

2. The act of opening the file and the ascertained facts shall be entered on record, signed by the President of the Constitutional Court and other participating persons according to paragraph 1 who shall have the right to state their reservations, if any, concerning the content of the record.

3.After performing all the necessary procedures, the President of the Constitutional Court shall re-seal the file.

Article 69

If the Constitutional Court establishes that the violation of the Constitution markedly influenced or could have influenced the results of the referendum, it shall issue a finding annulling the referendum.

Article 70

1.The Constitutional Court shall decide on a complaint challenging the results of a referendum within ten days from the date of receiving the complaint.

2.The finding of the Constitutional Court shall be publicized forthwith by the Press Agency of the Slovak Republic and published, without stating the grounds, in the Collection of Laws.

Title VIII
Proceedings concerning complaints against the decision on the confirmation or non-confirmation of the mandate of a Member of the National Council of the Slovak Republic

Article 71

The proceedings on these matters shall be instigated by a petition filed by a Member of the National Council of the Slovak Republic.

Article 72

The petition shall be filed pursuant to Article 20.

Article 73

The decision on the petition shall be taken by a chamber in the form of a ruling.

Title IX
Proceedings on the Impeachment of the President of the Republic

Article 74

1.The Constitutional Court, deciding on an accusation alleging high treason, made by the National Council of the Slovak Republic against the President of the Republic, shall be bound by the Penal Code only as far as the qualification of the offence is concerned.

2.The proceedings shall be governed, *mutatis mutandis*, by the provisions of the Code of Criminal Procedure.

3.The Constitutional Court shall decide by delivering a judgment.

4.If the Constitutional Court rules that the President is guilty of high treason, it shall divest him of his presidential office.

Part IV
Enforcement of the decisions of international organisations in matters involving fundamental rights and freedoms

Article 75

1.If the Government of the Slovak Republic is notified by the human rights committee[2] that a measure, a decision or another intervention of a power-holding body of the Slovak Republic has violated the right of the complainant under the International Covenant on Civil and Political Rights, the Government shall forthwith communicate this notification to the Constitutional Court which shall proceed in accordance with Part Three, Chapter Two, Title Four of the present Act.

[2] Optional Protocol No. 169/1991 Coll.

2.For the purposes of proceedings before the Constitutional Court, a notification under paragraph 1 shall be considered as a constitutional complaint admitted for further proceedings.

3.The Constitutional Court shall notify the complainant and other parties to the proceedings about the opening of the proceedings.

Part V
Transitory and final provisions

Article 76

1.The laws and other generally-binding regulations published in the Czech and Slovak Federal Republic, which are in conflict with the Constitution of the Slovak Republic[3], shall become null and void as from the ninetieth day following the

publication of the finding of the Constitutional Court in the Collection of Laws.

[3] Constitution of the Slovak Republic No. 460/1992

2. Such proceedings shall be governed, *mutatis mutandis*, by the provisions of Part Three, Chapter Two, Title One of the present Act.

Article 77

The Constitutional Court shall have a separate chapter in the state budget of the Slovak Republic.

Article 78

Whenever the Constitutional Court is in session, citizens shall be prohibited from assembling, with the aim of influencing the Court decision-making, within a 100 m radius of the building of the Constitutional Court or the venue in which the Constitutional Court holds its deliberations.

Article 79

The organisation of the Constitutional Court and proceedings before the Court shall be laid down in detail in the administrative rules and the rules of procedure of the Constitutional Court, approved by the full Constitutional Court. These rules shall be published in the Collection of Laws.

Article 80

The Act of the Slovak National Council No. 8/1992 on the organisation of the Constitutional Court of the Slovak Republic and proceedings before the Court is hereby repealed.

Article 81

This Act shall take effect on the day of its promulgation.

Spain
Constitutional Court

Constitution

Passed by the *Cortes Generales* in plenary meetings of the Congress of Deputies and the Senate held on October 31, 1978, sanctioned by His Majesty the King before the *Cortes* on December 27, 1978
- extracts -

Title IX – On the Constitutional Court

Article 159

1. The Constitutional Court shall consist of twelve members appointed by the King. Of these, four shall be nominated by the Congress by a majority of three-fifths of its members, four shall be nominated by the Senate with the same majority, two shall be nominated by the Government, and two by the General Council of the Judiciary.

2. The members of the Constitutional Court shall be appointed from among Judges and Prosecutors, University professors, public officials and lawyers, all of whom must be jurists of recognized standing with at least fifteen years' experience in the exercise of their professions.

3. The members of the Constitutional Court shall be appointed for a period of nine years and shall be renewed by thirds every three years.

4. Membership of the Constitutional Court is incompatible: with any representative function, any political or administrative office, a management role in a political party or trade union or any employment in their service, the exercise as a Judge or Prosecutor, and any professional or commercial activity whatsoever.

In the remaining, the incompatibilities relative to the members of the Judiciary shall also be applicable to the members of the Constitutional Court.

5. The members of the Constitutional Court shall be independent and irremovable during their term of office.

Article 160

The President of the Constitutional Court shall be appointed by the King from among its members, on the recommendation of the Plenum of the Court itself, for a term of three years.

Article 161

1. The Constitutional Court has jurisdiction over the whole Spanish territory and is competent to hear:

a. appeal of unconstitutionality in regard to laws and regulations having the force of law. A declaration of unconstitutionality of a legal provision with the force of law, interpreted by case-law, shall also affect the latter, although the judgement or judgements handed down shall not lose their status of *res judicata*;

b. individual appeals for protection *("recurso de amparo")* against violation of the rights and liberties enumerated in Article 53.2 of the Constitution, in the circumstances and manner to be laid down by law;

c. conflicts of jurisdiction between the State and the Autonomous Communities or among the Autonomous Communities themselves;

d. other matters assigned to it by the Constitution or by organic laws.

2. The Government may contest before the Constitutional Court the provisions and resolutions adopted by the agencies of the Autonomous Communities, which shall bring about the suspension of the contested provisions or resolutions, but the Court must either ratify it or lift the suspension, as the case may be, within a period of not more than five months.

Article 162

1. Standing is granted:

a. to lodge an appeal of unconstitutionality: the President of the Government, the Defender of the People *(Defensor del Pueblo)*, fifty Deputies, fifty Senators, the executive corporate bodies of the Autonomous Communities and, where applicable, their Assemblies;

b. to lodge an individual appeal for protection *("recurso de amparo")*: any natural or legal body with a legitimate interest, as well as the Defender of the People *(Defensor del Pueblo)* and the Office of the Public Prosecutor.

2. In all other cases, the organic law shall determine which persons and agencies are eligible.

Article 163

If a judicial body considers, in some actions, that a rule with the status of law which is applicable thereto, and upon the validity of which the judgement depends, may be contrary to the Constitution, it shall refer the question before the Constitutional Court in the circumstances, manner and subject to the consequences to be laid down by law, which shall in no case be suspensive.

Article 164

1. The judgements of the Constitutional Court shall be published in the Official State Gazette (*Boletín Oficial del Estado*), with the dissenting votes, if any. They have the validity of *res judicata* from the date following their publication, and no appeal may be brought against them. Those which declare the unconstitutionality of a law or of a rule with the force of law, and all those which are not limited to subjective acknowledgment of a right, shall be fully binding on all persons.

2. Unless the judgement rules otherwise, that part of the law not affected by unconstitutionality shall remain in force.

Article 165

An organic law shall regulate the functioning of the Constitutional Court, the statute of its members, the procedure to be followed before it, and the conditions governing actions brought before it.

Interim Provisions

...

Nine

Three years after the election of the members of the Constitutional Court for the first time, lots shall be drawn to choose a group of four members of the same electoral origin who are to resign and be replaced. The two members appointed following proposal by the Government and the two appointed following proposal by the General Council of Judicial Power shall be considered as members of the same origin exclusively for this purpose. After three years have elapsed, the same procedure shall be carried out with regard to the two groups not affected by the aforementioned drawing of lots. Thereafter, the provisions contained in clause 3 of Article 159 shall be applied.

Organic Law No. 2/1979 on the Constitutional Court

of 3 October 1979

Title I
On the Constitutional Court

Chapter I
Organisation and powers of the Constitutional Court

Article 1

1. The Constitutional Court, as supreme interpreter of the Constitution, shall be independent of the other constitutional bodies and subject only to the Constitution and this organic Law.

2. The Constitutional Court is unique and its jurisdiction encompasses the whole national territory.

Article 2

1. The Constitutional Court shall have jurisdiction, in the circumstances and form laid down by this Law:

a. in any action or question relating to the unconstitutionality of laws, legislative provisions or enactments having the force of law;

b. in any appeal for protection (*recurso de amparo*) against violation of the fundamental rights and freedoms set forth under Article 53.2 of the Constitution;

c. in constitutional conflicts of jurisdiction between the State and the Autonomous Communities or between the Autonomous Communities themselves;

d. in conflicts between the constitutional bodies of the State;

e. in any declaration concerning the constitutionality of international treaties[1];

f. in disputes within the scope of Article 161, number 2 of the Constitution;

g. in the scrutiny of appointments of Judges of the Constitutional Court in order to determine whether they fulfil the conditions laid down by the Constitution and by this Law;

h. in any other matter referred to it by the Constitution and by organic laws.

[1] Drafted in accordance with organic Law No. 4/1985

2. The Constitutional Court may establish rules governing its own functioning and organisation and the organisation of its staff and services within the framework of this Law. Such rules, which must be approved by the Plenum of the Court, shall be published in the Official State Gazette (*Boletín Oficial del Estado*) with the authorisation of its President.

Article 3

The Constitutional Court shall have jurisdiction to hear and give a ruling on preliminary and interlocutory issues of a non-constitutional nature that have a direct bearing on the matter before it, solely for the purpose of assessing the constitutionality of that matter.

Article 4

1. On no account may issues of jurisdiction or competence be raised before the Constitutional Court.

2. The Constitutional Court shall determine its lack of jurisdiction or competence *proprio motu* or at the request of the parties.

Article 5

The Constitutional Court shall consist of twelve members bearing the title of Judges (*Magistrados*) of the Constitutional Court.

Article 6

1. The Constitutional Court shall sit as a full Court or in divisions (*Salas*).

2. The full Court shall consist of all Judges of the Court. It shall be presided over by the President of the Court or, in his absence, by the Vice-President, or in the absence of the latter, by the Judge ranking highest in seniority of tenure and, in the event of equal seniority, by the eldest.

Article 7

1. The Constitutional Court shall consist of two Divisions. Each division shall comprise six Judges appointed by the plenum of the Court.

2. The President of the Court shall also be President of the First Division which, in his absence, shall be presided over by the Judge ranking highest in seniority and, in the event of equal seniority, by the eldest.

3. The Vice-President of the Court shall preside over the Second Division which, in his absence, shall be presided over by the Judge ranking highest in seniority and, in the event of equal seniority, by the eldest.

Article 8

With a view to expediting the proceedings of cases and determining the admissibility of applications, the full Court and the Divisions shall establish Sections (*Secciones*) comprising their respective President or his substitute and two Judges.

Article 9

1. The plenum of the Court shall elect its President from among its members by secret ballot and nominate him for appointment by the King.

2. An absolute majority shall be required in the first ballot. If it is not obtained, a second ballot shall be held, in which the Judge obtaining the most votes shall be elected. In the event of a tie, a final ballot shall be held. If that also proves inconclusive, the Judge ranking highest in seniority of tenure or, in the event of equal seniority, the eldest shall be nominated.

3. The name of the nominee shall be submitted to the King for appointment for a three-year term, at the end of which he shall be eligible for re-election once only.

4. The plenum of the Court shall elect from among its members, in accordance with the procedure described in paragraph 2 of this article and also for a three-year term, a Vice-President who shall replace the President in the event of vacancy or absence or for any other reason, and who shall preside over the Second Division.

Article 10

1. The plenum of the Court shall have jurisdiction in the following matters:

a. actions and questions of unconstitutionality;

b. constitutional conflicts of jurisdiction between the State and the Autonomous Communities and between the Autonomous Communities themselves;

c. conflicts between the constitutional bodies of the State;

d. prior determination of constitutionality[2];

e. disputes provided for in Article 161, number 2, of the Constitution;

f. scrutiny of compliance with the formalities required for the appointment of Judges of the Constitutional Court;

g. the appointment of Judges to serve in either of the two Divisions;

h. challenges relating to the Judges of the Constitutional Court;

i. dismissal of the Judges of the Constitutional Court in the circumstances provided for in Article 23 of this Law;

j. the adoption and amendment of the Court's rules;

k. any other matter within the Court's jurisdiction brought before it by the plenum on the recommendation of the President or three Judges, and any other matters assigned to it explicitly by an organic law.

[2] Consisting solely, pursuant to organic Law No. 4/1985, of the declaration of constitutionality of international treaties (cf. Article 78 of this Law).

Article 11

1. The Divisions of the Constitutional Court shall hear cases which, having been referred to constitutional justice, fall outside the jurisdiction of the full Court.

2. The Divisions shall also hear cases which have been referred to the corresponding Sections but which they consider of sufficient importance to require a ruling by the Division itself.

Article 12

Cases shall be assigned to the Divisions of the Court in turn in accordance with a procedure established by the plenum of the Court on the recommendation of its President.

Article 13

Where a Division considers it necessary to deviate on any point from the constitutional doctrine previously established by the Court, the matter shall be submitted to the full Court for a ruling.

Article 14

The plenum of the Court may give a ruling when at least two-thirds of its membership at that particular time are present. The rulings of the Divisions shall also require the presence of two-thirds of their respective membership at a particular time. In the case of the Sections, the presence of two members shall be necessary, save in the case of a difference of opinion when the presence of all three members shall be required.

Article 15

The President of the Constitutional Court shall represent and convene the Court, preside over its plenum and convene the Divisions; he shall take appropriate steps to ensure the functioning of the Court, the Divisions and the Sections; he shall inform the Houses, the Government and the General Council of the Judiciary of any vacancy that occurs; he shall exercise administrative authority over the staff of the Court, and shall request the Ministry of Justice to publicise vacancies in respect of posts of clerk, officer *(oficiales)*, auxiliary *(auxiliares)* and porters so that they may be filled.

Chapter II
The Judges of the Constitutional Court

Article 16

1. The Judges of the Constitutional Court shall be appointed by the King on the recommendation of the Houses, the Government and the General Council of the Judiciary in accordance with the conditions laid down in Article 159.1 of the Constitution.

2. The term of office of a Judge of the Constitutional Court shall be nine years, one third of the Court being renewed every three years. No Judge may be nominated to the King for a second consecutive term unless he or she has held office for a period of not more than three years.

Article 17

1. More than four months prior to the date of expiry of the appointments, the President of the Court shall invite the Presidents of the bodies responsible for nominating new Judges to initiate the statutory procedure.

2. The Judges of the Constitutional Court shall remain in office until such time as their successors take up office.

Article 18

The members of the Constitutional Court shall be appointed from among Spanish citizens who are judges, members of the Office of the Public Prosecutor, university professors, public officials or lawyers, and who are in all cases jurists of recognised standing with more than fifteen years' experience in their respective profession or office.

Article 19

1. The office of Judge of the Constitutional Court shall be incompatible: firstly, with that of Defender of the People (*Defensor del Pueblo*); secondly, with that of Deputy or Senator; thirdly, with any other political or administrative office with the State authorities, the Autonomous Communities, the provinces or any other local entities; fourthly, with any jurisdictional function or any activity whatsoever associated with judicial service or the Office of the Public Prosecutor; fifthly, with any form of employment in the courts of any other jurisdiction; sixthly, with management responsibilities in political parties, trade unions, associations, foundations and professional boards and with any form of employment in their service; seventhly, with professional and commercial activities. In the remaining, the incompatibilities that apply to members of the Judiciary shall also be applicable to the members of the Court.

2. Where a ground of incompatibility exists in the case of a person nominated as Judge of the Court, that person shall resign from the incompatible post or activity before taking up office. Failure to do so within the ten days following nomination shall be taken to denote non-acceptance of the office of Judge of the Constitutional Court. The same rule shall be applicable in any cases of incompatibility that may arise.

Article 20

Members of the Judiciary and of the Office of the Public Prosecutor and public officials in general who are appointed Judges of the Court shall be placed on special temporary release from their former career.

Article 21

On taking office, the President and the other Judges of the Constitutional Court shall take before the King the following oath or pledge:

"I swear (or pledge) faithfully and at all times to uphold and to ensure that it is upheld the Spanish Constitution, allegiance to the Crown and to perform my duties as a Constitutional Judge."

Article 22

The Judges of the Constitutional Court shall perform their duties in accordance with the principles of impartiality and dignity that are inherent in their office; they may not be prosecuted for opinions expressed in the exercise of their duties; they shall be irremovable and may be dismissed or suspended only on one of the grounds established by this Law.

Article 23

1. The following shall be grounds for dismissal of Judges of the Constitutional Court: firstly, resignation accepted by the President of the Court; secondly, expiry of their term of office; thirdly, existence of any of the grounds of disability applicable to members of the Judiciary; fourthly, any incompatibility that may arise; fifthly, failure to perform the duties of their office with the requisite diligence; sixthly, failure to maintain the reserve pertaining to their office; seventhly, being found responsible for fraud in civil proceedings or being convicted of a wilful wrong or of seriously negligent crime.

2. The termination or vacancy of the office of Judge of the Constitutional Court shall be decreed by the President in the first and second cases as well as in the event of decease. In the other cases, the plenum of the Court shall rule by a simple majority in the third and fourth cases and by a three-quarters majority of its members in the remaining cases.

Article 24

Judges of the Constitutional Court may be suspended by the Court, as a preliminary measure, in cases of indictment or to allow the time indispensable to establish whether any of the grounds for termination defined in the previous article exists. Three quarters of the members sitting in the full Court must vote in favour of suspension.

Article 25

1. Judges of the Constitutional Court with a minimum of three years' service shall be entitled to a one-year transitional allowance equivalent to that accruing to them on leaving office.

2. Where a Judge of the Court belongs to any body of officials with a pension entitlement, the amount thereof shall be determined by calculating the time spent in the performance of constitutional duties,

taking into account the overall remuneration accruing to the Judge of the Constitutional Court during the final year.

Article 26

The criminal liability of Judges of the Constitutional Court shall be enforceable only before the Criminal Division of the Supreme Court.

Title II
Procedures for a declaration of unconstitutionality

Chapter I
General provisions

Article 27

1. By virtue of the procedures for a declaration of unconstitutionality established in this title, the Constitutional Court shall guarantee the primacy of the Constitution and determine the conformity or non-conformity therewith of contested laws, provisions or enactments.

2. A declaration of unconstitutionality may be issued in respect of the following:

a. the Statutes of Autonomy and other organic laws;

b. other State laws, regulations and enactments having the force of law. In the case of legislative decrees (delegated legislation), the Court's jurisdiction shall be exercised without prejudice to the provisions of Article 82, number 6, of the Constitution;

c. international treaties;

d. the Rules of Procedure of the Houses and the *Cortès Générales*;

e. the laws, enactments and regulations having the force of law of the Autonomous Communities, subject to the same reservation as under sub-paragraph b above with respect to cases of legislative delegation;

f. the Rules of Procedure of the legislative assemblies of the Autonomous Communities.

Article 28

1. In order to determine the conformity or non-conformity with the Constitution of a law, regulation or enactment having the force of law issued by the State or the Autonomous Communities, the Court shall consider, in addition to constitutional precepts, any laws enacted within the framework of the Constitution for the purpose of delimiting the powers of the State and the individual Autonomous Communities or of regulating or harmonizing the exercise of their powers.

2. Furthermore, the Court may declare unconstitutional, on grounds of infringement of Article 81 of the Constitution, the provisions of a decree-law, a legislative decree, or a law other than an organic law or an enactment of an Autonomous Community, where such provisions regulate matters reserved for an organic law or require an amendment to or a derogation from such an law, irrespective of its content.

Article 29

1. A declaration of unconstitutionality may be issued in response to:

a. an action of unconstitutionality;

b. a question of unconstitutionality raised by judges or courts of law.

2. The dismissal, on grounds of form, of an action of unconstitutionality against a law, regulation or enactment having the force of law, shall not impede the raising of a question of unconstitutionality with respect to such law, regulation or enactment in other legal proceedings.

Article 30

The admissibility of an action or question of unconstitutionality shall not suspend the entry into force or the enforcement of the relevant law, regulation or enactment having the force of law save where the Government invokes the provisions of Article 161.2 of the Constitution to challenge, through its President, laws, regulations or enactments having the force of law of the Autonomous Communities.

Chapter II
Action of unconstitutionality

Article 31

An action of unconstitutionality against laws, regulations or enactments having the force of law may be brought from the date of their official publication.

Article 32

1. The following have standing to bring an action of unconstitutionality against Statutes of Autonomy and other State laws, organic or of any character whatsoever, against regulations and enactments of the State or Autonomous Communities having the force of law, and against international treaties and the Rules of Procedure of the Houses and the *Cortès Générales*:

a. the President of the Government;

b. the Defender of the People (*Defensor del Pueblo*);

c. fifty Deputies;

d. fifty Senators.

2. The executive collegiate bodies and the assemblies of the Autonomous Communities, following prior agreement to that effect, shall also have standing to bring an action of unconstitutionality against State laws, provisions or enactments having the force of law that may affect their own area of autonomy.

Article 33

An action of unconstitutionality shall be brought within three months of the date of publication of the contested law, provision or enactment having the force of law, in the form of an application to the Constitutional Court stating the identity of the individuals or bodies bringing the action and, where appropriate, their representatives, specifying the wholly or partially contested law, provision or enactment, and indicating the constitutional precept that is deemed to have been violated.

Article 34

1. If the application is declared admissible, the Constitutional Court, following the prescribed procedure, shall transmit it to the Congress of Deputies and the Senate through their Presidents, to the Government through the Ministry of Justice and, where the action concerns a law or provision having the force of law promulgated by an Autonomous Community, to its legislative and executive bodies so that they can attend the proceedings and put forward such arguments as they deem appropriate.

2. There shall be a time-limit of fifteen days for appearance before the Court and presentation of arguments. Upon expiry of that time-limit, the Court shall deliver its judgement within ten days, save where, based on a reasoned decision, the Court deems that circumstances require an extension which shall in no circumstances exceed thirty days.

Chapter III
Question of unconstitutionality raised by judges and courts of law

Article 35

1. Where a judge or a court, *proprio motu* or at the request of a party, considers that an enactment having the force of law which is applicable to a case and on which the validity of the ruling depends may be contrary to the Constitution, the judge or court shall raise the question before the Constitutional Court in accordance with the provisions of this Law.

2. The judicial body may raise the question only on completion of the proceedings and within the prescribed time-limit for delivering its judgement, by specifying the law or enactment having the force of law whose constitutionality is contested and the constitutional precept that is deemed to have been violated, and by indicating with supporting evidence the extent to which the judgement emanating from the proceedings depends on the validity of the enactment in question. Before delivering its final judgement, the judicial body shall hear the parties and the Office of the Public Prosecutor so that, within a joint time-limit of ten days that may not be extended, they can put forward such arguments as they see fit regarding the appropriateness of raising a question of unconstitutionality, whereupon the judge shall give a ruling without further process within three days. That ruling may not be appealed. However, the question of unconstitutionality may be raised again at successive stages of the proceedings or in higher courts until such time as a judgement not subject to appeal has been delivered.

Article 36

The judicial body shall lay the question of unconstitutionality before the Constitutional Court together with a certification of the records in the main proceedings and the arguments provided for in the previous article, where they exist.

Article 37

1. When the Constitutional Court has received all the documents, the proceedings shall be conducted in accordance with the procedure described in paragraph 2 of this article. However, the Court may, when assessing admissibility, dismiss the question of unconstitutionality by an order issued solely after hearing the State Attorney-General where the requisite conditions for the action are lacking or where the question raised is manifestly unfounded. Any such decision shall be reasoned.

2. The Constitutional Court shall communicate the question to the Congress of Deputies and the Senate through their Presidents, to the State Attorney-General, to the Government through the Ministry of Justice and, where it concerns a law or other enactment having the force of law of an Autonomous Community, to the legislative and executive bodies of that Community; all parties may appear before the Court and put forward arguments concerning the question raised within a jointly applicable time-limit of fifteen days which may not be extended. On expiry of that time-limit, the Court shall deliver its judgement within fifteen days, save where, based on a reasoned decision, the Court deems that circumstances require an extension which shall not exceed thirty days.

Chapter IV
The judgement in unconstitutionality proceedings and its consequences

Article 38

1. Judgements handed down in unconstitutionality proceedings shall have the force of *res judicata*, shall be binding on all public authorities and shall have consequences of a general nature from the date of their publication in the “Official State Gazette”.

2. Where judgements entailing dismissal of applications are handed down in actions of unconstitutionality, the question may not be raised subsequently through the same channels if it is based on infringement of an identical constitutional precept.

3. In the case of judgements handed down on questions of unconstitutionality, the Constitutional Court shall immediately inform the judicial authority responsible for giving a ruling in the proceedings. That body shall report the constitutional judgement to the parties. The judge or the court shall be bound from the time of taking cognisance of the constitutional judgement and the parties from the time of being informed thereof.

Article 39

1. Where the judgement declares unconstitutionality, it shall also declare invalid the contested provisions and, where appropriate, any other provisions of the same law, regulation or enactment having the force of law to which it must be extended by association or consequence.

2. The Constitutional Court may ground the declaration of unconstitutionality on the violation of any constitutional precept, regardless of whether it was invoked during the proceedings.

Article 40

1. Judgements that declare the unconstitutionality of laws, regulations or enactments having the force of law shall not provide grounds for review of proceedings concluded by means of a judgement having force of *res judicata* in which unconstitutional laws, regulations or enactments were applied, save in the case of criminal proceedings or administrative litigation concerning a sanction procedure where the invalidity of the rule applied would entail a reduction of the penalty or sanction or exclusion, exemption or limitation of liability.

2. At all events, the case-law of the courts of law relating to laws, regulations and enactments adjudicated by the Constitutional Court shall be amended by the doctrine resulting from judgements and reasoned orders relating to actions and questions of unconstitutionality.

Title III
The appeal for constitutional protection *(recurso de amparo)*

Chapter I

Grounds and making the appeal for constitutional protection

Article 41

1. The rights and freedoms recognised in Articles 14 to 29 of the Constitution shall be secured by constitutional protection (*amparo constitucional*) in the circumstances and form laid down by this Law, without prejudice to the general guardianship thereof entrusted to the courts of law. The same protection shall be accorded to conscientious objection as recognised in Article 30 of the Constitution.

2. The appeal for constitutional protection shall be available to all citizens, in accordance with the provisions of this Law, against violations of the rights and freedoms referred to in the previous paragraph resulting from provisions, legal enactments or common assault by the public authorities of the State, the Autonomous Communities and other territorial, corporate or institutional public bodies, as well as by their officials or agents.

3. For the purposes of constitutional protection, no claims may be asserted other than those designed to restore or preserve the rights or freedoms for which the action has been brought.

Article 42

Decisions or enactments without the force of law taken by the *Cortès* or any of its organs or by the legislative assemblies of the Autonomous Communities or their organs, which violate the rights and freedoms protected by the Constitution, may be the subject of legal action within a period of three months following the time when, in accordance with the rules of procedure of the Houses or the assemblies, they shall be without appeal.

Article 43

1. The above-mentioned violations of rights and freedoms resulting from provisions, legal enactments or common assault by the Government, its authorities, or its officials or by the collegiate executive bodies of the Autonomous Communities or their authorities, officials or agents, may provide grounds for an appeal for protection when the relevant judicial remedy has been exhausted, in accordance with Article 53.2 of the Constitution.

2. The time-limit for lodging an appeal for constitutional protection shall be twenty days from the date of notification of the ruling given in the previous legal proceedings.

3. Such an appeal may be based solely on an infringement, by a non-appealable decision, of the constitutional precepts recognizing protected rights and freedoms.

Article 44

1. Violations of constitutionally protected rights and freedoms that are the immediate and direct result of an act or omission by a judicial body may give grounds for such an appeal provided that the following conditions are met:

a. That all available judicial remedies have been exhausted;

b. That the violation of the right or freedom is immediately and directly attributable to an act or omission by the judicial body regardless of the circumstances that led to the proceedings in which it occurred, which shall in no circumstances be adjudicated by the Constitutional Court;

c. That the violated constitutional right, once it became evident, was formally invoked during the proceedings at the earliest opportunity.

2. The time-limit for lodging an appeal for protection shall be twenty days from the date of notification of the ruling given in the judicial proceedings.

Article 45

Repealed by organic Law No. 8/1984[3]

[3] According to Article 1 of this Law:

"1. An appeal may be lodged, in accordance with the rules governing judicial protection of fundamental rights, against decisions by the National Council on Conscientious Objection that reject an application for a declaration of conscientious objection or that produce the same result.

2.An appeal for constitutional protection against judicial decisions that terminate the procedure mentioned in the preceding paragraph may be brought before the Constitutional Court."

Article 46

1.The following shall have standing to lodge an appeal for constitutional protection:

a.In the case of Articles 42 and 45, the person directly affected, the Defender of the People and the Office of the Public Prosecutor;

b.In the case of Articles 43 and 44, the parties to the corresponding judicial proceedings, the Defender of the People and the Office of the Public Prosecutor.

2.Where the appeal is brought by the Defender of the People or the Office of the Public Prosecutor, the Division of the Court with authority to hear the case for constitutional protection shall inform any potentially injured persons of whom it has knowledge and shall order publication of the notice of appeal in the "Official State Gazette" so that other interested parties may come forward. Such publication shall have preferential status.

Article 47

1.Persons who benefited by the decision, act or circumstance that led to the appeal or persons with a legitimate interest therein may appear in the proceedings for constitutional protection as a defendant or additional party.

2.The Office of the Public Prosecutor shall intervene in all protection proceedings in defence of legality, citizens' rights and the public interest under the custodianship of the law.

Chapter II
On procedure in appeals for constitutional protection

Article 48

Appeals for constitutional protection shall be heard by the Divisions of the Constitutional Court.

Article 49

1.Appeals for constitutional protection shall be initiated by an application setting out clearly and concisely the circumstances on which they are based, mentioning the constitutional precepts that are deemed to have been violated and giving details of the protection sought with a view to preserving or restoring the allegedly violated right or freedom.

2.The application shall be accompanied by:

a.The document mandating the representative of the applicant for protection;

b.Where appropriate, a copy, notification or certificate of the decision that terminated the judicial or administrative proceedings.

3.The application shall also be accompanied by as many authenticated copies thereof as there were parties to the previous proceedings, as well as, when appropriate, a copy for the Office of the Public Prosecutor.

Article 50[4]

[4] Article drafted pursuant to L.O. 6/1988.

1.The Section, ruling unanimously through an order that shall not be substantiated, may declare the action inadmissible in the following cases:

a.Where the application manifestly and irreversibly fails to meet any of the conditions contained in Articles 41 to 46, or in the case referred to in Article 4.2;

b.Where the application relates to rights or freedoms that are not constitutionally protected;

c.Where the application is manifestly devoid of content warranting a judgement by the Constitutional Court on its merits;

d.Where the Constitutional Court has already dismissed an action or question of unconstitutionality or an appeal for constitutional protection on the merits in a broadly identical case, in which case it shall make specific reference in the order to the judgement or judgements concerned.

2.The applicant and the Office of the Public Prosecutor shall be notified of the order referred to in the preceding paragraph, which must specify the category into which the action falls. Appeals against such an order shall lie solely with the Office of the Public Prosecutor and shall take the

form of an application to be filed within three days. The ruling on any such application shall be given in the form of a reasoned decision.

3. In the absence of unanimity regarding the cases listed in paragraph 1, the Section, after hearing the applicant for constitutional protection and the Office of the Public Prosecutor within a period applicable to both parties of not more than ten days, may declare the appeal inadmissible through a reasoned decision.

4. No appeal may be lodged against the reasoned decisions referred to in paragraphs 2 and 3 above.

5. If the application for constitutional protection contains one or more irregularities that may be corrected, the Section shall apply the provisions of Article 85.2; if the irregularities are not corrected within the prescribed period, the Section shall declare the application inadmissible through an order that shall not be reasoned and shall be without appeal.

Article 51

1. Where an application for protection is admitted, the Division shall urgently request the body or authority with which the decision, act or circumstance originated or the judge or court that heard the previous proceedings, to provide it with the court records or the supporting documents within a period of not more than ten days.

2. The body, authority, judge or court shall immediately acknowledge receipt of the request, shall dispatch the documents within the prescribed period and shall notify the persons who were parties to the former proceedings so that they may appear in the constitutional proceedings within ten days.

Article 52

1. On receipt of the court records and on expiry of the notification period, the Division shall transmit the records to the originator of the appeal for protection, the parties who appeared in the proceedings, the Government Advocate in cases involving the public Administration, and the Office of the Public Prosecutor. The hearing shall take place within a period applicable to all parties of not more than twenty days during which pertinent arguments may be put forward.

2. The Division, *proprio motu* or at the request of a party, may agree to an oral hearing in place of the formal presentation of arguments.

3. Following presentation of the arguments or on expiry of the time-limit without further developments, the Division shall hand down its judgement within ten days.

Chapter III
The judgement on appeals for constitutional protection and its consequences

Article 53

The Division, having examined the case on its merits, shall deliver one of the following judgements:

a. Granting of protection (*otorgamiento de amparo*);

b. Denial of protection (*denegación de amparo*).

Article 54

When the Division hears an appeal for protection concerning rulings by the judges and courts, its role shall consist solely in determining whether the applicant's rights or freedoms have been violated and in preserving or restoring those rights or freedoms; it shall refrain from further comment on the actions of the judicial bodies.

Article 55

1. A judgement granting protection shall contain one or more of the following pronouncements:

a. Declaration of invalidity of the decision, act or resolution that prevented the full exercise of protected rights and freedoms, specifying, where applicable, the scope of its consequences;

b. Recognition of the public right or freedom in the light of the constitutional provision relating to its substance;

c. Full restoration of the applicant's right or freedom and adoption, where appropriate, of measures conducive to its preservation.

2. Where protection is granted because the law applied violates fundamental rights or public freedoms, the Division shall lay the question before the full Court,

which may declare the law in question unconstitutional in a new judgement entailing the ordinary consequences provided for in Article 37 and related articles.

Article 56

1. The Division that hears an appeal for protection shall, *proprio motu* or at the request of the applicant, stay execution by the public authorities of the act in respect of which constitutional protection is claimed where such execution might cause an injury that would defeat the very purpose of the protection. It may, however, deny the stay where it could seriously harm the general interests or the fundamental rights or public freedoms of a third party.

2. A stay may be requested at any time prior to the delivery of a judgement or prior to any other form of settlement of the action for protection. The interlocutory issue of a stay shall be examined in a hearing of the parties and the Office of the Public Prosecutor, within a period of not more than three days for all parties, and the authorities responsible for execution shall report to the hearing if the Division so requires. A stay may be granted with or without surety. The Division may stipulate as a condition for denial of a stay, where the rights of a third party could be seriously injured, the provision of adequate surety to cover any ensuing damages and injuries.

Article 57

The stay or its denial may be modified during the proceedings for constitutional protection, proprio motu or at the request of a party, in the light of new circumstances or of circumstances that could not have been known at the time of examination of the interlocutory issue of a stay.

Article 58

1. Jurisdiction to rule on claims for damages consequent on the granting or refusal of a stay shall lie with the judges or courts, with which the sureties shall be deposited.

2. Claims for damages settled arising as a result of interlocutory matters shall be submitted within a year following the date of publication of the judgement of the Constitutional Court.

Title IV
Constitutional conflicts

Chapter I
General provisions

Article 59

The Constitutional Court shall hear any conflicts that may arise concerning the jurisdiction or powers conferred directly by the Constitution, the Statutes of Autonomy or organic or ordinary laws defining the respective spheres of competence of the State and the Autonomous Communities:

1. Between the State and one or more Autonomous Communities;

2. Between two or more Autonomous Communities;

3. Between the Government and the Congress of Deputies, the Senate or the General Council of the Judiciary, or among those constitutional bodies.

Chapter II
Conflicts between the State and the Autonomous Communities or between the latter

Article 60

Actions concerning conflicts of jurisdiction between the State and an Autonomous Community or between the latter may be brought by the Government or the executive collegial bodies of the Autonomous Communities in the manner prescribed in the following articles. Negative conflicts may also be brought by interested natural or legal persons.

Article 61

1. Decisions, resolutions and acts by State bodies or by bodies of the Autonomous Communities or the omission of such decisions, resolutions or acts shall provide grounds for initiating conflicts of jurisdiction.

2. Where one of the conflicts mentioned in the preceding article is initiated in connection with a decision, resolution or act concerning which a challenge is pending in any court whatsoever, that court shall suspend the proceedings until the constitutional conflict has been decided.

3. The decision of the Constitutional Court shall be binding on all public authorities and shall be fully enforceable in all cases.

Section I
Positive conflicts

Article 62

Where the Government considers that a decision or resolution by an Autonomous Community is contrary to the allocation of powers established in the Constitution, the Statutes of Autonomy or the corresponding organic legislation, it may refer the dispute concerning jurisdiction directly to the Constitutional Court within a period of two months, or it may give notice of lack of jurisdiction, as provided for in the following paragraph, without prejudice to the Government's right to invoke Article 161.2 of the Constitution with corresponding consequences.

Article 63

1. Where the higher executive body of an Autonomous Community considers that a decision, resolution or act by the authority of another Community or by the State is contrary to the allocation of powers established in the Constitution, the Statutes of Autonomy or the corresponding legislation, and where its own field of jurisdiction is affected, it shall make an application to the authority in question with a view to having the decision reversed or the resolution or act annulled.

2. The application concerning lack of jurisdiction may be made within two months following the date of publication or announcement of the decision, resolution or act that is deemed *ultra vires* irregular on grounds of lack of jurisdiction or in the event of its application in a specific case, and shall be addressed directly to the Government or the higher executive body of the other Autonomous Community, the Government being notified also in the latter case.

3. The application shall clearly specify the provisions of the decision or the particular aspects of the resolution or act deemed *ultra vires* as well as the legal or constitutional provisions from which the irregularity results.

4. Where the body applied to considers that the application is justified, it shall take corresponding action within a period of not more than one month from the date of reception thereof, notifying the applicant and also the Government in cases where the latter was not the applicant. Where it considers that the application is unfounded, it shall reject it within the same time-limit, on expiry of which applications on which no action has been taken shall at all events be considered rejected.

5. If the applicant body has not obtained satisfaction within one month following notification of rejection or on expiry of the time-limit referred to in the preceding paragraph, it may lay the dispute before the Constitutional Court, certifying that the application procedure has proved unsuccessful and stating the legal arguments on which the application is based.

Article 64

1. Within ten days the Court shall inform the Government or the corresponding autonomous body of the initiation of the conflict, setting a time-limit which shall under no circumstances exceed twenty days for presentation of all relevant documents and arguments.

2. Where the conflict was initiated by the Government, invoking Article 161.2 of the Constitution, following adoption of a decision by the Autonomous Community, formal notification thereof by the Court shall suspend enforcement with immediate effect of the decision, resolution or act that gave rise to the conflict.

3. In all other cases, the body initiating the conflict may apply to the Court for a stay of the challenged decision, resolution or act, citing injuries that are impossible or difficult to redress; the Court shall be free to grant or deny the requested stay.

4. A statement of the facts of the conflict initiated by the Government and, where applicable, the Court's decision to grant a stay of the challenged decision, resolution or act shall be communicated to the parties concerned and published in the relevant “Official State Gazette” by the Court itself.

Article 65

1. The Court may require the parties to furnish any information, clarifications or details that it considers necessary for its decision and shall deliver a decision within fifteen days following the expiry of the period for presentation of arguments or, where

applicable, of any time-limit set in respect of the additional information, clarifications or details.

2. In the case provided for in paragraph 2 of the preceding article, if no judgement is delivered within five months of the initiation of the conflict, the Court shall issue a reasoned order within that period stating whether the stay of the act, resolution or decision challenged by the Government on grounds of lack of jurisdiction shall be maintained or lifted.

Article 66

The judgement shall specify the body with which the challenged jurisdiction lies and shall grant annulment, where appropriate, of the contested decision, resolution or act on grounds of lack of jurisdiction. It may take whatever action it sees fit on any *de facto* or *de jure* situations created.

Article 67

Where the challenged jurisdiction has been assigned by a law or an enactment ranking as a law, the conflict of jurisdiction shall proceed from the time of initiation or, where applicable, from the time of invoking the existence of the empowering enactment in the manner prescribed for an action concerning unconstitutionality.

Section II
Negative conflicts

Article 68

1. Where an organ of State administration disclaims authority to rule on any claim lodged with it by a natural or legal person on the grounds that jurisdiction in the matter lies with an Autonomous Community, the party concerned, after seeking an administrative remedy through an application to the relevant Ministry, may reassert the claim before the collegiate executive body of the Autonomous Community that has been declared competent. Similar action shall be taken where an application is rejected by an Autonomous Community on the grounds that jurisdiction lies with the State or another Autonomous Community.

2. The administration approached in the second instance shall accept or decline jurisdiction within one month. In the event of acceptance, it shall take action on the application. In the event of rejection, it shall notify the applicant, stating clearly the grounds on which its decision is based.

3. Where the administration referred to in the previous paragraph disclaims jurisdiction or fails to take an affirmative decision within the prescribed period, the party concerned may apply to the Constitutional Court. In that event, it shall make the appropriate application within one month following notification of the refusal of jurisdiction or on expiry of the period fixed in the preceding paragraph without an explicit outcome, requesting examination and settlement of the conflict of negative jurisdiction.

Article 69

1. The application introducing the conflict shall be made in writing and shall be accompanied by documents certifying that the remedy referred to in the preceding paragraph has been exhausted and reporting the rulings that resulted from those proceedings.

2. Where the Court finds that the refusal of the administrations involved is based specifically on a difference of interpretation of the provisions of the Constitution or the Statutes of Autonomy or organic or ordinary legislation defining the specific jurisdictions of the State and the Autonomous Communities, it shall declare the conflict admissible in a reasoned order issued within ten days following submission of the application. That decision shall be communicated immediately to the applicant and the administrations involved and to any other parties deemed by the Court to have authority upon the case, together with a copy of the application and supporting documents; it shall grant a period of one month to all parties for presentation of any arguments they consider relevant for the purpose of reaching a determination on the conflict.

Article 70

1. The judgement specifying which administration has jurisdiction shall be delivered within one month following expiry of the period indicated in the preceding article or, where applicable, of the periods set by the Court for responding to any requests for clarifications or additional information or details.

2.Administrative time-limits that have expired shall be renewed as a matter of course for a normal period following publication of the judgement.

Article 71

1.The Government may also initiate a conflict of negative jurisdiction where the higher executive body of an Autonomous Community, alleging lack of jurisdiction, fails to act on an application from the Government requesting it to exercise the powers associated with the jurisdiction assigned to it by its own Statutes or by an organic law providing for delegation or transfer.

2.The failure of the respondent executive body to take action within the period fixed by the Government for the exercise of its powers shall be taken as an implicit declaration of lack of jurisdiction. That period shall in no circumstances be less than one month.

Article 72

1.Within one month following the date on which the application referred to in the preceding article must be viewed as expressly or tacitly rejected, the Government may lay the negative conflict before the Constitutional Court in the form of an application stating the constitutional, statutory or legal provisions which, in its opinion, require the Autonomous Community to exercise its powers.

2.The Court shall transmit the application to the higher executive body of the Autonomous Community, granting it a period of one month to present whatever arguments it sees fit.

3.Within one month following expiry of that period or, where applicable, of the period granted to the State or the Autonomous Community to reply to any requests to it for clarifications or additional information or details, the Court shall deliver its judgement, which shall contain one of the following declarations:

a.That the application is valid and that the Autonomous Community must exercise the requisite powers within a specified period;

b.That the application is invalid.

Chapter III

Conflicts between constitutional organs of the State

Article 73

1.Where one of the constitutional bodies referred to in Article 59.3 of this Law decides in plenary session that the decisions of another such body encroach on the powers conferred on the former by the Constitution or by organic laws, it shall notify the latter thereof within one month following the date on which it obtained knowledge of the decision allegedly taken by virtue of wrongfully assumed powers and request its annulment.

2.Where the body notified asserts that it has acted within its constitutionally and legally conferred powers, or where it fails to take the corrective action requested within a period of one month following reception of the notification, the body alleging that its powers have been wrongfully assumed shall lay the conflict before the Constitutional Court. To that end, it shall submit an application specifying the provisions that have allegedly been violated and present any arguments it sees fit. The application shall be accompanied by any judicial record certificate considered relevant and by the communication provided for in the preceding paragraph of this article.

Article 74

On receipt of the application, the Court shall transmit it to the respondent body within ten days, according it one month to present any arguments it deems relevant. It shall send similar communications and notice of proceedings to all other bodies empowered to initiate this type of conflict, who may appear before the Court, in support of the applicant or the defendant, if they consider that their own powers may in some way be affected by the outcome of the conflict.

Article 75

1.The Court may require the parties to furnish any information, clarifications and details that it considers necessary for its decision and shall deliver judgement within one month following expiry of the period for submission of arguments referred to in the preceding article or, where applicable, of the period for submission of information, clarifications or additional details, which shall not exceed an additional thirty days.

2. The Court's judgement shall specify the body to which the disputed constitutional powers belong and shall declare null and void any acts executed through the wrongful assumption of powers; it shall also take appropriate action on any legal situations that may have come about as a result of such acts.

Title V
Challenges to enactments without force of law and to decisions of the Autonomous Communities, as provided under Article 161.2 of the Constitution

Article 76

The Government may challenge enactments without force of law and decisions by any body of the Autonomous Communities before the Constitutional Court within two months following the date of their publication or, in the absence of publication, the date on which it obtained knowledge thereof.

Article 77

The challenge provided for in this Title, regardless of the grounds on which it is based, shall be formulated and submitted in accordance with the procedure set forth in Articles 62 to 67 of this Law. Notification of the challenge by the Court shall entail a stay of the contested enactment or decision until the Court decides, within a period of not more than five months unless it delivers judgement sooner, to ratify or annul it.

Title VI
Declaration on the constitutionality of international treaties

Article 78

1. The Government or either of the two Houses may request the Constitutional Court to rule on whether or not there is a conflict between the Constitution and the provisions of an international treaty whose text is final but to which the State has not yet given its consent.

2. On receipt of the request, the Constitutional Court shall summon the applicant and the other competent bodies, in accordance with the provisions of the previous paragraph, to express their considered opinion of the matter within a period of one month. Within one month following expiry of that period, except in the case provided for in the following paragraph, the Constitutional Court shall deliver its declaration which, in conformity with the provisions of Article 95 of the Constitution, shall be binding.

3. The Constitutional Court may at any time request the bodies mentioned in the preceding paragraph, other natural or legal persons or other bodies of the State or the Autonomous Communities to furnish any clarifications, additional information and details that it considers necessary, extending the above-mentioned period of one month by the period accorded for response to its consultations, which may not exceed thirty days.

Article 79

Repealed by organic Law No. 4/1985

Title VII
General provisions concerning procedure

Article 80

The provisions of the Judiciary organic Law and the Code of Civil Procedure shall be applicable, in addition to the provisions of this Law, to appearances in court, disqualication and abstention, publication and form of instruments, communications and judicial cooperation, working days and hours, setting of time-limits, deliberations and voting, lapse, renunciation and withdrawal, official language and court-room police.

Article 81

1. Natural or legal persons with a legitimate interest in appearing as a plaintiff or additional party in constitutional proceedings shall be represented by a judicial attorney and act under the guidance of an advocate. Persons holding a Bachelor of Law degree may appear in defence of their own rights and interests even if they do not practise the profession of judicial attorney or advocate.

2. Only current members of any Bar Association in Spain may practise as an advocate in the Constitutional Court.

3. Persons who have served as a judge or staff attorney in the Constitutional Court shall be barred from practising in the Court as an advocate.

Article 82

1. The bodies or the deputies or senators authorised by the Constitution and by this Law to bring constitutional proceedings shall be represented by the member or members that they appoint or by a representative appointed for the purpose.

2. Executive bodies, both of the State and of the Autonomous Communities, shall be represented and defended by their advocates. In the case of the State executive bodies, those functions shall be performed by the State Advocate.

Article 83

The Court, after hearing the parties to constitutional proceedings, may at any time, *proprio motu* or at the request of a party, order the consolidation of proceedings whose purposes are related and warrant joint proceedings and rulings. The hearing shall take place within a period of not more than ten days.

Article 84

The Court may, at any time prior to delivering judgement, inform the parties to constitutional proceedings of the possible existence of other grounds, different from those invoked, of sufficient importance to warrant an appropriate ruling on admissibility and inadmissibility and, where applicable, on the granting or dismissal of the constitutional claim. A joint hearing shall be held within a period of not more than ten days, that period suspending the delivery of the judgement.

Article 85

1. Constitutional proceedings shall be initiated by means of a reasoned application stating the grounds for the request in clear and precise terms.

2. In the cases referred to in Article 50 of this Law where correction is possible, the Court shall inform the petitioner of the grounds for inadmissibility so that he may remedy the defects within a period of ten days.

Article 86

1. Rulings in constitutional proceedings shall take the form of a judgement. However, rulings on initial inadmissibility, withdrawal and lapse shall take the form of a reasoned order (*auto*) unless otherwise stipulated in this Law. Other rulings shall take the form of a reasoned order or a non-reasoned order (*providencia*), depending on their content.[5]

[5] Drafted in accordance with organic Law No. 6/1988.

2. The judgements and declarations referred to in Title VI of this Law shall be published in the "Official State Gazette" within thirty days following the date of the judgement.

Article 87

1. The judgements of the Constitutional Court shall be binding on all public authorities.

2. The courts shall provide the Constitutional Court, as a matter of priority and urgency, with any legal co-operation and assistance it may request.

Article 88

1. The Constitutional Court may request the public authorities and any organ of public administration to furnish records, reports and documents concerning a decision or act that is the subject of constitutional proceedings. In such cases, the Court shall set a time-limit for communication of the records, information or documents to the parties so that they may present such arguments as they deem appropriate.

2. The Court shall take any steps required to preserve the confidentiality under law of particular documents and the confidentiality that the Court itself accords by a reasoned decision to certain proceedings.

Article 89

1. Where it is deemed necessary, the Court may, *proprio motu* or at the request of a party, determine the taking of evidence, ruling freely on its form and duration, which shall in no circumstances exceed thirty days.

2. Where a witness summoned by the Court is unable to appear without authorisation from a higher body, the authority concerned shall, where appropriate, inform the Court of the grounds on which its refusal is based. The Court, having taken cognisance of this report, shall make the final decision.

Article 90

1. Unless otherwise stipulated in this Law, decisions shall be taken by a majority of the members meeting in full session, of the Division or Section participating in the deliberations. In the event of a tie, the President shall have the casting vote.

2. The President and the Judges of the Court may express a discrepancy maintained in the course of the deliberations, in the form of a dissenting opinion concerning either the judgement or its grounds. Dissenting opinions shall be included in the ruling and, in the case of judgements or declarations, shall be published with them in the "Official State Gazette".

Article 91

The Court may suspend its proceedings until the conclusion of criminal proceedings taking place before a criminal court.

Article 92

The Court may specify, in the judgement or ruling or in subsequent acts, the body responsible for execution and, where applicable, for deciding on interlocutory matters relating thereto.

Article 93

1. The judgements of the Constitutional Court shall be without appeal but the parties may request clarifications within two days of the date of their notification.

2. The only remedy available against non-reasoned orders (*providencias*) and reasoned orders (*autos*) is, where applicable, an application for reconsideration (*recurso de súplica*) which shall not have suspensive effect. The application may be lodged within three days and shall be decided, after a prior joint hearing of the parties within a similar period, within the following two days.

Article 94

The Court, *proprio motu* or at the request of a party, shall correct or confirm any procedural defect before delivering its judgement.

Article 95

1. Constitutional Court proceedings shall be free of charge.

2. The Court may charge costs arising from the proceedings to any party or parties that have defended unfounded positions where it finds evidence of recklessness or bad faith.

3. The Court may impose a fine of between 5,000 and 100,000 pesetas on any party who brings an action of unconstitutionality or *amparo* under circumstances of recklessness or abuse of rights.

4. It may impose coercive fines of between 5,000 and 100,000 pesetas on any party, with or without public authority status, who fails to comply with the Court's demands within the prescribed time-limits; such fines may be reimposed until full compliance by the parties concerned, without prejudice to any other liability arising therefrom.

5. The lower and upper limits of such penalties or fines may be amended at any time by an ordinary enactment.

Title VIII
The staff of the Constitutional Court

Article 96

1. The following officers shall serve in the Constitutional Court:

-The Registrar-General;

-Staff attorneys (*letrados*);

-Registrars (*secretarios de justicia*);

-Court Officers *(oficiales)*, auxiliaries *(auxiliares)* and bailiffs *(agentes)*.

2. The staff of the Court shall be subject to the provisions of this Law and of its implementing regulations[6] and, in addition, to the regulations applicable under the legislation in force to personnel employed in the administration of justice.

[6] The Organisational and Staff Regulations were approved by the plenum of the Constitutional Court on 5 July 1990.

3. The judicial offices mentioned in this article shall be incompatible with any other office, post or responsibility, with the exercise of a profession and with any industrial, commercial or professional

activities, even of a consultative or advisory nature. Persons holding such office may, however, engage in teaching or research activities that are not, in the Court's opinion, incompatible with faultless service on its behalf.

Article 97

1. The Constitutional Court shall be assisted by a team of staff attorneys recruited on the basis of a competitive examination held in accordance with the regulations laid down in the Rules of the Court.

2. On appointment, successful candidates shall be placed on special release without pay from their original career during their period of service with the Constitutional Court.

3. The competitive examination shall be held in accordance with the regulations laid down in the Rules of the Court and candidates with specialist qualifications in the field of public law shall be particularly highly rated.

Article 98

The Constitutional Court shall have a Registrar-General elected by the full Court and appointed by the President from among the staff attorneys. He shall provide General Registry services to the Court and shall serve as chief of the Court, without prejudice to the powers vested in the President, the Court and the Divisions.

Article 99

1. The Registrar-General shall organise, run and distribute the court's legal, administrative and auxiliary services and shall report thereon to the President; he shall also manage, coordinate and supervise the Court officers and provide General Registry services to the Court.

2. The Registrar-General shall also compile, classify and publish the Court's constitutional doctrine.

3. The Registrar-General's decisions concerning the staff may be appealed to the President of the Court, whose ruling shall exhaust available administrative remedies. A judicial administrative remedy against the President's ruling may subsequently be sought before administrative Courts.

Article 100

The Court and the Divisions shall be served by a number of registrars to be determined. The Registrars shall be recruited from the Registrars serving in the administration of justice; any vacancies shall be filled through a contest of merit among individuals qualified to serve in the Supreme Court.

Article 101

The Registrars shall serve as notaries public in the Court and the Divisions and shall perform the duties, on behalf of the Court or the Division to which they serve, which are conferred to secretaries under the organic and procedural legislation of the courts.

Article 102

Court Officers *(oficiales)*, auxiliaries *(auxiliares)*, bailiffs *(agentes)* and other staff shall be assigned to the Constitutional Court as necessary to conduct the proceedings.

The staff regulations shall establish the conditions of access to such posts.

Transitional Provisions

One

1. Within three months following the date of entry into force of this Law, the Congress of Deputies, the Senate, the Government and the General Council of the Judiciary shall submit nominations to the King for the appointment of the Judges of the Constitutional Court. This period shall be suspended, in the case of the Houses, during the intersessional periods.

2. The Court shall be constituted within fifteen days following the date of publication of the final appointments if all nominations are submitted during the same session. Otherwise, it shall be constituted and commence its proceedings within fifteen days following the end of the session during which the first eight appointments have been made, regardless of the circumstances that led to the failure to appoint all the Judges provided for under Article 5 of this Law.

3. At the first competitive examination, the staff attorneys to the Constitutional Court shall be selected by a committee of the Court itself,

appointed by the full Court and chaired by its President.

Two

1. The time-limits set in this Law for bringing an unconstitutionality or *amparo* action or for initiating a constitutional dispute shall be calculated from the date on which the Court is constituted in accordance with the preceding transitional provision, in cases where the laws, decisions, resolutions or acts that motivated the action or dispute came into force prior to that date and are still in effect.

2. Pending creation of the conditions for implementation of Article 53.2 of the Constitution establishing the judicial procedure for protection of fundamental rights and freedoms, the judicial means for seeking redress in the form of an *amparo* action shall be the ordinary judicial administrative remedy or that described in Section II of Law No. 62/1978 of 26 December concerning judicial protection of fundamental rights; the scope thereof shall therefore be understood to extend to all rights and freedoms referred to in Article 53.2 of the Constitution.

Three

1. The drawing of lots referred to in Transitional Provision IX of the Constitution shall be carried out in the fourth month preceding the date of expiry of the three-year or six-year term since the initial appointment of the Judges of the Constitutional Court.

2. The restriction established in Article 16.2 of this Law shall not be applicable to Judges of the Constitutional Court whose office is terminated three years after their appointment pursuant to Transitional Provision IX of the Constitution.

Four

The Government shall provide the funds required for the functioning of the Constitutional Court until such time as it has a budget of its own.

Five

Should Navarra decide not to exercise its right under Transitional Provision IV of the Constitution to seek incorporation in the Basque General Council or in the Basque autonomous regime that takes its place, the Regional Government (*Diputación*) and the Regional Parliament of Navarra shall enjoy the right to initiate disputes in accordance with Article 2.1.c and the right to bring actions of unconstitutionality accorded to the Autonomous Communities under Article 32.

Additional Provisions

One

1. The Constitutional Court shall initially have a staff of sixteen staff attorneys and three registrars.

2. The Court, once constituted, shall decide on the composition of its staff, which may only be modified by the Finance Law.

Two

1. The Court shall draw up its budget, which shall constitute a section of the general State Budget.

2. The Registrar-General, assisted by technical staff, shall be responsible for preparing and implementing the budget and for keeping the accounts.

Turkey
Constitutional Court

Constitution

Law No. 2709 of 7 November 1982 (as amended by Law No. 4121 of 23 July 1995)
- extracts -

II – Higher Courts

A – The Constitutional Court

1 – Organisation

Article 146

The Constitutional Court shall be composed of eleven regular and four substitute members.

The President of the Republic shall appoint two regular and two substitute members from the High Court of Appeals, two regular and one substitute member from the Council of State, and one member each from the Military High Court of Appeals, the High Military Administrative Court and the Court of Accounts, three candidates being nominated for each vacant office by the Plenary Assemblies of each court from among their respective presidents and members, by an absolute majority of the total number of members; the President of the Republic shall also appoint one member from a list of three candidates nominated by the Higher Education Council from among members of the teaching staff of institutions of higher education who are not members of the Council, and three members and one substitute member from among senior administrative officers and lawyers.

To qualify for appointments as regular or substitute members of the Constitutional Court, members of the teaching staff of institutions of higher education, senior administrative officers and lawyers shall be required to be over the age of 40 and to have completed their higher education, or to have served at least fifteen years as a member of the teaching staff of institutions of higher education or to have actually worked at least fifteen years in public service or to have practised as a lawyer for at least fifteen years.

The Constitutional Court shall elect a President and Deputy President from among its regular members for a term of four years by secret ballot and by an absolute

majority of the total number of members. They may be re-elected at the end of their term of office.

The members of the Constitutional Court shall not assume other official and private functions, apart from their main functions.

2 – Termination of Membership

Article 147

The members of the Constitutional Court shall retire on reaching the age of sixty-five.

Membership in the Constitutional Court shall terminate automatically if a member is convicted of an offence requiring his dismissal from the judicial profession; it shall terminate by a decision of an absolute majority of the total number of members of the Constitutional Court if it is definitely established that he is unable to perform his duties on account of ill health.

3 – Functions and Powers

Article 148

The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having force of law, and the Rules of Procedure of the Grand National Assembly of Turkey. Constitutional amendments shall be examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having force of law issued during a state of emergency, martial law or in time of war.

The verification of laws as to form shall be restricted to consideration of whether the requisite majority was obtained in the last ballot; the verification of constitutional amendments shall be restricted to consideration of whether the requisite majorities were obtained for the proposal and in the ballot, and whether the prohibition on debates under urgent procedure was complied with. Verification as to the form may be requested by the President of the Republic or by one-fifth of the members of the Grand National Assembly of Turkey. Applications for annulment on the grounds of defect in form shall not be made more than ten days after the date on which the law was promulgated; nor shall objection be raised.

The President of the Republic, members of the Council of Ministers, presidents and members of the Constitutional Court, of the High Court of Appeals, of the Council of State, of the Military High Court of Appeals, of the High Military Administrative Court of Appeals, their Chief Public Prosecutors, Deputy Public Prosecutors of the Republic, and the presidents and members of the Supreme Council of Judges and Public Prosecutors, and of the Court of Accounts shall be tried for offences relating to their functions by the Constitutional Court in its capacity as the Supreme Court.

The Chief Public Prosecutor of the Republic or Deputy Chief Public Prosecutor of the Republic shall act as public prosecutor in the Supreme Court.

The judgments of the Supreme Court shall be final.

The Constitutional Court shall also perform the other functions given to it by the Constitution.

4 – Function and Trial Procedure

Article 149

The Constitutional Court shall convene with its President and ten members, and shall take decisions by absolute majority. Decision of annulment of constitutional amendments shall be taken by a two-thirds majority.

The Constitutional Court shall give priority to the consideration of, and to decisions on, applications for annulment on the ground of defect in form.

The organisation and trial procedures of the Constitutional Court shall be determined by law; its method of work and the division of labour among its members shall be regulated by the Rules of Procedure made by the Court.

The Constitutional Court shall examine cases on the basis of written evidences, except where it acts as the Supreme Court. However, when it deems necessary, it may call on those concerned and those having knowledge relevant to the case, to present oral explanations and, in lawsuits on whether to permanently dissolve a political party or not, the Constitutional Court shall hear the defense of the head of the party the dissolution of which is in question or of a proxy appointed by the head, after the Chief Public Prosecutor of the High Court of Appeals.

5 – Annulment Action

Article 150

The President of the Republic, Parliamentary groups of the party in power and of the main opposition party and a minimum of one-fifth of the total number of members of the Grand National Assembly of Turkey shall have the right to apply for annulment action to the Constitutional Court, based on the assertion of the unconstitutionality of laws in form and in substance, of decrees having force of law, of Rules of Procedure of the Grand National Assembly of Turkey or of specific articles or provisions thereof. If more than one political party is in power, the right of the parties in power to apply for annulment action shall be exercised by the party having the greatest number of members.

6 – Time limit for Annulment Action

Article 151

The right to apply for annulment directly to the Constitutional Court shall lapse sixty days after publication in the Official Gazette of the contested law, the decree having force of law, or the Rules of Procedure.

7 –Contention of Unconstitutionality before other Courts

Article 152

If a court which is trying a case, finds that the law or the decree having force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on this issue.

If the court is not convinced of the seriousness of the claim of unconstitutionality, such a claim together with the main judgment shall be decided upon by the competent authority of appeal.

The Constitutional Court shall decide on the matter and make public its judgment within five months of receiving the contention. If no decision is reached within this period, the trial court shall conclude the case under existing legal provisions. However, if the decision on the merits of the case becomes final, the trial court is obliged to comply with it.

No allegation of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after the publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits.

8 – Decisions of the Constitutional Court

Article 153

The decisions of the Constitutional Court are final. Decisions of annulment cannot be made public without a written statement of reasons.

In the course of annulling the whole or a provision of laws or decrees having force of law, the Constitutional Court shall not act as a law-maker and pass judgment leading to new implementation.

Laws, decrees having force of law, or the Rules of Procedure of the Grand National Assembly of Turkey or provisions thereof, shall cease to have effect from the date of publication in the Official Gazette of the annulment decision. Where necessary, the Constitutional Court may also decide on the date on which the annulment decision shall come into effect. That date shall not be more than one year from the date of the publication of the decision in the Official Gazette.

In the event of the postponement of the date on which an annulment decision is to come into effect, the Grand National Assembly of Turkey shall debate and decide with priority on the draft bill or a law proposal, designed to fill the legal void arising from the annulment decision.

The annulment decision cannot have retroactive effect.

Decisions of the Constitutional Court shall be published immediately in the Official Gazette, and shall be binding on the legislative, executive, and judicial organs, on the administrative authorities, and on persons and corporate bodies.

Law of the Organisation and Trial Procedures of the Constitutional Court

Law No. 2949 of 10 November 1983

Part One
General Principles

Article 1
Organisation

To exercise the functions assigned to it by the Constitution of the Republic of Turkey and to use the corresponding powers, a Constitutional Court was established in Ankara.

Article 2
Membership

The Constitutional Court shall be composed of eleven regular and four substitute members.

Article 3
Qualifications for election

In order to be elected for regular and substitute membership of the Constitutional Court, the following conditions must be complied with:

1. (The member to be elected must be) either president or member of the Court of Cassation, of the Council of State, of the Military Court of Cassation, of the High Military Administrative Court, or of the Court of Accounts;

2. He/she must have reached the age of 40 (years) but not yet 65 years (of age), have graduated from any institute of higher education, and have worked in the public sector for at least fifteen years, or have been a member of the teaching staff of any institute of higher education for at least fifteen years:

a. (the member to be elected must be) a member of the teaching staff of the law, economics, or political science branches of any institute of higher education; or

b. he/she has to fulfil the functions of president or member of the Board of Administration of the Higher Education Council; rector or dean or councillor of the institute of higher education; undersecretary in a ministry or assistant to the undersecretary, general, admiral, ambassador, district governor or governor; or

c. have practised as a lawyer for at least fifteen years; and

3. not have been tried for an offence requiring dismissal from the judicial profession, nor have been prosecuted for similar offences, nor be subject to any prohibition on the performance of the functions of a judicial profession.

Part Two
Election of the Members, of the President and the Vice-President

Article 4
Election of the members

The President of the Republic shall appoint two regular and two substitute members from the Court of Cassation, two regular and one substitute member from the Council of State, and one member each from the Military Court of Cassation, the High Military Administrative Court, and the Court of Accounts from among the presidents and members of said courts; one regular member shall be nominated by the Higher Education Council from among members of the teaching staff of institutions of higher education, in the field of law, economics, or political science, who are not members of the Council; the President chooses from among three candidates nominated for each vacant seat by the absolute majority of the plenary session of the court concerned; three regular and one substitute member are appointed directly from among those enumerated in sub-paragraphs 2b and 2c of Article 3.

The presidents and members of the Court of Cassation, the Council of State, the Military Court of Cassation, and the High Military Administrative Court mentioned in this article include also the Chief Public Prosecutor of the Republic (at the Court of Cassation), the Deputy Chief Public Prosecutor of the Republic (at the Court of Cassation), and the Chief Public Prosecutors of the Council of State, the Military Court of Cassation, and the High Military Administrative Court.

Article 5
Notice to the appointed members

The President of the Republic notifies the presidency of the Constitutional Court of the regular and substitute members to be appointed to the Constitutional Court. The presidency of the Constitutional Court in turn informs the persons appointed in writing.

The first and family names of the persons appointed are published in the Official Gazette.

Article 6
Refusal of the appointees to exercise their functions

The President of the Constitutional Court informs the presidency of the Republic and the institution which nominated the candidate concerned of the names of the appointed members to the Constitutional Court who do not accept their appointment. Within one month of this date, new members have to be appointed according to the procedures laid down in Article 4. If an institution responsible for nominating a candidate is on vacation, the nomination of a candidate and election for membership must take place within one month of the date that the vacation expires.

Article 7
Oath

Before beginning to exercise their functions, the newly appointed members of the Constitutional Court shall, in the presence of the President of the Republic, the President of the Grand National Assembly of Turkey, the Prime Minister, the presidents of the High Courts, the Minister of Justice, the Chief Public Prosecutor of the Republic, the chief prosecutors of the Council of State, the Military Court of Cassation, and the High Military Administrative Court, the President of the Court of Accounts, the President of the Board of Higher Education, the rectors of the universities, the deans of the faculties of law, economics, and political science, and the retired presidents and members of the Constitutional Court, invited by the President of the Court, before a council composed of regular and substitute members of the Constitutional Court, take the following oath: “I swear upon my honour and good name to protect the Constitution of the Republic of Turkey entrusted by the Turkish nation to the compassion for nation and country shown by the Turkish people which is fond of democracy; to exercise my function only upon the imperatives of my conscience in accordance with righteousness, neutrality, and respect for the law”.

Article 8
Election of the President and the Vice-President

The Constitutional Court elects a President and a Vice-President for a period of four years from among its regular members on secret ballot by the absolute majority of the plenary session of regular members. They may be re-elected at the end of their term of office.

If the presidency or the vice-presidency should be vacant before the end of the term of office, new elections for a four-year term of office will be held in accordance with the above-mentioned paragraph.

Article 9
Administration and representation

The administration and representation of the Constitutional Court belongs to the President. If the presidency is vacant or if the President has been excused (for any reason) or is on vacation, the functions and powers exercised by him/her shall be exercised by the Vice-President. If there is also no Vice-President at the court's disposal, the most senior regular member shall preside over the Court.

Article 10
Vacancy of membership

If membership of the Constitutional Court expires for whatever reason, procedures shall be followed in accordance with Articles 4 and 6.

Part Three
Termination of membership

Article 11
Conditions incompatible with membership

The President and members of the Constitutional Court shall not exercise other official or private functions in addition to their main functions; persons assuming another function shall be automatically dismissed from office. A decision shall be given by the Constitutional Court upon this matter.

Article 12
Retirement and withdrawal

The President and members of the Constitutional Court retire automatically upon reaching the age of 65.

If the President or members of the Constitutional Court wish to retire, they must submit this in written form, but they may withdraw from office at any time without being bound to a time limit or to the acceptance of their wish. In this case, the presidency (of the Court) shall inform the presidency of the Republic and the institution responsible for the nomination of a new candidate to be elected immediately.

Article 13
Conviction, illness, and absence

Apart from the conditions laid down in Articles 11 and 12, presidency and membership of the Constitutional Court ends when:

1. according to the laws governing the functions of judges and prosecutors he/she has been convicted of an offence requiring his/her dismissal from the judicial profession; in this case, the membership terminates automatically;

2. upon submitting a report issued by an institution of health if it is definitely established that for reasons of health a continuation of the exercise of the function is impossible; or if the exercise of the function was disrupted without permission or the submission of reasons for absence for an uninterrupted period of 15 days, or for (at least) 30 days within the period of one year; in this case, membership to the Constitutional Court terminates upon a decision of an absolute majority of the plenary session of the Court.

Part Four
Personal Affairs

Article 14
Personal Affairs

The keeping of records of the President and the members of the Constitutional Court, regulations concerning leave or illness reports, robes to be worn during ceremonies and trials, and regulations concerning other personal affairs are regulated by the Rules of Procedure laid down by the Constitutional Court.

The President and members of the Constitutional Court shall be granted 45 days leave for the period of one year on condition that this does not pose an obstacle to the Court's exercise of its function as Supreme Court or to the performance of duties to which the Constitution has ascribed a time limit.

Health reports and reasons for absence are governed by general regulations.

Yearly leave and special grants of absence are given by the President.

Article 15
Rights concerning retirement

The rights of the President and members of the Constitutional Court concerning their retirement are regulated by Law No. 5434 passed on 8 June 1949, covering the Pension Funds of the Republic of Turkey plus its annexes and amendments.

All rights concerning retirement arising out of membership of the Armed Forces for candidates nominated by the Military Court of Cassation or the High Military Administrative Court or for members appointed from among high bureaucrats of the Turkish Armed Forces, are preserved.

Part Five
Assisting Organisations

Article 16
Reporters

A sufficient number of reporters shall be assigned to assist in the work of the Constitutional Court.

Judges and prosecutors defined in Law no.2802 concerning Judges and Prosecutors, controllers of the Court of Accounts, chief controllers or experts in control, upon their own volition may be appointed as reporters by the competent authorities of the institutions concerned and with the approval of the President of the Constitutional Court. The persons concerned must have been successful in their (various) fields for a period of at least five years. Those holding the position of assistant, associate professor, and those holding at least a Ph.D. in law, economics, and political science from any institute of higher education may be assigned to the office of reporter under the same conditions in compliance with the procedures.

The personal affairs of the reporters are regulated according to the professions which they exercise; also the time they spend as reporter at the Court counts as the exercise of their professions. Promotions, however, must be handled in accordance with written rules drawn up by the President of the Constitutional Court. The presidency of the Constitutional Court deals with permission for vacation as regulated by law and procedures with regard to health problems; if any entry in the records is necessary, notice shall be given to the institutions concerned.

In addition to their basic function, the reporters also carry out tasks conferred upon them by the President and participate in scientific researches.

In addition to their monthly salaries and other payments, an extra-payment amounting to the monthly coefficient applied to salaries for civil servants multiplied by an index of 500 will be given to reporters.

If the total amount of monthly salaries and other payments of reporters coming from institutes of higher education or from the Court of Accounts paid to them by their own institutions is less than the amount of monthly salaries and other payments paid to judges and public prosecutors who are in the same rank, grade, or senior position (including compensations given to judges and public prosecutors), the difference shall be paid to them separately.

Article 17
General Secretariat

The office of General Secretariat is attached to the presidency of the Constitutional Court.

Matters concerning the organisation and functions of the General Secretariat are regulated by the Rules of Procedure laid down by the Constitutional Court.

Part Six
Functions and competences, investigation and trial procedures of the Constitutional Court

Article 18
Functions and powers

The functions and powers of the Constitutional Court are as follows:

1. The Constitutional Court tries actions for the annulment of laws, law-amending ordinances, Standing Orders of the Grand National Assembly of Turkey or specific articles or regulations thereof, with respect to their unconstitutionality in both form and substance;

2. To reach a decision concerning procedures referred by other courts according to Article 152 of the Constitution, or in deciding upon cases when acting as the Supreme Court and in examining cases concerning the dissolution of political parties, or in deciding upon procedures relating to preliminary objections necessitated by the same article mentioned above;

3. In the capacity of Supreme Court, to try the President of the Republic, members of the Council of Ministers, the presidents and members of the Constitutional Court, the Court of Cassation, the Council of State, the Military Court of Cassation, the High Military Administrative Court, the chief prosecutors, the deputy Chief Public Prosecutor, the presidents and members of the Council of

Judges and Prosecutors, and of the Court of Accounts, on offences relating to the exercise of their functions;

4. To try cases relating to the dissolution of political parties;

5. Control of the constitutionality of the finances of political parties in addition to their revenues and expenses;

6. Rendering of an annulment decision based on the argument of being contrary to the stipulations of the Constitution or the Rules of Procedure in cases where the Grand National Assembly of Turkey decides to waive the parliamentary immunity of a member or disqualify him/her from membership, or to waive the parliamentary immunity of ministers who are not deputies;

7. The office of President of the Jurisdictional Conflict Court shall be exercised by a member entrusted by the Constitutional Court from among its own members;

8. To perform the other functions assigned to it by the Constitution.

Article 19
Cases where no application for annulment may be made

No action for annulment can be brought before the Constitutional Court and no claim may be submitted on substantive and procedural grounds as regards the unconstitutionality of law-amending ordinances passed in accordance with Articles 121 and 122 of the Constitution and issued during a state of emergency, martial law, or in times of war.

Article 20
The right to initiate an action for annulment

Groups and persons who have the right to bring direct actions for annulment on grounds of unconstitutionality of laws, law-amending ordinances, Standing Orders of the Grand National Assembly of Turkey or specific articles and provisions thereof, are as follows:

1. the President of the Republic;

2. parliamentary groups of the party in power and of the main opposition party;

3. a minimum of one-fifth of the total number of members of Parliament;

If a coalition government is formed, then the right of the parties in power to apply for a case to be annulled can be exercised only by the party which has the greatest number of members.

Parliamentary groups of the party in power and of the main opposition party cannot bring actions for annulment of amendments to the Constitution or actions claiming that laws are unconstitutional on procedural grounds.

Article 21
Action for annulment based on the unconstitutionality of procedures and its limitations

The review of laws on procedural grounds by the Constitutional Court is restricted to consideration of whether the requisite majority provided for in the laws was obtained in the last ballot, and the review of constitutional amendments is restricted to whether the requisite majorities were obtained for the proposal and the last voting in the ballot, and whether the prohibition on debates under urgent procedure was complied with.

No claim as to unconstitutionality of form may be brought before a court.

Actions of annulment concerning amendments to the Constitution may only be brought on procedural grounds.

Decisions on actions of annulment based on a claim as to unconstitutionality of form will be given priority by the Constitutional Court.

Article 22
Time limit for the initiation of actions for annulment

The right to bring an action for annulment on grounds of unconstitutionality with regard to amendments to the Constitution and with regard to form of laws must be initiated within 10 days of publication in the Official Gazette; as for actions of annulment on the grounds of unconstitutionality relating to the matter and form of law-amending ordinances, the Standing Orders of the Grand National Assembly of Turkey, of laws or specific articles and provisions thereof, these must be initiated within 60 days of publication in the Official Gazette.

Article 23
No appeal on grounds of unconstitutionality of regulations of international agreements can be made

No appeal can be made to the Constitutional Court concerning international agreements which have entered into effect on the grounds that they are unconstitutional.

Article 24
No appeal on grounds of unconstitutionality of the Reform Laws can be made

1. Law No. 430 of 3 March 1340 (1924) concerning the unification of the educational system.

2. Law No. 671 from 25 *Te_rin-i sani* 1341 (November 1925) relating to the wearing of hats.

3. Law No. 677 from 30 *Te_rin-i sani* 1341 (November 1925) on the closure of tombs and dervish convents, the abolition of certain titles and the abolition of the Office of Keeper of Tombs.

4. Principle of Article 110 of the Turkish Civil Code according to which the act of marriage has to be performed in front of a registrar, this being the principle of civil marriage; the regulation concerned came into force under the Turkish Civil Law No. 743 of 17 February 1926.

5. Law No. 1288 of 20 May 1928 concerning the adoption of international numerals.

6. Law No. 1353 from 1 *Te_rin-i sani* (November 1928) relating to the adoption of the Turkish alphabet and its application.

7. Law No. 2590 from 26 *Te_rin-i sani* (November 1934) relating to the abolition of titles and appellations such as "*Efendi*", "*Bey*", and "*Pasha*".

8. Law No. 2596 from 3 *Kanun-u evvel* (December 1934) concerning the prohibition of wearing certain garments.

No appeal on grounds of unconstitutionality can be made with regard to provisions in force on 7 November 1982.

Article 25
Other texts with regard to which no appeal on grounds of unconstitutionality can be made

No allegation of unconstitutionality can be made with respect to laws or law-amending ordinances made by the National Security Council under Act No. 2356 which has exercised legislative and executive power on behalf of the Turkish nation from 12 September 1980 and will continue to do so until the date of formation of the Bureau of the Grand National Assembly of Turkey which is to convene following the first general elections; and decisions or measures taken in accordance with Act No. 2324 on the Constitutional Order.

Article 26
Representation in cases of annulment

Actions for annulment based on the allegations of unconstitutionality of laws, law-amending ordinances, and Standing Orders of the Grand National Assembly of Turkey shall be brought forward, in accordance with sub-paragraph 2 of Article 20, by the leaders of parliamentary groups or their deputies upon a decision reached by an absolute majority at the plenary session of the general council of political groups.

If a case is initiated by members of the Grand National Assembly of Turkey in accordance with sub-paragraph 3 of Article 20, the names of two members must be shown on the petition form so that a notification can be made by the court.

Article 27
Matters to be observed when initiating an action for annulment

The filing of a suit for annulment on the grounds that amendments to the Constitution, laws, law-amending ordinances, and the Standing Orders of the Grand National Assembly of Turkey or specific articles or provisions thereof are unconstitutional is considered inaugurated when the petition is transferred by the General Secretariat of the Constitutional Court to the office, and the General Secretariat hands to the plaintiffs a paper notifying them that they have filed a suit.

If a case is brought by at least one-fifth of the total number of members of Parliament, the petition must contain the names and surnames of the members who have filed the suit, and also the name of the district to

which they have been elected, and their signatures below their corresponding number; this petition must be given to the General Secretariat after being ratified by an official to be named by the President or the presidency of the Grand National Assembly of Turkey; the official has to sign and seal every page which contains a signature, thus attesting that every person who has signed is a member of Parliament, and that his/her name, surname, and signature are his/her own; if a case is initiated by political party groups, certified copies of the decision of the group's general council together with certified documents attesting that the petition has been signed by the leader of the party group or his/her deputy must be handed to the General Secretariat in addition to the petition.

Plaintiffs initiating a case for annulment on grounds of unconstitutionality must expound the provisions they claim to be contrary to the Constitution, and they must show incompatibility with those articles of the Constitution they claim to be unconstitutional, furthermore they must explain the reasons for their claims concerning unconstitutionality.

The Constitutional Court examines whether the petition is drafted according to the provisions laid down in the second and third paragraph of this article; this examination must be done within ten days of the date of registration; the plaintiffs concerned are notified of any deficiencies so that they can complete their petition within a period of at least fifteen days. If a case is brought before the Court by at least one-fifth of the total number of members of the Grand National Assembly of Turkey, the notification on deficiencies is sent to the members specified in the last paragraph of Article 26; if no such members are specified, notification shall be made to the two members whose names and surnames are mentioned at the head of the petition.

If the relevant deficiencies are not rectified within the time limit specified in the above paragraph, the action for annulment is considered as if it has not been initiated. The Constitutional Court reaches a decision about whether or not a case should be considered as inaugurated. This decision is notified to relevant parties and published in the Official Gazette.

Article 28
Incidental proceedings being referred by other courts

If a court which is trying a case:

1. finds that provisions of a law or law-amending ordinance to be applied in this case are unconstitutional, this decision together with its reasons, or

2. is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, a decision explaining the claims and defences of the parties concerned in relation to this subject-matter and its own views which led to this conviction,

the contents of the file together with certified copies of documents relating to this case are sent by the court concerned to the presidency of the Constitutional Court.

The General Secretariat of the Constitutional Court transfers the incoming papers to the office and sends written notification of this to the court concerned.

Within ten days of the date of registration of the papers, an examination for deficiencies will be completed. If upon completion of this investigation by the Constitutional Court it becomes obvious that there are deficiencies, the Court will decide to refuse to handle the case or to refuse to accept applications showing that a court has no competence to handle a certain case.

The Constitutional Court shall decided on the matter and make public its judgment within five months of receiving the contention. If no decision is reached within this period, the trial court shall conclude the case under existing legal provisions. If, however, the decision on the merits of the case becomes final, the trial court is obliged to comply with it.

If the Constitutional Court is not convinced as to the seriousness of the claim of unconstitutionality, then such a claim together with the main judgment shall be decided upon by the competent appeal authority.

If the court dismisses the case on substantive grounds, no allegation of unconstitutionality shall be made with regard to the same legal provision until ten years have elapsed since publication of the decision of the Constitutional Court in the Official Gazette.

Article 29
Non-binding force of statements of reasons

The Constitutional Court is not obliged to follow up claims concerning unconstitutionality of laws, law-amending ordinances or Standing Orders of the Grand National Assembly of Turkey brought forward by the parties concerned. The Constitutional Court may also, on condition that it observes the initial claim, reach a decision concerning unconstitutionality that is based on another statement of reasons.

If the request, however, comprises claims of unconstitutionality concerning only specific articles or provisions of laws, law-amending ordinances or Standing Orders of the Grand National Assembly of Turkey, the result may be that annulment of these specific articles or provisions may lead to the question of whether only some or indeed all of the provisions or articles of laws, law-amending ordinances, and Standing Orders of the Grand National Assembly of Turkey must be considered as annulled; in this case the Constitutional Court may decide, upon compliance with the condition of indicating the matter in its statement of reasons, to annul the other provisions in question or annul completely a law, a law-amending ordinance, or the Standing Orders of the Grand National Assembly of Turkey.

Article 30
Procedures of investigation and summoning of persons or groups concerned

The Constitutional Court shall examine cases on the basis of files, except where it acts as the Supreme Court. But where necessary, the Court may call on those concerned to present oral explanations.

An official authorised by the President of the Republic shall present oral explanations in the name of the President of the Republic.

Control of the financial situation of political parties in addition to their revenues and expenses is regulated in accordance with the procedures laid down in the present and in other laws. The Constitutional Court may apply for assistance to the Court of Accounts in order to fulfil its tasks of control.

Article 31
Notification

If the Constitutional Court decides to hear oral explanations in accordance with Article 30, an invitation indicating a fixed day on which to be present or to send representatives to the Court shall be communicated to the parties concerned. The invitation shall also indicate that failure to attend or to send representatives will result in the necessary examinations being made on the basis of files.

Those deputies mentioned in sub-paragraph 3 of Article 20 and those members mentioned in the second paragraph of Article 26 may be present at oral explanations.

When, in cases laid down in sub-paragraphs 1 and 2 of Article 18, political party groups who have the right to initiate an action for annulment are convinced of the constitutionality of laws, law-amending ordinances, Standing Orders of the Grand National Assembly of Turkey or specific articles and provisions thereof the annulment of which has been demanded according to sub-paragraph 2 of Article 20, these party groups may, in accordance with the first and second paragraph of Article 26, hand over written statements to the Constitutional Court. If the Constitutional Court deems it necessary, it may summon two representatives of these political party groups in order to hear oral explanations.

Article 32
Attorneyship

Those having the right to apply to the Constitutional Court may be represented by one or several attorneys who have to procure a certified authorization for attorneyship through the notary. The regulation of the second paragraph of Article 30 is reserved.

Article 33
Cases of dissolution of political parties

In cases concerning the dissolution of political parties being investigated by the Chief Public Prosecutor of the Republic, the case shall be investigated and decided upon files in accordance with the regulations of the Law on Criminal Procedure. In these cases defences brought forward by the general presidency of the political party, the dissolution of which is intended by the Chief Public Prosecutor of the Republic, or by a designated deputy shall be heard.

When the Constitutional Court deems it necessary, it may call on those concerned and having knowledge relevant to the case to present oral explanations. If this should be the case, the regulation of Article 31 shall not be applied.

Article 34
Request of annulment in cases of the waiving of immunity or disqualification from membership

If the Grand National Assembly of Turkey decides to waive the parliamentary immunity of a member or disqualify him/her from membership, the member concerned, or a minister who is not a deputy may, together with another member appeal for annulment of said decision. The Constitutional Court shall decide on the appeal within fifteen days.

The right to appeal to the Constitutional Court against a decision of the Grand National Assembly of Turkey concerning the appeal of annulment shall end within seven days from the date on which the decision is taken.

As far as cases for annulment are concerned, the presidency of the Constitutional Court shall procure the necessary documents without awaiting their presentation by the parties concerned.

Part Seven
Procedures concerning matters being tried before the Supreme Court

Article 35
Trial and sentence

When the Constitutional Court is trying a case in its capacity as Supreme Court, trials shall be held and sentences pronounced according to the laws in force.

The decisions of the Supreme Court are final.

Article 36
Prosecution

The prosecution in matters concerning the Supreme Court shall be exercised by the Chief Public Prosecutor or his/her deputy. One or several of the assistants to the Chief Public Prosecutor may also participate in the trials together with the Chief Public Prosecutor and his/her deputy.

Article 37
Absence of an accused in the trials

If the interrogation of an accused has been carried out by the Supreme Court and if, for this reason, his/her presence at the following sessions and his/her participation in the trials is not considered necessary by the Supreme Court, a request for non-attendance made by the accused will nonetheless lead to public prosecution result since trials continue even in his/her absence. The council for the defence, however, may always be present at the trials.

Article 38
The posing of questions by members (of the Court) and the Chief Public Prosecutor of the Republic during the interrogation of an accused

When the Supreme Court invites the accused to the interrogation, the members (of the Court) and the Chief Public Prosecutor of the Republic or his/her deputy may ask the accused questions with the permission of the President of the Court.

Article 39
Use of means, material, and personnel

The President may, if trials held by the Supreme Court render it necessary, request the use of means and materials belonging to public institutions, and he/she may further request the help of personnel skilled in short-hand, and other technical personnel. The authorities concerned shall immediately comply with these requests.

Article 40
Registration of trial phases by technical means

Trials may be recorded by technical means upon the advice of the President of the Court. Every page of the trial protocols drawn up on the basis of such records shall be signed by the President and the official keeping the records. If it is claimed that trial phases are not in accordance with the records thus kept, these claims shall be examined and decided upon by the Supreme Court.

Part Eight
Joint provisions concerning investigation and trial procedures

Article 41
Session of the Court

The Constitutional Court assembles under a president and ten regular members. Upon non-attendance of regular members, the President assigns their functions to the most senior of the substitute members.

The reason and nature of the non-attendance is regulated by the Rules of Procedure made by the Constitutional Court.

Article 42
Secrecy of discussion and quorum for a decision

The discussions concerning a decision to be reached by the Constitutional Court shall be held in camera. Decisions must be reached by an absolute majority. In order to reach a decision concerning annulment of constitutional amendments, a two-thirds majority of the votes shall be required.

Voting is initiated by the most junior ranking member.

The principle of seniority shall be decided according to the day on which a member was elected to the Constitutional Court. Among persons elected on the same day it will be the elder, among persons of the same age it will be the person whose name is drawn in the ballot which will count as the most senior.

Article 43
Obligation to submit information and documents

Legislative, executive, and judicial organs of the State, administration offices, all natural persons and corporate bodies, and all institutions have the obligation to procure information and documents requested by the Constitutional Court within the given time limit.

The office concerned may avoid sending documents and procuring information relating to cases which must be kept secret and which are expected to damage the superior interests of the State upon their publication.

Before reaching a decision concerning this matter the Constitutional Court may request oral explanations from the competent persons or authorities. Explanations made in this way shall not be kept on record.

If a two-thirds majority of the Constitutional Court decides to obtain information or documents which are of importance in a given case, the submission of the information or documents thus requested is obligatory.

If, however, the fact to be kept secret concerns the security and superior interests of the Republic of Turkey together with foreign States, a decision by the authorities concerned not to submit information and documents relating to the case is final.

If, in accordance with paragraphs four and five, a secret should not be revealed, matters relating to this secret may not be used as contrary evidence.

Article 44
Rules of Procedure

Working conditions and the division of functions among the members of the Court are regulated by the Rules of Procedure made by the Constitutional Court.

The Rules of Procedure shall be published in the Official Gazette.

Article 45
Refusal of an application

Applications which have no bearing whatsoever on the functions of the Constitutional Court shall be refused. The applicant shall be notified of the refusal.

Article 46
Circumstances where cases are not tried by the Court

The President and members of the Constitutional Court do not sit on trials where:

1. they themselves are involved in a case or related matters are of personal interest;

2. cases being tried are of interest to the spouse even if the marriage has been terminated, to the next of kin (offspring, parents), and to relations-at-law up to and including fourth grade; to kinship arising out of marriage, even if it has been terminated, up to and including the third grade (collateral line); to adopted persons;

3. cases involve a member acting as deputy representing a case or a businessman, as trustee or controller of property;

4. cases involve a member acting as judge, prosecutor, or arbitrator, or giving explanations as a witness or expert;

5. cases involve a member expressing his/her opinions or thoughts.

Article 47
Challenge of President and members

If circumstances arise which prove the partiality of the President and members of the Constitutional Court, the partiality argument may be used to challenge the bringing of a suit or to prevent the discussion of matters before the Court.

In such a case, the Constitutional Court shall reach a final decision on the subject of the challenge without the participation of the member challenged.

The challenge is personal. If the challenge of several members is requested which might render impossible the holding of sessions of the Court, these requests shall not be granted.

Article 48
Refusal of a challenge

The petition for a challenge must explain the reasons for the challenge together with the required proofs and the means for providing them. Petitions not complying with the afore-mentioned conditions shall be refused.

An oath shall not be counted as proof.

Article 49
Refraining from a case

If the President of the Constitutional Court or one of its members, in accordance with the reasons laid down in Article 46, refuse to try a case or matters, the Court shall reach a final decision concerning this matter with the participation of the President or the member who expressed his/her refusal. The person expressing his/her refusal in this way may not, however, participate in the voting.

If the avoidance uttered by such a number of members which might render impossible the holding of sessions of the Court, these requests shall not be heard.

Article 50
Unsuitable petitions for challenge

If the President or members of the Constitutional Court refuse requests related to a challenge, the Court shall collect, according to the nature of the request for challenge, a fine varying anywhere from 10,000 TL up to 100,000 TL from the person who requested this challenge.

The fine which shall be announced according to the above-mentioned paragraph shall be collected in accordance with the Law on Collection of Public Debts.

Article 51
Hearing of witnesses and experts

If the hearing of witnesses or experts by the Constitutional Court, which must be granted by an official department according to the laws of procedure, reveals secrets which may damage the interests of the State, a hearing relating to such matters will not normally be granted; however, if the Court decides with a two-thirds majority that the prohibition is inappropriate after having taken notice of the oral or written explanations of the competent person(s), witnesses and experts are not requested any more to keep their secrets and must present their explanations before the Court.

If, however, the fact not to grant a hearing is based on reasons which violate the security and superior interests of the Republic of Turkey and those of foreign States in revealing inconvenient secrets, the decision of the competent department on this matter is final.

Article 52
Exemption from taxes, fees, and other such financial imposition

Applications made on the grounds of unconstitutionality of laws, law-amending ordinances, and Standing Orders of the Grand National Assembly of Turkey, in accordance with sub-paragraphs 1 and 2 of Article 18 of the present Law, procedures and decisions related to transferring requests made by other courts together with the relevant certified documents produced by the Constitutional Court on this subject in accordance with Article 28, further requests and procedures which must be carried out in accordance with sub-paragraph 6 of Article 18, are exempt from taxes, fees, and other such financial impositions.

Article 53
Decisions of the Constitutional Court

The decisions of the Constitutional Court must contain a written statement of reasons. The decisions shall be signed by the President and members who participated in the investigation or trials. Those members who have given a dissenting opinion shall explain the reasons for their dissention. Those whom the Court's decisions concern are notified in this way.

The decisions of the Constitutional Court are final. Decisions concerning annulments shall not be made public without a written statement of reasons being given.

Laws, law-amending ordinances, or the Standing Orders of the Grand National Assembly of Turkey or specific articles and provisions thereof to be invalidated by the Constitutional Court on grounds of unconstitutionality shall cease to have effect from the date of publication of the annulment decision in the Official Gazette. If the Court deems it necessary it may also decide on the date on which the annulment decision shall come into effect. That date shall not be more than one year from the date of publication of the decision in the Official Gazette.

If the Constitutional Court decides that the legal void arising out of the annulment of laws, law-amending ordinances, or Standing Orders of the Grand National Assembly of Turkey or specific provisions thereof is of such a nature as to endanger public order or violate public interest, the provision of the above-mentioned paragraph shall be applied and notice given to the presidency of the Grand National Assembly of Turkey and the Prime Ministry in order to fill this legal void.

In the course of annulling an entire law or a provision of laws or law-amending ordinances, the Constitutional Court shall not act as law-maker and pass judgment leading to new implementation.

Annulment decisions cannot have retroactive effect.

Article 54
Publication of the decisions of the Constitutional Court and their binding nature

Decisions of the Constitutional Court shall be published immediately in the Official Gazette, and shall be binding on the legislative, the executive, and judicial organs, and on the administrative authorities and on persons and corporate bodies.

Article 55
Personal offences and offences related to the function of President and members

The initiation of an investigation with regard to personal offences and offences relating to the function of the President and members of the Constitutional Court rests on a decision by the Court. The president may also, where he/she deems it necessary, without waiting for the case to be brought before the Constitutional Court, assign a member with the task of carrying out preliminary enquiries. Notice and complaints which bear no signature or address, or which have been made using a false name, and do not refer to a specific event and the reasons behind it and do not give the proof on which the arguments are based, shall not be subjected to the necessary procedures by the presidency.

If the Constitutional Court reaches a decision to initiate an investigation, the task of conducting the necessary examination, of reaching a decision in accordance with the Code of Criminal Procedure, and of making use of the competences assigned to the judge of investigation by the afore-mentioned Law, shall be given to three members of the Court. The decisions reached by the board thus composed are final. Matters concerning the conducting of preparatory investigations, the election of members to the board, the handling of investigations, and the giving of decisions if necessary are regulated by the Rules of Procedure made by the Constitutional Court.

In circumstances of flagrant offences necessitating heavy penalties the preparatory investigation and the first investigation shall be done according to the general provisions of the Code of Criminal Procedure.

In cases of personal offences by the President and members of the Constitutional Court, provisions related to personal offences of members of the Court of Appeal shall be applied.

For members of the Constitutional Court, the authority competent to grant permission as mentioned in the regulations concerning martial law is the Constitutional Court. If the Constitutional Court decides not to grant permission to facilitate the conduct of legal proceedings by martial law head-quarters, the proceedings which must be initiated on behalf of the member concerned are those laid down in the Rules of Procedure laid down by the Constitutional Court.

Part Nine
Finances, personnel, and staff of the Court

Article 56
Budget

The Constitutional Court shall, within the framework of the general budget, be administered by its own budget.

In the first instance, the President is responsible for covering expenses out of the budget; in the second instance, responsibility for expenses is assigned to the Secretary-General.

Accounting shall be done by the Department of Accounts to be established within the framework of the Constitutional Court; the payment of expenses shall be administered by the Directory of the Financial Department of the Court.

The Minister of Justice or, by consent, the Secretary-General of the Constitutional Court shall participate in discussions relating to the budget and conducted before the Parliamentary Assembly. The President and members of the Court may not, however, be summoned to present oral explanations.

Article 57
Election of the Secretary-General and the appointment of personnel

In accordance with the approval of the President of the Constitutional Court a reporter may, in addition to his/her essential functions, be appointed to the task of Secretary-General.

Appointment of personnel to the departments of general administration and technical and sanitary services shall be made by the President upon a proposal forwarded by the Secretary-General; personnel attached to the department of lower services shall be appointed by the Secretary-General.

Article 58
Day of anniversary

The anniversary of the Constitutional Court shall be celebrated every year on 25 April. The anniversary shall be celebrated by holding ceremonies and arranging for seminars and conferences; also the President, Vice-President and members who have retired during that period shall be given a gift symbolising their honourable services in the past together with documents of honour in a ceremony arranged for this purpose.

The budget of the Constitutional Court must allocate enough money every year to meet expenses for the ceremony and the gifts.

Article 59
Travel allowances, payment of damages, daily allowances

If the President of the Constitutional Court, the Vice-President, members or reporters are assigned the task of investigating a case, preparing an expert witness report, or are given duties similar in nature to those mentioned above, they shall, in addition to the actual travel allowances and for every day spent on this extra-duty, be given a daily allowance amounting to 1/20 of the gross monthly income of the President and members, and of 1/30 of the gross monthly income of the reporters. If these daily allowances fail to meet the necessary expenses, the difference shall be paid on condition that the circumstances are documented. These extra allowances, however, may not exceed 50% of the daily allowances.

Article 60
Period of promotion

Under consideration of rights acquired previously, the period of promotion of the members of the Constitutional Court is two years. Upon termination of this period, the rights acquired lead automatically to a promotion of one rank.

Rights acquired by persons elected to the membership of the Constitutional Court who previously exercised the profession of advocate count for two-thirds in grade and rank as if they were spent in the Constitutional Court.

Article 61
Meeting of needs of housing

In order to meet the housing needs of members, reporters, and Constitutional Court staff, a sufficient amount shall be allocated in the budget of the Constitutional Court.

Article 62
Categories of staff replaced by other categories

A. At the moment the present Law comes into force the categories of provisional reporter at the Constitutional Court, being shown in the passages a and b of schedule I in the appendix, shall be abolished; they shall be replaced by the categories shown in schedule II annexed to the present Law.

At the moment the present Law comes into force person(s) acting as provisional reporter(s) at the Constitutional Court are automatically transferred to the position of new categories. According to Article 16 of the present Law those persons carry, without having to undergo procedures for a different nomination, the title of reporter of the Constitutional Court.

B. At the moment the present Law comes into force those categories shown in schedule III bound to the general administration, services of lower rank, and sanitary services of the Constitutional Court are replaced by the categories being shown in schedule IV annexed to the present Law. As a result of this new arrangement nominations for new ranks necessary for those concerned shall have effect from the moment the present Law comes into force. Persons whose categories are not replaced shall continue in the same functions.

Provisional Article 1

The categories and functions of those persons who have been regular and substitute members of the Constitutional Court as at 7 November 1982, shall continue. Those chosen by the Constitutional Court to perform special functions and who have acquired specific rights or titles, are authorised in the continuation of these rights.

No election shall be held for the rank of regular member unless their number is less than eleven, and no election shall be held for the rank of substitute member unless the number of both regular and substitute members has fallen below fifteen. In elections to be held on the grounds that the number of regular and substitute members has fallen below fifteen a preference shall be given to those without representation although they are mentioned in Article 4; apart from this, they are following the regulations required by the said article. If the number of regular members of the Constitutional Court does not fall below eleven, they shall be viewed as competent to hold meetings according to Law No. 44 of 22 April 1962, to try cases and discuss matters.

Provisional Article 2

Within one month of the present Law coming into force, the senior ranks of members shall be re-assigned according to the provisions of Article 42.

Provisional Article 3

The provision of Article 60 shall also be applied to those who have been elected to membership of the Constitutional Court before the present Law takes effect.

Provisional Article 4

Until the establishment of the Department of Accounts, accounting shall be provided for by the Directory of Accounts of the Ministry of Justice.

Provisional Article 5

The chief clerk of the Constitutional Court at the time when the present Law comes into force shall from this time be called “head of the editorial department”. No new nominations of the person(s) concerned are required because of this change of title. The person(s) concerned will continue to receive extra payments in accordance with the former titles until the new titles are recorded in the Government order concerning extra payments.

Provisional Article 6

The members of the Presidential Council shall also be invited to the ceremony of inauguration of members of the Constitutional Court.

Article 63
Provisions being repealed

The Law on the Organisation and Trial Procedures of the Constitutional Court No. 44 of 22 April 1962, has been repealed.

Article 64
Coming into force

The present Law shall become effective upon the date of publication.

Article 65
Application

The provisions of the present Law are exercised by the Council of Ministers.

Ukraine
Constitutional Court

Constitution
adopted at the fifth session of the *Verkhovna Rada* of Ukraine of 28 June 1996
- extracts -

Chapter V – President of Ukraine

...

Article 106

The President of Ukraine:
....

22. appoints one-third of the composition to the Constitutional Court of Ukraine;

Article 111

...

The decision on the removal of the President of Ukraine from office by the procedure of impeachment is adopted by the *Verkhovna Rada* of Ukraine by no less than three quarters of its constitutional composition, after the review of the case by the Constitutional Court of Ukraine and the receipt of its opinion on the observance of the constitutional procedure of investigation and consideration of the case of the impeachment, and the receipt of the opinion of the Supreme Court of Ukraine to the effect that the acts, of which the President of Ukraine is accused, contain elements of state treason or other crime.

Chapter VIII – Justice

Article 124

...

Judicial proceedings are performed by the Constitutional Court of Ukraine and courts of general jurisdiction.

Chapter XII – Constitutional Court of Ukraine

Article 147

The Constitutional Court of Ukraine is the sole body of constitutional jurisdiction in Ukraine.

The Constitutional Court of Ukraine decides on issues of conformity of laws and other legal acts with the Constitution of Ukraine, and provides the official interpretation of the Constitution of Ukraine and the laws of Ukraine.

Article 148

The Constitutional Court of Ukraine is composed of eighteen judges of the Constitutional Court of Ukraine.

The President of Ukraine the *Verkhovna Rada* of Ukraine and the Congress of Judges of Ukraine each appoint six judges to the Constitutional Court of Ukraine.

A citizen of Ukraine who has attained the age of 40 on the day of appointment, has a higher legal education and professional experience of no less than ten years, has resided in Ukraine for the last twenty years, and has command of the state language, may be a judge of the Constitutional Court of Ukraine.

A judge of the Constitutional Court of Ukraine is appointed for nine years without the right of appointment to a repeat term.

The Chairman of the Constitutional Court of Ukraine is elected by secret ballot only for one three years term at a special plenary meeting of the Constitutional Court of Ukraine from among the judges of the Constitutional Court of Ukraine.

Article 149

Judges of the Constitutional Court of Ukraine are subject to the guarantees of independence and immunity and to the grounds for dismissal from office envisaged by Article 126 of this Constitution, and the requirements concerning incompatibility as determined in Article 127, paragraph two of this Constitution.

Article 150

The authority of the Constitutional Court of Ukraine comprises:

1. deciding on issues of conformity with the Constitution of Ukraine (constitutionality) of the following:

-laws and other legal acts of the *Verkhovna Rada* of Ukraine;

-acts of the President of Ukraine;

-acts of the Cabinet of Ministers of Ukraine;

-legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea.

These issues are considered on the appeals of: the President of Ukraine; no less than forty-five National Deputies of Ukraine; the Supreme Court of Ukraine; the Authorised Human Rights Representative of the *Verkhovna Rada* of Ukraine; the *Verkhovna Rada* of the Autonomous Republic of Crimea.

2. the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

On issues envisaged by this Article, the Constitutional Court of Ukraine adopts decisions that are mandatory for execution throughout the territory of Ukraine, that are final and shall not be appealed.

Article 151

The Constitutional Court of Ukraine, on the appeal of the President of Ukraine or the Cabinet of Ministers of Ukraine, provides opinions on the conformity with the Constitution of Ukraine of international treaties of Ukraine that are in force, or the international treaties submitted to the *Verkhovna Rada* of Ukraine for granting agreement on their binding nature.

On the appeal of the *Verkhovna Rada* of Ukraine, the Constitutional Court of Ukraine provides an opinion on the observance of the constitutional procedure of investigation and consideration of the case of removing the President of Ukraine from office by the procedure of impeachment.

Article 152

Laws and other legal acts, by the decision of the Constitutional Court of Ukraine, are deemed to be unconstitutional, in whole or in part, in the event that they do not conform to the Constitution of Ukraine, or if there was a violation of the procedure established by the Constitution of Ukraine for their review, adoption or their entry into force.

Laws and other legal acts, or their separate provisions, that are deemed to be unconstitutional, lose legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality.

Material or moral damages, inflicted on physical and legal persons by the acts or actions deemed to be unconstitutional, are compensated by the State by the procedure established by law.

Article 153

The procedure for the organisation and operation of the Constitutional Court of Ukraine, and the procedure for its review of cases are determined by law.

Chapter XV – Transitional Provisions

...

6. The Constitutional Court of Ukraine is formed in accordance with this Constitution, within three months after its entry into force. Prior to the creation of the Constitutional Court of Ukraine, the interpretation of laws is performed by the *Verkhovna Rada* of Ukraine.

Law of Ukraine on the Constitutional Court of Ukraine

16 October 1996

Chapter I
Foundations of the constitutional judicial system

Section 1
General provisions

Article 1
Status of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine is the sole body of constitutional jurisdiction in Ukraine.

The Constitutional Court of Ukraine is a legal entity, having a seal portraying the State Coat of Arms of Ukraine and its own name.

Article 2
Task of the Constitutional Court of Ukraine

The task of the Constitutional Court of Ukraine is to guarantee the supremacy of the Constitution of Ukraine as the Fundamental Law of the State throughout the territory of Ukraine.

Article 3
Normative regulation of the activity of the Constitutional Court of Ukraine

The organization, authority and arrangement of activities of the Constitutional Court of Ukraine are established by the Constitution of Ukraine and this Law.

The Constitutional Court of Ukraine adopts acts which regulate the organization of its internal work in conformity with this Law.

Article 4
Basic principles of activity of the Constitutional Court of Ukraine

The activity of the Constitutional Court of Ukraine is based on the principles of supremacy of law, independence, collegiality, equality of judges' rights, openness, comprehensive and multi-dimensional consideration of cases, and the soundness of the decisions it adopts.

Article 5
Composition of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine is composed of 18 judges of the Constitutional Court of Ukraine.

The President of Ukraine, the *Verkhovna Rada* of Ukraine and the Congress of Judges of Ukraine each appoint six judges to the Constitutional Court of Ukraine.

Article 6
Procedure for the appointment of judges of the Constitutional Court of Ukraine by the President of Ukraine

The President of Ukraine consults with the Prime Minister of Ukraine and the Minister of Justice of Ukraine as to candidates for the offices of judges of the Constitutional Court of Ukraine.

A person shall be deemed to be appointed to the position of judge of the Constitutional Court of Ukraine provided that a Decree of the President of Ukraine confirmed by the signatures of the Prime Minister of Ukraine and the Minister of Justice of Ukraine is adopted.

In the case of termination of the powers of a judge of the Constitutional Court of Ukraine who was appointed by the President of Ukraine, the President of Ukraine, in a one-month period, appoints another person to the position.

Article 7
Procedure for the appointment of judges of the Constitutional Court of Ukraine by the *Verkhovna Rada* of Ukraine

The *Verkhovna Rada* of Ukraine appoints judges of the Constitutional Court of Ukraine through secret voting by means of submitting ballots.

The Chairman of the *Verkhovna Rada* of Ukraine submits proposals as to the candidates for the offices of judges of the Constitutional Court of Ukraine. Such proposals may also be submitted by no fewer than one-quarter of the National Deputies of the constitutional composition of the *Verkhovna Rada* of Ukraine. A National Deputy has a right to sign the proposal as to a single candidate only, and the Deputies' signatures can not be recalled. The respective Committee of the *Verkhovna Rada* of Ukraine submits its conclusions as to each candidate for the position of judge of the Constitutional Court of Ukraine submitted in prescribed order, to the *Verkhovna Rada*.

A candidate is deemed to be appointed to the office of judge of the Constitutional Court of Ukraine if he/she received a majority of the votes of National Deputies, but more than half of the constitutional composition of the *Verkhovna Rada* of Ukraine. Where several candidates receive equal support and if the necessary number of judges in the case of their appointment is exceeded, they shall be subject to a second vote.

In the case of termination of authorities of a judge of the Constitutional Court of Ukraine who was appointed by the *Verkhovna Rada* of Ukraine, the *Verkhovna Rada* of Ukraine, within a one-month period, appoints another person to the position.

According to the result of voting, the Chairman of the *Verkhovna Rada* of Ukraine signs resolutions of the *Verkhovna Rada* of Ukraine on appointments of judges of the Constitutional Court of Ukraine.

Article 8
Procedure for the appointment of the judges of the Constitutional Court of Ukraine by the Congress of Judges of Ukraine

The Congress of Judges of Ukraine, upon the proposal of the Congress's delegates through open voting by a majority of votes of delegates present at the Congress determines candidates for the office of judges of the Constitutional Court of Ukraine to be included in ballots for secret voting.

A candidate is deemed to be appointed to the office of judge of the Constitutional Court of Ukraine if he/she in the course of secret voting received a majority of votes from the elected delegates to the Congress of Judges of Ukraine.

If voting is carried out for candidates, the number of which exceeds the quota for appointment to the office of judges of the Constitutional Court of Ukraine, the candidates deemed appointed are those who, under the circumstances set forth in paragraph two of this article, receive more votes than other candidates for the office.

In the case of termination of the powers of a judge of the Constitutional Court of Ukraine who was appointed by the Congress of Judges of Ukraine, the Congress of Judges of Ukraine, within a one-month period, appoints another person to the position.

According to the results of voting, the chairman and secretary of the Congress sign the decision of the Congress of Judges of Ukraine about appointing judges of the Constitutional Court of Ukraine.

Article 9
Term of authority of a judge of the Constitutional Court of Ukraine

Judges of the Constitutional Court of Ukraine are appointed for a term of nine years with no right to reappointment.

Article 10
Uniform and badge of judges of the Constitutional Court of Ukraine

Judges of the Constitutional Court of Ukraine, while performing their duties in Plenary sessions, in sessions of the Constitutional Court of Ukraine and in the Collegium of judges of the Constitutional Court of Ukraine, should be dressed in a gown.

A judge of the Constitutional Court of Ukraine has a badge, the description and form of which is approved by the *Verkhovna Rada* of Ukraine.

Article 11
Attributes of the Constitutional Court of Ukraine

Unalienable attributes of the Session Hall of the Constitutional Court of Ukraine are the State Coat of Arms of Ukraine and the State Flag of Ukraine.

Article 12
Location of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine is located in the city of Kyiv.

Section 2
Authority of the Constitutional Court of Ukraine

Article 13
Authority of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine adopts decisions and provides conclusions in cases concerning:

1. constitutionality of laws and the other legal acts of the *Verkhovna Rada* of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Supreme *Rada* of the Autonomous Republic of Crimea;

2. conformity with the Constitution of Ukraine of international treaties of Ukraine that are in force, or those international treaties submitted to the *Verkhovna Rada* of Ukraine for consent to their binding nature;

3. adherence to the constitutional procedure for investigating and considering cases about removing the President of Ukraine from office through impeachment, within the limits prescribed by Articles 111 and 151 of the Constitution of Ukraine;

4. official interpretation of the Constitution and laws of Ukraine.

Article 14
Limits of the authority of the Constitutional Court of Ukraine

The authority of the Constitutional Court of Ukraine does not cover issues concerning the legality of acts of state power authorities, power authorities of the Supreme *Rada* of the Autonomous Republic of Crimea and local self-government authorities, as well as the other issues which are subject to the authority of the courts of general jurisdiction.

Article 15
Grounds for recognizing legal acts as unconstitutional

The grounds for adopting decisions by the Constitutional Court of Ukraine concerning the unconstitutionality of legal acts (their separate parts) are:

-non-conformity with the Constitution of Ukraine;

-violation of the order for their consideration prescribed by the Constitution of Ukraine, their approval or entry into force;

-exceeding constitutional authority during their adoption.

Section 3
Judges of the Constitutional Court of Ukraine

Article 16
Requirements for judges of the Constitutional Court of Ukraine

A judge of the Constitutional Court of Ukraine may be a citizen of Ukraine who, on the day of appointment has attained the age of 40, has higher legal education, no less than ten years of practical, scholarly or pedagogical professional experience, has command of the state language and has resided in Ukraine for the last twenty years.

Judges of the Constitutional Court of Ukraine may not be members of political parties or trade unions, have a representative mandate, take part in any kind of political activity, possess any other paid position, execute any other paid work other than scholarly, teaching or creative.

Article 17
Entering the office of judge of the Constitutional Court of Ukraine

A judge of the Constitutional Court of Ukraine enters office from the date of swearing the judges' oath of the Constitutional Court of Ukraine.

A judge of the Constitutional Court of Ukraine, upon taking office, swears the following oath: “I solemnly swear to perform honestly and conscientiously the high duties of a judge of the Constitutional Court of Ukraine, ensure the supremacy of the Constitution of Ukraine, protect the constitutional order of the State, constitutional rights and freedoms of the individual and citizen.”

A judge of the Constitutional Court of Ukraine takes the oath at a session of the *Verkhovna Rada* of Ukraine with the participation of the President of Ukraine, the Prime Minister of Ukraine and the Chairman of the Supreme Court of Ukraine no later than one month from the date of appointment as the judge of the Constitutional Court of Ukraine.

Article 18
Status of a judge of the Constitutional Court of Ukraine

The status of a judge of the Constitutional Court of Ukraine is established by the Constitution of Ukraine, this Law and the laws of Ukraine on the status of the judges.

The authority of judges of the Constitutional Court of Ukraine and their constitutional rights and freedoms may not be restricted upon the introduction of martial or emergency situations in Ukraine or in particular areas of its territory.

Article 19
Authority of judges of the Constitutional Court of Ukraine

A judge of the Constitutional Court of Ukraine executes preliminary preparation of issues for consideration by the Collegium of judges of the Constitutional Court of Ukraine, the Constitutional Court of Ukraine, takes part in consideration of cases.

A judge of the Constitutional Court of Ukraine has the right to demand from the *Verkhovna Rada* of Ukraine, the President of Ukraine, the Prime Minister of Ukraine, the General Procurator of Ukraine, judges, state power authorities, power authorities of the Autonomous Republic of Crimea, local self-government authorities, officials, enterprises, institutions, organizations of all forms of ownership, political parties and other associations of citizens, individual citizens, requisite documents, materials and other information concerning the matters being prepared for consideration by the Collegium of judges of the Constitutional Court of Ukraine or the Constitutional Court of Ukraine.

Avoidance to provide explanations or refusal to provide documents, materials, information to a judge of the Constitutional Court of Ukraine carries the liability of the responsible persons under the law.

A judge of the Constitutional Court of Ukraine has the right to announce his/her point of view as to the issues concerning examination by the Constitutional Court of Ukraine of only those cases which were subject to the decision adopted or opinions provided by the Constitutional Court of Ukraine.

Article 20
Elections of the Chairman of the Constitutional Court of Ukraine

The Chairman of the Constitutional Court of Ukraine is elected at a special Plenary session of the Constitutional Court of Ukraine from the membership of the judges of the Constitutional Court of Ukraine for a single three-year period through secret voting by means of submitting ballots with any number of candidates, proposed by judges of the Constitutional Court of Ukraine. No more than one candidate can be left on any ballot.

The Chairman of the Constitutional Court of Ukraine is the elected candidate who received more than half of the constitutional composition of the Constitutional Court of Ukraine.

In case more than two candidates are proposed for the office of Chairman of the Constitutional Court of Ukraine and none of the candidates is elected, repeat voting is conducted on the two candidates who received the majority of votes.

In case no more than two candidates are proposed for the office of Chairman of the Constitutional Court of Ukraine and neither of the candidates is elected or the Chairman of the Constitutional Court of Ukraine is not elected during repeated voting, new elections are conducted with nominations of other candidates for the office of Chairman of the Constitutional Court of Ukraine.

The Constitutional Court of Ukraine elects from among the judges of the Constitutional Court of Ukraine a commission on organizing and conducting elections of Chairman of the Constitutional Court of Ukraine.

Article 21
Authority of the Chairman of the Constitutional Court of Ukraine

The Chairman of the Constitutional Court of Ukraine heads the Constitutional Court of Ukraine and organizes its activity.

The authority of the Chairman of the Constitutional Court of Ukraine includes:

-organization of the work of the collegia of judges of the Constitutional Court of Ukraine, Commissions and Secretariat of the Constitutional Court of Ukraine;

-convocation and conducting the sessions, plenary sessions of the Constitutional Court of Ukraine;

-management of budget funds for maintaining and securing the activities of the Constitutional Court of Ukraine in accordance to the estimate approved by the Constitutional Court of Ukraine;

-performance of other authority under this Law and acts of the Constitutional Court of Ukraine which regulate its internal work.

Article 22
Deputy Chairmen of the Constitutional Court of Ukraine

The chairman of the Constitutional Court of Ukraine has two deputy Chairman of the Constitutional Court of Ukraine.

Deputy chairmen perform under instruction of the Chairman of the Constitutional Court of Ukraine certain of his/her powers. When the Chairman of the Constitutional Court of Ukraine is absent or unable to exercise his/her authority, his/her duties are performed by the eldest of the deputy chairman.

When both deputy-chairmen are absent, the duties of the Chairman of the Constitutional Court are executed by the eldest judge of the Constitutional Court of Ukraine.

Deputy chairmen of the Constitutional Court of Ukraine are elected on the proposal of the Chairman of the Constitutional Court of Ukraine for a single three-year term by secret voting by the means of submitting ballots prescribed by Article 20 of this Law.

Article 23
Termination of the authority of a judge of the Constitutional Court of Ukraine

The authorities of a judge of the Constitutional Court of Ukraine are terminated in the case of:

1. expiration of the term of office;

2. attaining the age of sixty-five;

3. inability to perform his/her duties due to the state of health;

4. violation by the judge of the requirements of Article 16, part two, of this Law;

5. violation of the oath;

6. the entry into legal force of a guilty verdict against him/her;

7. termination of his/her citizenship;

8. recognition that he is missing or declared dead;

9. submission by the judge of a petition for his/her resignation or dismissal from the office by personal request.

The decision about the termination of authority of a judge of the Constitutional Court of Ukraine in cases foreseen by subsections 1-3 and 6-9 are adopted at the session of the Constitutional Court of Ukraine and in the cases under subsections 4 and 5 by the *Verkhovna Rada* of Ukraine.

The authority of a judge is terminated in the case of his/her death.

Article 24
Pre-term dismissal of the Chairman of the Constitutional Court of Ukraine, Deputy-Chairman of the Constitutional Court of Ukraine on their petition

The Chairman of the Constitutional Court of Ukraine, deputy Chairman of the Constitutional Court of Ukraine are dismissed from office on their petition by the Constitutional Court of Ukraine.

The decision on pre-term dismissal is deemed to be adopted if it receives the votes of more than a half of the constitutional composition of the Constitutional Court of Ukraine.

The dismissal from the office of the Chairman of the Constitutional Court of Ukraine, deputy Chairman of the Constitutional Court of Ukraine does not deprive them of authority as judge of the Constitutional Court of Ukraine.

Article 25
Scholarly consultants and assistants of judge of the Constitutional Court of Ukraine

A judge of the Constitutional Court of Ukraine has a scholarly consultant and assistant.

The scholarly fellow and assistant fulfil instructions of the judge of the Constitutional Court of Ukraine on cases of constitutional examination.

The scholarly consultant and assistant of a judge of the Constitutional Court of Ukraine are state employees.

Article 26
Out-of-court activity of judges of the Constitutional Court of Ukraine

Judges of the Constitutional Court of Ukraine have the right to take part in conferences, symposiums, to be members of delegations of the Constitutional Court of Ukraine.

Decisions on official trips of judges of the Constitutional Court of Ukraine are adopted by the Chairman of the Constitutional Court of Ukraine and where he/she is absent, by the deputy Chairman of the Constitutional Court of Ukraine.

Section 4
Guarantees for the activity of judges of the Constitutional Court of Ukraine

Article 27
Independence of judges of the Constitutional Court of Ukraine

Judges of the Constitutional Court of Ukraine, while exercising their authorities, are independent and obey only the Constitution of Ukraine and are guided by this Law, other laws of Ukraine other than those laws or their separate parts which are subject to examination by the Constitutional Court of Ukraine.

Article 28
Immunity of the person of a judge of the Constitutional Court of Ukraine

The person of a judge of the Constitutional Court of Ukraine enjoys immunity.

A judge of the Constitutional Court of Ukraine may not be detained or arrested without the consent of the *Verkhovna Rada* of Ukraine before a guilty verdict is handed down by a court.

Judges of the Constitutional Court of Ukraine do not bear legal liability for voting results or expressing points of view in the Constitutional Court of Ukraine and in its collegia, other than liability for offense or slander during the consideration of cases, adopting decisions and providing opinions by the Constitutional Court of Ukraine.

Article 29
Social security conditions of judges of the Constitutional Court of Ukraine

Judges of the Constitutional Court of Ukraine receive a salary and enjoy other types of material security established by legislative acts of Ukraine regarding the status of judges of Ukraine.

Where the authority of a judge of the Constitutional Court of Ukraine is terminated under subsections 1 and 3, part of one of Article 23 of this Law, he/she will receive 80 % of money allowance and the other types of material security which are enjoyed by a judge of the Constitutional Court of Ukraine, until his/her retirement.

Section 5
Organization and activity of the Constitutional Court of Ukraine

Article 30
Organization of the activity of the Constitutional Court of Ukraine

Issues concerning the examination of cases and activity of the Constitutional Court of Ukraine, its Secretariat, the order of office work, local rules of the Constitutional Court of Ukraine are determined by the Constitution of Ukraine, this Law and acts of the Constitutional Court of Ukraine that establish the order of organizing the internal work of the Constitutional Court of Ukraine.

Article 31
Financing the Constitutional Court of Ukraine

Financing the Constitutional Court of Ukraine is foreseen by the State budget of Ukraine in a separate item.

Proposals as to the volume of financing of the Constitutional Court of Ukraine as well as the draft of the respective estimate are submitted by the Chairman of the Constitutional Court of Ukraine to the Cabinet of Ministers of Ukraine and the *Verkhovna Rada* of Ukraine during the formation of the proposed State budget for each following year.

Article 32
Secretariat of the Constitutional Court of Ukraine

The organizational, scholarly and expert, informational and reference and other facilities for the activity of the Constitutional Court of Ukraine are performed by the Secretariat of the Constitutional Court of Ukraine which is headed by the Head of Secretariat of the Constitutional Court of Ukraine.

The regulation on the Secretariat of the Constitutional Court of Ukraine, its structure and staff is approved by the Constitutional Court of Ukraine.

The Head of the Secretariat of the Constitutional Court of Ukraine is appointed by the Constitutional Court of Ukraine on the basis of a proposal of the Chairman of the Constitutional Court of Ukraine from among citizens who have the right to assume the position of the professional judge.

The Head of the Secretariat of the Constitutional Court of Ukraine may not be a member of any political party, have a representative mandate, take part in any political activity, occupy any other paid jobs or perform other paid activity, other than scholarly, teaching and creative work.

The Head and other officials of the Secretariat of the Constitutional Court of Ukraine are state employees.

Article 33
Standing Commissions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine forms standing commissions at its session from the number of judges of the Constitution Court of Ukraine that are the assistant working organs regarding issues of organization of its internal activity.

The regulation about standing commissions of the Constitutional Court of Ukraine is approved by the Constitutional Court of Ukraine at its Plenary session.

Heads of standing commissions are appointed by the Chairman of the Constitutional Court of Ukraine for the term of their office.

Article 34
Temporary commissions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine may create at its Plenary sessions temporary commissions for additional research of issues connected with constitutional examination of a case with the participation of experts in appropriate fields of law.

Article 35
Archive of the Constitutional Court of Ukraine

Materials about the activity of the Constitutional Court of Ukraine are kept in the Archive of the Constitutional Court of Ukraine.

Materials of the cases, about which decisions were adopted or opinions were provided by the Constitutional Court of Ukraine, are kept in the archive of the Constitutional Court of Ukraine for one hundred years.

Original copies of decisions and opinions of the Constitutional Court of Ukraine are kept in the archive in perpetuity.

Other materials about the activity of the Constitutional Court of Ukraine are kept in the archive of the

Constitutional Court of Ukraine on the general grounds determined by Ukrainian law.

The regulation about the Archive of the Constitutional Court of Ukraine is approved by the Constitutional Court of Ukraine.

Article 36
Library of the Constitutional Court of Ukraine

To provide the Constitutional Court of Ukraine with regulatory-legal acts, scholarly and other special literature, a Library of the Constitutional Court of Ukraine shall be established.

The regulation about the Library of the Constitutional Court of Ukraine is approved by the Constitutional Court of Ukraine.

Article 37
Printed organ of the Constitutional Court of Ukraine

The printed organ of the Constitutional Court of Ukraine is "The Bulletin of the Constitutional Court of Ukraine".

Chapter II
Constitutional examination

Section 6
Application to the Constitutional Court of Ukraine

Article 38
Forms of application to the Constitutional Court of Ukraine

The forms of application to the Constitutional Court of Ukraine are constitutional claim and constitutional petition.

Article 39
Constitutional claim

The constitutional claim is a written petition to the Constitutional Court of Ukraine on the recognition of a legal act (its separate parts) as unconstitutional, on determination of the constitutionality of an international treaty or on the necessity of official interpretation of the Constitution of Ukraine and the laws of Ukraine. A constitutional claim is also an appeal of the *Verkhovna Rada* of Ukraine on providing an opinion concerning the conformity with the constitutional procedure for investigating and considering the case of removing the President of Ukraine from office through impeachment.

The constitutional claim sets forth:

1. the full name of the organ, official, submitting the constitutional claim in accordance with rights provided by the Constitution of Ukraine and this Law;

2. the facts about the representative by law or the person authorized by proxy;

3. the full title, number, date of adoption, source of publication (provided that it was published) of the legal act whose constitutionality is in question and which needs to be officially interpreted;

4. legal rationale of statements concerning the unconstitutionality of the legal act (its separate parts) or the necessity to be officially interpreted;

5. data concerning the other documents and materials upon which the subjects of the constitutional claim are relying (copies of this documents and materials are enclosed);

6. a list of the enclosed materials and documents.

The constitutional claim, enclosed documents and materials are submitted in triplicate.

Article 40
Subjects of the right to constitutional claim for adopting a decision by the Constitutional Court of Ukraine

Subjects of the right to a constitutional claim for adopting a decision by the Constitutional Court of Ukraine in cases provided for by subsection one, Article 13 of this Law are: the President of Ukraine, no fewer than forty-five National Deputies of Ukraine (a National Deputy's signature may not be recalled), the Supreme Court of Ukraine, the Authorized Representative of the *Verkhovna Rada* of Ukraine on Human Rights and the Supreme *Rada* of the Autonomous Republic of Crimea.

Article 41
Subjects of the right to constitutional claim for providing opinions by the Constitutional Court of Ukraine

Subjects of the right to a constitutional claim for providing opinions by the Constitutional Court of Ukraine in the cases provided for by subsections two, three and four of Article 13 of this Law are:

-under subsection two, the President of Ukraine and the Cabinet of Ministers of Ukraine;

-under subsections three, the *Verkhovna Rada* of Ukraine;

-under subsection four, the President of Ukraine, no fewer than forty-five National Deputies of Ukraine (a National Deputy's signature may not be recalled), the Authorized Representative of the *Verkhovna Rada* of Ukraine on Human Rights, the Supreme Court of Ukraine, the Cabinet of Ministers of Ukraine, the other State power authorities, the Supreme *Rada* of the Autonomous Republic of Crimea and local self-government authorities.

Article 42
Constitutional petition

The constitutional petition is a written petition to the Constitutional Court of Ukraine on the necessity of an official interpretation of the Constitution of Ukraine and the laws of Ukraine in order to secure implementation or protecting the constitutional rights and freedoms of the individual and citizen as well as the rights of a legal entity.

The constitutional petition sets forth:

1. the surname, first name and patronymic of the citizen of Ukraine, alien, or a stateless person, his/her address of residence, or the full name and the place of location of the legal entity;

2. data about the citizen's representative by law, or the person authorized by proxy;

3. articles (their separate provisions) of the Constitution of Ukraine or the Law of Ukraine, the interpretation of which will be made by the Constitutional Court of Ukraine;

4. rationale of the necessity of an official interpretation of the statements of the Constitution of Ukraine or the laws of Ukraine;

5. data concerning the other documents and materials upon which the subjects of the constitutional petition are relying (copies of these documents and materials are enclosed);

6. a list of materials and documents enclosed.

The constitutional petition, enclosed documents and materials are submitted in triplicate.

Article 43
Subjects of the right to a constitutional petition for providing opinions by the Constitutional Court of Ukraine

Subjects of the right to a constitutional petition for providing opinion by the Constitutional Court of Ukraine in the cases foreseen by subsection 4 of Article 13 of this Law are the citizens of Ukraine, aliens, stateless persons and legal entities.

Article 44
Withdrawal of the constitutional claim, constitutional petition

A constitutional claim, constitutional petition may be withdrawn under the written application of the subject who submitted it to the Constitutional Court of Ukraine at any time before the date of its consideration at the Plenary session of the Constitutional Court of Ukraine.

Procedural decision on terminating the examination of a case based on constitutional claim, constitutional petition which is being withdrawn is adopted at sessions of the Constitutional Court of Ukraine.

Article 45
Grounds for refusal to open constitutional examination

Grounds for refusal to open examination of a case in the Constitutional Court of Ukraine are:

1. absence in the Constitution of Ukraine and this Law of the right to constitutional claim or constitutional petition;

2. non-conformity of the constitutional claim or constitutional petition with the requirements prescribed by the Constitution of Ukraine and this Law;

3. lack of jurisdiction by the Constitutional Court of Ukraine over issues raised by the constitutional claim or constitutional petition.

Section 7
Examination of cases in the Constitutional Court of Ukraine

Article 46
Procedures of constitutional examination of a case

Opening of examination of a case in the Constitutional Court of Ukraine under the constitutional claim or constitutional petition is approved by the Collegium of judges of the Constitutional Court of Ukraine, or by the Constitutional Court of Ukraine at its session.

The case which is subject to the opened constitutional examination is considered by the Constitutional Court of Ukraine at a plenary session following the order and within the term prescribed by this Law.

The date for consideration of a case by the Constitutional Court of Ukraine is determined by the Chairman of the Constitutional Court of Ukraine.

Article 47
Collegia of judges of the Constitutional Court of Ukraine

In the Constitutional Court of Ukraine, collegia of judges are created to consider the issues concerning opening examination of cases arising from constitutional claim, and collegia of judges to consider the issues concerning opening examination of cases arising from constitutional petition.

Decisions on creating the collegia of judges of the Constitutional Court of Ukraine, confirmation of the composition and appointment of the Secretaries of the collegia are adopted at sessions of the Constitutional Court of Ukraine during the first month of each calendar year.

The Secretary of a Collegium of judges is appointed from the judges who are members of the Collegium and heads it.

Article 48
Authorities of the Collegia of judges of the Constitutional Court of Ukraine on cases arising from constitutional claims

The Collegium of judges of the Constitutional Court of Ukraine in cases arising from constitutional claim adopts, by a majority of the judges' votes, a procedural decision on opening examination of a case in the Constitutional Court of Ukraine or on refusing such examination.

When the Collegium of judges of the Constitutional Court of Ukraine adopts a procedural decision to open examination of a case in the Constitutional Court of Ukraine, the Chairman of the Constitutional Court of Ukraine submits this case for consideration to the plenary session of the Constitutional Court of Ukraine.

When the Collegium of judges adopts a procedural decision on refusing to open examination of a case, the secretary of the Collegium of judges submits the materials to the Chairman of the Constitutional Court of Ukraine for consideration of the case at the session of the Constitutional Court of Ukraine.

Article 49
Authorities of collegia of judges of the Constitutional Court of Ukraine in cases arising from constitutional petitions

The Collegium of judges of the Constitutional Court of Ukraine in cases arising from constitutional petition adopts a procedural decision on opening examination of the case in the Constitutional Court of Ukraine or on refusing such examination in the order prescribed by Article 48 of this Law.

Article 50
Sessions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine at its sessions examines issues concerning opening the examination of cases in the Constitutional Court of Ukraine in the case of adoption by the Collegium of judges of the Constitutional Court of Ukraine of a procedural refusal to open such an examination.

Where a session of the Constitutional Court of Ukraine adopts a procedural approval for opening the examination of a case in the Constitutional Court of Ukraine, this case is submitted by the Chairman of the Constitutional Court of Ukraine for consideration to the Plenary session of the Constitutional Court of Ukraine.

The procedural decision, adopted at a session of the Constitutional Court of Ukraine, on the refusal to open examination of the case in the Constitutional Court of Ukraine is final.

Sessions of the Constitutional Court of Ukraine also review all the issues subject to resolution by the Constitutional Court of Ukraine, other than those that

are subject to resolution at its plenary session, according to this Law.

Sessions of the Constitutional Court of Ukraine are legally empowered provided that no fewer than 11 judges of the Constitutional Court of Ukraine are present.

A decision of the Constitutional Court of Ukraine in its session is deemed adopted provided that it received the votes of more than a half of the judges who took part in the session.

Article 51
Plenary sessions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine at its plenary sessions considers cases, examination of which has been opened by constitutional petitions and constitutional claims, and the other issues subject to consideration of the Constitutional Court of Ukraine at its plenary sessions according to this Law.

At Plenary sessions, the Constitutional Court of Ukraine adopts decisions in cases concerning issues foreseen in subsection 1 of Article 13 and provides opinions on the issues prescribed by subsections 2, 3 and 4 of Article 13 of this Law.

Plenary session of the Constitutional Court of Ukraine is legally empowered provided no fewer than 12 judges of the Constitutional Court or Ukraine are present.

Decisions of the Constitutional Court of Ukraine are adopted and opinions or the Constitutional Court of Ukraine are provided if they receive the votes of no fewer than 10 judges of the Constitutional Court of Ukraine.

Article 52
Order of conducting Plenary sessions of the Constitutional Court of Ukraine, sessions of the Constitutional Court of Ukraine

The order of conducting Plenary sessions and sessions of the Constitutional Court of Ukraine are established by this Law and acts of the Constitutional Court of Ukraine which regulate the organization of its internal work.

The Plenary sessions and sessions of the Constitutional Court of Ukraine are headed by the Chairman of the Constitutional Court of Ukraine.

Article 53
Responsibility for violating the order of conducting Plenary session of the Constitutional Court of Ukraine

The chairman of the Plenary session of the Constitutional Court of Ukraine secures adherence to the order of its conducting.

Participants of the constitutional examination and those present in the session hall of the Constitutional Court of Ukraine are forewarned of the necessity to adhere to the established order.

In the event of demonstrating disrespect to the Constitutional Court of Ukraine or hindering the conduct of its plenary session, the responsibility is imposed on the violator as prescribed by law.

The decision on imposing responsibility is adopted by the Constitutional Court of Ukraine on the proposal of the chairman in the session hall of the Constitutional Court of Ukraine.

The violator is removed from the session hall of the Constitutional Court of Ukraine.

Article 54
Securing the completeness of the consideration of a case by the Constitutional Court of Ukraine

The Collegium of judges of the Constitutional Court of Ukraine, during the preparation period of a case, and the Constitutional Court of Ukraine, during the examination of the case, are empowered to demand from the *Verkhovna Rada* of Ukraine, the President of Ukraine, the Prime Minister of Ukraine, the General Procurator of Ukraine, judges, State power authorities, power authorities of the Autonomous Republic of Crimea, local self-government authorities, officials, enterprises, institutions, organizations of all forms of ownership, political parties and other associations of citizens and individual citizens the requisite documents, materials and other information concerning the case.

The Collegium of judges of the Constitutional Court of Ukraine, during the preparation of the case, the Constitutional Court of Ukraine, during examination of the case, where necessary, order expertise of the case and resolve problems concerning the involvement in the constitutional examination of experts.

The Collegium of judges of the Constitutional Court of Ukraine, during the preparation period of a case, the Constitutional Court of Ukraine, during examination of the case, have the right to summon officials, experts, representatives by law and persons authorized by proxy and citizens, whose participation should ensure unbiased and complete consideration of the case.

Avoiding without just cause to appear before the Collegium of judges of the Constitutional Court of Ukraine or the Constitutional Court of Ukraine, as well as refusal to present requisite documents, materials and the other information or their intentional concealment carries with it the liability of the guilty persons according to law.

Article 55
Participants of the constitutional examination

Participants of the constitutional examination are: subjects of the right to constitutional claim and constitutional petition and their representatives, and authorities and officials, witnesses, experts and translators invited by the Constitutional Court of Ukraine to participate in consideration of the case as well.

The failure to appear for good cause of a participant in the constitutional examination in the Plenary session or session of the Constitutional Court of Ukraine may be grounds to delay consideration of the case.

In case of the repeated failure to appear for good cause of a participant in the constitutional examination in the Plenary session or session of the Constitutional Court of Ukraine, the Constitutional Court of Ukraine may adopt a decision to consider the case at the respective session in the absence of him/her.

In case of the failure to appear without good cause of a participant of the constitutional examination, the Constitutional Court of Ukraine adopts the decision in his/her absence.

Article 56
Language of the constitutional examination

In the Constitutional Court of Ukraine, examination of cases is conducted, decisions are adopted and opinions are provided and promulgated in the state language.

The participants of the constitutional examination who do not have command of the state language have a right to use a translator. Participants of the constitutional examination provide timely notice to the Constitutional Court of Ukraine about their intention to use the services of translator.

Article 57
Term for constitutional examination

The term for the examination of cases arising from constitutional petition should not exceed three months.

When examining a case arising from constitutional claim which is recognized by the Constitutional Court of Ukraine as urgent, the term for consideration of such a claim should not exceed one month.

The term for the examination of cases arising from constitutional petition should not exceed 6 months.

Calculation of the term of constitutional examination begins the day of adoption of the procedural decision on opening of the constitutional examination of the case.

Article 58
Joining of constitutional examinations

Were several constitutional claims and/or constitutional petitions concerning the same issue have been submitted to the Constitutional Court of Ukraine, they are joined in one constitutional examination of a case.

Article 59
Compensation of costs to the participants of the constitutional examination

Costs of the participants in constitutional examination are compensated at the expense of the budgetary funds as decided by the Constitutional Court of Ukraine.

Article 60
State duty

The constitutional claim and constitutional petition are submitted to the Constitutional Court of Ukraine without payment of state duty.

If a repeated submission of a constitutional claim or constitutional petition on the same issue that was already considered in the Constitutional Court of Ukraine constitutes a misuse of the right, the Constitutional Court of Ukraine, upon deciding to refuse to open examination of a case, may decide that

the subjects of the right to constitutional claim or constitutional petition pay state duty as prescribed by law.

Section 8
Decisions and opinions of the Constitutional Court of Ukraine

Article 61
Decisions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine adopts decisions following the consideration of a case concerning the constitutionality of the laws and the other legal acts of the *Verkhovna Rada* of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea.

The Constitutional Court of Ukraine may recognize as unconstitutional the legal act in its entirely or its separate parts.

If consideration of the case arising from constitutional claim or constitutional petition reveals the non-conformity with the Constitution of Ukraine of legal acts (their separate parts) other than those for which an examination has been opened and which influence the adoption of a decision or the providing of an opinion in the case, the Constitutional Court of Ukraine recognizes such legal acts (their separate parts) as unconstitutional ones.

Article 62
Opinions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine provides opinions in cases concerning questions of:

-the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

-the conformity with the Constitution of Ukraine of valid international treaties of Ukraine or those international treaties submitted to the *Verkhovna Rada* of Ukraine for consent to their binding status;

-the adherence to the constitutional procedure for investigating and considering the case of removing the President of Ukraine from office through impeachment.

Article 63
Adopting decisions and providing opinions by the Constitutional Court of Ukraine

Decisions are adopted and opinions are provided by the Constitutional Court of Ukraine through individual voting in the form of questioning of the judges of the Constitutional Court of Ukraine.

Proposals of the judges of the Constitutional Court of Ukraine regarding the draft decision or opinion are voted on in the order in which they are received.

Judges of the Constitutional Court of Ukraine do not have the right to abstain from voting.

Decisions and opinions of the Constitutional Court of Ukraine are justified in written form and signed individually by the judges of the Constitutional Court of Ukraine who voted for them and who voted against them and are promulgated. They are final and not subject to complaint.

The signature of a judge of the Constitutional Court of Ukraine under a decision or opinion of the Constitutional Court of Ukraine is mandatory.

Article 64
Separate thoughts of judges of the Constitutional Court of Ukraine

The separate thoughts of judges of the Constitutional Court of Ukraine who signed a decision or opinion of the Constitutional Court of Ukraine is expressed by the judge of the Constitutional Court of Ukraine in written form and is added to the decision or opinion of the Constitutional Court of Ukraine.

Article 65
Contents of a decision of the Constitutional Court of Ukraine

A decision of the Constitutional Court of Ukraine contains:

1.the title of the decision, date and place of adoption, its number;

2.the names of the judges of the Constitutional Court of Ukraine who took part in consideration of the case;

3.the list of participants of the court session;

4.the content of the constitutional claim;

5. the full title, date of adoption, index number given by the authority or official to the adopted legal act whose constitutionality is under consideration;

6. the provisions of the Constitution of Ukraine which guided the Constitutional Court of Ukraine in adopting the decision;

7. the rationale (explanation) of the decision;

8. the resolutive part of the decision;

9. the mandatory remark that the decision of the Constitutional Court of Ukraine is final and is not subject to complaint.

Article 66
Content of an opinion of the Constitutional Court of Ukraine

Opinions of the Constitutional Court of Ukraine contain:

1. the title of the opinion, date and place of providing the opinion, its number;

2. the names of the judges of the Constitutional Court of Ukraine who took part in consideration of the case;

3. the list of participants of the court session;

4. the content of the constitutional claim or constitutional petition;

5. the provisions of the Constitution of Ukraine which guided the Constitutional Court of Ukraine in providing the opinion;

6. the rationale (explanation) of the opinion;

7. the resolutive part of the opinion;

8. the mandatory remark that the opinion of the Constitutional Court of Ukraine is final and is not subject to complaint.

Article 67
Official promulgation of decisions and opinions

Decisions and opinions of the Constitutional Court of Ukraine are signed no later than seven days after adopting the decision or providing the opinion.

Decisions and opinions of the Constitutional Court of Ukraine are officially promulgated the next working day after they are signed.

Decisions and opinions of the Constitutional Court of Ukraine together with separate thoughts of judges of the Constitutional Court of Ukraine are published in the “Bulletin of the Constitutional Court of Ukraine” and other official publications of Ukraine.

Article 68
Grounds for re-starting a new examination of a case

The Constitutional Court of Ukraine opens a new examination of a case upon the discovery of new circumstances concerning the case, which were not a subject of examination but which existed at the time of the consideration and adoption of a decision or providing opinion in the case.

Article 69
Binding nature of decisions and opinions of the Constitutional Court of Ukraine

Decisions and opinions of the Constitutional Court of Ukraine are equally binding.

Article 70
Order for implementing decisions and opinions of the Constitutional Court of Ukraine

Copies of decisions and opinions of the Constitutional Court of Ukraine are sent on the next working day after their official promulgation to the subject of the right to constitutional claim or constitutional petition, on whose initiative the case was considered, to the Ministry of Justice of Ukraine as well as to the power authority that adopted the legal act which was the subject to consideration in the Constitutional Court of Ukraine.

Where necessary, the Constitutional Court of Ukraine may determine in its decision or opinion, the order and terms of fulfilment and oblige appropriate State authorities to secure fulfilment of the decision or adherence to the opinion.

The Constitutional Court of Ukraine has the right to demand from authorities mentioned in this Article written confirmation of the fulfilment of the decision or adherence to the opinion of the Constitutional Court of Ukraine.

Failure to fulfil decisions or adhere to opinions of the Constitutional Court of Ukraine carries with it liability in accordance with law.

Chapter III
Particularities of constitutional examination

Section 9
Examination of cases under subsection 1 of Article 13 of this Law

Article 71
Submission of constitutional claims

The subjects of the right to constitutional claim, mentioned in Article 40 of this Law, submit to the Constitutional Court of Ukraine constitutional claims which contain arguments and declarations as to the unconstitutionality of the laws, the other legal acts of the *Verkhovna Rada* of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine or legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea.

The subjects of the right to constitutional claim appoint up to three representatives for participation in consideration of the case.

Article 72
Participation in examination of the case

In examination of the case, the Constitutional Court of Ukraine must involve the representatives of the state authorities, whose regulations are in dispute under the constitutional claim as to their constitutionality, to participation.

Article 73
Decisions in cases

The Constitutional Court of Ukraine adopts decisions concerning the constitutionality of the acts set forth in subsection 1 of Article 13 of this Law.

If such acts or their separate parts are recognized to be non-conform to the Constitution of Ukraine (unconstitutional) they are declared invalid and are null and void as of the day of adoption of the decision on their unconstitutionality by the Constitutional Court of Ukraine.

Article 74
Regulating legal relations which have arisen as a result of the application of an act recognized as unconstitutional

The Constitutional Court of Ukraine may make a statement on the preliminary nature of its decision during the consideration of claims by courts of general jurisdiction in connection with legal relations which have arisen as a result of the application of an unconstitutional act.

Section 10
Particularities of the examination of cases regarding the constitutionality of legal acts creating disputes regarding authorities of the constitutional organs of State power of Ukraine, the organs of power of the Autonomous Republic of Crimea and organs of local self-government

Article 75
Grounds for constitutional claim

The grounds for a constitutional claim are the existence of a dispute regarding authority of the constitutional organs of State power of Ukraine, organs of power of the Autonomous Republic of Crimea and organs of local self-government if one of the subjects of the right to the constitutional claim set forth in Article 40 of this Law considers the legal acts, set forth in subsection one of Article 13 of this Law, which establish the authority of the mentioned organs, do not correspond to the Constitution of Ukraine.

Article 76
Right to take part in the case

Every subject of constitutional claim set forth in Article 40 of this Law may apply to the Constitutional Court of Ukraine with the constitutional claim concerning the authority of the constitutional organs of State power of Ukraine, power organs of the Autonomous Republic of Crimea and organs of local self-government at any stage of constitutional examination if he/she/it considers that the decision of the Constitutional Court of Ukraine in the case may influence the scope of their authority.

Article 77
The resolutive part of the decision

The resolutive part of the decision of the Constitutional Court of Ukraine gives the conclusion as to the legal act which established the authority of the constitutional

organs of State power of Ukraine, power organs of the Autonomous Republic of Crimea and organs of local self-government.

Section 11
Particularities of the examination of cases concerning the constitutionality of acts calling elections, all-Ukrainian referenda or local referenda in the Autonomous Republic of Crimea

Article 78
Term for submitting constitutional claims

The constitutional claim for providing opinions concerning the constitutionality of the acts calling elections, all-Ukrainian referenda or local referenda in the Autonomous Republic of Crimea may be submitted to the Constitutional Court of Ukraine in the term of no later than a month from the date of the official announcement of the date, cancellation or delay of regular elections, of calling an all-Ukrainian referendum or local referendum in the Autonomous Republic of Crimea.

Article 79
Subject matter of consideration

The Constitutional Court of Ukraine considers issues concerning the constitutionality of legal acts of the *Verkhovna Rada* of Ukraine, acts of the President of Ukraine, and the legal acts of the Autonomous Republic of Crimea on calling elections, an all-Ukrainian referendum or local referenda in the Autonomous Republic of Crimea.

Article 80
Participation in the constitutional examination

The Constitutional Court of Ukraine may involve in consideration of the case those representatives of the organs that called elections, an all-Ukrainian referendum or local referendum in the Autonomous Republic of Crimea as well as organs charged with holding elections or referenda; a representative of the Central Electoral Commission of Ukraine, and representatives of the power organs, local self-government organs or organs with authority to conduct elections or referenda.

Where necessary, the Constitutional Court of Ukraine may involve representatives of political parties and other associations of citizens, to participate in consideration of the case.

Article 81
Resolutive part of decision

The resolutive part of a decision of the Constitutional Court of Ukraine gives a conclusion as to the constitutionality of the acts calling elections, calling an all-Ukrainian referendum or local referendum in the Autonomous Republic of Crimea.

Where these acts have been recognized to be unconstitutional, the decision of the Constitutional Court of Ukraine contains a statement about the termination of the activities of all organs created to conduct the elections or referenda, the destruction of ballots, agitation's materials, termination of financing for the measures concerning holding elections or referenda, returning to the State revenues that were transferred but were not used.

Section 12
Particularities of the examination of cases regarding the consistency of the provisions of current legal acts, set forth in subsection one of Article 13 of this Law with constitutional principles and norms concerning rights and freedoms of the individual and citizen

Article 82
Grounds for raising the issue of opening the constitutional examination

The grounds for raising the issue of opening the examination of a case concerning the conformity of current legislative norms to the principles and norms of the Constitution of Ukraine as to the rights and freedoms of individuals and citizens are:

1. the existence of disputable questions concerning the constitutionality of laws and other legal acts adopted and promulgated in the prescribed order;

2. the development of disputable questions concerning the constitutionality of legal acts revealed in the process of general court procedure;

3. the development of disputable questions concerning the constitutionality of legal acts revealed by executive power authorities in process of their implementation and by the Authorized Representative of the *Verkhovna Rada* of Ukraine on Human Rights in the process of his/her activity.

Article 83

Problems of constitutionality which develop during the process of general court procedure

When, in the process of examination of cases under general court procedure, a dispute develops concerning the constitutionality of norms of a law which is being applied by the court, the examination of the case is suspended.

Under such circumstances, a constitutional examination of the case is opened and the case is considered by the Constitutional Court of Ukraine immediately.

Section 13
Particularities of the examination of cases concerning the constitutionality of legal acts which are contradictory in regulating the realization of constitutional rights and freedoms of individuals and citizens

Article 84
The subject matter for constitutional examination and the order of its opening

The subject matter for the constitutional examination of cases concerning the constitutionality of norms of laws, which are contradictory in regulating the order of realizing the constitutional rights and freedoms of the individual and citizen, is the resolution of the disputable issues concerning the constitutionality of the two or more norms or acts of international law, recognized to have binding nature in the territory of Ukraine, which establish different orders for realizing the same constitutional rights and freedoms and thus substantially restrict the possibility of applying them.

Article 85
Order of opening the examination of the case and the particularities of the decision's content

The constitutional examination of the case is opened on the initiative of the subjects of the right to constitutional claim set forth in Article 40 of this Law.

The decision of the Constitutional Court of Ukraine sets forth the norms of the law which are constitutional and which ones are unconstitutional and invalid.

Section 14
Examination of cases under subsection 2 of Article 13 of the Law

Article 86

Subject matter of the examination of the case

The Constitutional Court of Ukraine considers the cases and provides opinions concerning the constitutionality of:

1. international treaties of Ukraine currently in force;

2. international treaties of Ukraine introduced to the *Verkhovna Rada* of Ukraine for approval of their binding force.

Article 87
Providing opinions concerning the constitutionality of international treaties currently in force

Issues concerning the constitutionality of an international treaty currently in force are considered by the Constitutional Court of Ukraine under the constitutional claim of the President of Ukraine or the Cabinet of Ministers of Ukraine.

In the case of providing opinions on non-conformity of an international treaty with the Constitution of Ukraine, the Constitutional Court of Ukraine, during this examination, resolves the issues concerning unconstitutionality of this treaty or its separate parts.

Article 88
Providing opinions concerning unconstitutionality of international treaties introduced to the *Verkhovna Rada* of Ukraine for approval of their binding force

Issues concerning constitutionality of international treaties introduced to the *Verkhovna Rada* of Ukraine for approval of their binding force are considered by the Constitutional Court of Ukraine under the constitutional claim of the President of Ukraine or the Cabinet of Ministers of Ukraine before adoption of appropriate law by the *Verkhovna Rada* of Ukraine.

Opening of the constitutional examination of such a case causes termination of consideration of the issue concerning approval of their binding force by the *Verkhovna Rada* of Ukraine.

Article 89
Consideration of the cases concerning the constitutionality of the legal acts on entering of the international treaties into force for Ukraine

Issues concerning constitutionality of the legal acts of the *Verkhovna Rada* of Ukraine, the President of Ukraine or the Cabinet of Ministers of Ukraine on entering of the international treaties into force for Ukraine are considered by the Constitutional Court of Ukraine in accordance with Article 13, subsection 1, under the constitutional claim of the subjects listed in Article 40 of this Law.

During the consideration of the case concerning constitutionality of the legal act mentioned in the first paragraph of this Article, the Constitutional Court of Ukraine at the same time provides opinion on the constitutionality of the international treaty entered into force under the referenced legal act.

Section 15
Examination of cases arising from subsection 3 of Article 13 of this Law

Article 90
Opening the constitutional examination of cases concerning adherence to the constitutional procedure for investigating and considering cases of removing the President of Ukraine from office through impeachment

The basis for opening the constitutional examination of a case is the constitutional claim of the *Verkhovna Rada* of Ukraine on the issue of providing an opinion concerning adherence to the constitutional procedure for investigating and considering cases of removing the President of Ukraine from office through impeachment.

The referenced constitutional claim of the *Verkhovna Rada* of Ukraine is supplemented with the following documents and materials:

-those concerning initiating of the question on removing the President of Ukraine from office through impeachment;

-those on establishment and activity of the special temporary investigatory commission of the *Verkhovna Rada* of Ukraine for investigation; opinions and proposals of this commission;

-those on consideration of the opinions and proposals of the temporary investigatory commission by the *Verkhovna Rada* of Ukraine;

-decision of the *Verkhovna Rada* of Ukraine on bringing the accusation of state treason or other crimes against the President of Ukraine;

-decision of the *Verkhovna Rada* of Ukraine on applying to the Constitutional Court of Ukraine.

Article 91
Concluding the constitutional examination

The voluntary resignation of the President of Ukraine, against whom charges were brought, is grounds for concluding constitutional examination of the case.

In such a case, that person is brought to judicial responsibility in accordance with general procedures.

Article 92
Opinion of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine provides an opinion on the case concerning adherence to the constitutional procedure for investigating and considering cases of removing the President of Ukraine from office through impeachment in accordance with part six of Article 111 of the Constitution of Ukraine.

Section 16
Examination of cases foreseen by subsection 4 of Article 13 of this Law

Article 93
Ground for the constitutional claim

The ground for a constitutional claim for an official interpretation of the Constitution of Ukraine and laws of Ukraine is the practical necessity of elucidation or clarification, official interpretation of the provisions of the Constitution of Ukraine and the laws of Ukraine as well.

When constitutional examination of such a case is opened, the Constitutional Court of Ukraine notifies the subjects of the constitutional claim, who applied with such a claim, within ten days.

Article 94
Ground for a constitutional petition

The ground for a constitutional petition for an official interpretation of the Constitution of Ukraine and laws of Ukraine is the existence of inappropriate application of provisions of the Constitution of Ukraine or laws of Ukraine by the courts of Ukraine, other organs of State authorities, provided that the subject of the right to constitutional petition considers it may lead or has led

to a violation of his/her constitutional rights and freedoms.

Article 95
The resolutive part of the opinion of the Constitutional Court of Ukraine

The resolutive part of the opinion of the Constitutional Court of Ukraine officially interprets the provisions of the Constitution of Ukraine and laws of Ukraine which were the subject of the constitutional claim or constitutional petition.

If in the interpretation of a law of Ukraine (its separate parts) there was established the existence of non-conformity with the Constitution of Ukraine, then the Constitutional Court of Ukraine in that same examination decides the issue as to the unconstitutionality of such a law.

Chapter IV
Final and transitional provisions

I. This Law enters into force on the date of its publication.

II. Upon the entry of this Law into force, the Law of Ukraine of 3 June 1992, "On the Constitutional Court of Ukraine" with amendments adopted on 4 February, 1993, and the Resolution of the *Verkhovna Rada* of Ukraine "On the Order of entering into force the Law of Ukraine On the Constitutional Court of Ukraine" of 3 June 1992, are annulled.

III. The jurisdiction of the Constitutional Court of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) extends to:

1. The laws of Ukraine and the other legal acts of the *Verkhovna Rada* of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea adopted after the Constitution of Ukraine enters into force;

2. The laws of Ukraine, and the other legal acts of the *Verkhovna Rada* of Ukraine, its organs, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea adopted before the Constitution of Ukraine entered into force;

3. All current international treaties of Ukraine or those international treaties submitted to the *Verkhovna Rada* of Ukraine for granting agreement on their binding nature.

IV. The Constitutional Court of Ukraine begins accepting constitutional claims and constitutional petitions for consideration as of 1 January 1997.

V. The session of the *Verkhovna Rada* of Ukraine for taking the oath of the judges of the Constitutional Court of Ukraine takes place no later than within one month after the first appointment of judges of the Constitutional Court of Ukraine.

VI. The first special plenary session of the Constitutional Court of Ukraine for electing the Chairman of the Constitutional Court of Ukraine shall be convened on the day of the taking of the oath by the judges which constitute a minimally-requisite composition of the Constitutional Court of Ukraine.

VII. Until the problem of establishing the Committees of the *Verkhovna Rada* of Ukraine is solved, the functions of the Committee of the *Verkhovna Rada* of Ukraine set forth in subsection two of Article 7 of the Law are executed by the Standing Commission of the *Verkhovna Rada* of Ukraine.

VIII. Expenditures for maintenance of the Constitutional Court of Ukraine before 1 January 1997, shall be incurred at the expense of the *Verkhovna Rada* of Ukraine and compensated at the expense of the reserve fund of the Cabinet of Ministers of Ukraine.

IX. The Cabinet of Ministers of Ukraine, within three months following this Law's entry into force, provides the Constitutional Court of Ukraine, its sub-divisions and services, with a separate building in Kyiv. It also provides equipment and solves the problems of financial, material and technical provision for the Constitutional Court of Ukraine.