

# Armenia

## Constitutional Court

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### Constitution

5 July 1995

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### Chapter Three

#### The President of the Republic

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#### Article 55

The President of the Republic:

...

10. shall appoint members and the President of the Constitutional Court.

He may, on the basis of a determination by the Constitutional Court, remove from office any of his or her appointees to the Court or sanction the arrest of such a member of the Court, and through the judicial process authorise the initiation of administrative or criminal proceedings against that member.

...

13. shall decide on the use of the armed forces. In the event of an armed attack against or of an immediate danger to the Republic, or a declaration of war by the National Assembly, the President shall declare a state of martial law and may call for a general or partial mobilisation.

Upon the declaration of martial law, a special sitting of the National Assembly shall be held;

14. in the event of an imminent danger to the constitutional order, and upon consultations with the President of the National Assembly and the Prime Minister, shall take measures appropriate to the situation and address the people on the subject;

...

#### Article 57

The President may be removed from office for treason against the state or other grave crimes.

In order to request a determination on questions pertaining to the removal of the President of the Republic from office, the National Assembly must appeal to the Constitutional Court by a resolution adopted by the majority of the deputies.

A decision to remove the President of the Republic from office must be reached by the National Assembly by a minimum two-thirds majority vote of the total number of deputies, based on the determination of the Constitutional Court.

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#### Article 59

In the event of the serious illness of the President of the Republic or of insurmountable obstacles affecting the performance of his or her duties, upon the recommendation of the Government and a determination by the Constitutional Court, the National Assembly shall adopt a resolution on the incapacity of the President of the Republic to exercise his or her duties with a minimum two-thirds majority vote of the total number of deputies.

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### Chapter Four

#### The National Assembly

...

#### Article 81

...

The National Assembly, upon the determination of the CC, may suspend the execution of the provisions of paragraphs 13 and 14 of Article 55 of the Constitution.

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#### Article 83

The National Assembly:

...

2. shall appoint the Chair of the National Assembly's Supervisory Office upon the recommendation of the President of the National Assembly and members and the President of the Constitutional Court from among the members of the Court.

If within thirty days of the formation of the Constitutional Court the National Assembly fails to appoint the President of the Constitutional Court, the President of the Constitutional Court shall then be appointed by the President of the Republic;

3. may, upon the determination of the Constitutional Court, terminate the powers of a member of the Constitutional Court the Assembly has appointed, approve such a member's arrest, and authorise the initiation of administrative or criminal proceedings against such members through the judicial process.

...

## **Chapter Six Judicial Power**

### **Article 96**

Judges and members of the Constitutional Court are appointed for life. A judge may hold office until the age of 65, while a member of the Constitutional Court may do so until the age of 70. They may be removed from office only in accordance with the Constitution and the law.

### **Article 97**

When administering justice, judges and members of the Constitutional Court shall be independent and may be subject only to the law.

The guarantees for the exercise of their duties and the grounds and procedures of the legal responsibility applicable to judges and members of the Constitutional Court shall be prescribed by law.

### **Article 98**

Judges and members of the Constitutional Court may not hold any other public office, nor engage in any other paid occupation, except for scientific, educational and creative work.

Judges and members of the Constitutional Court may not be members of any political party nor engage in any political activity.

### **Article 99**

The Constitutional Court shall be composed of nine members, five of whom shall be appointed by the National Assembly and four by the President of the Republic.

### **Article 100**

The Constitutional Court, in accordance with the law, shall:

1. decide on whether the laws, the resolutions of the National Assembly, the orders and decrees of the President of the Republic and the resolutions of the Government are in conformity with the Constitution;
2. decide, prior to the ratification of an international treaty, whether the obligations assumed therein are in conformity with the Constitution;
3. rule on disputes concerning referenda and the results of presidential and parliamentary elections;
4. ascertain the existence of insurmountable obstacles facing a presidential candidate or the elimination of such obstacles;
5. determine whether there are grounds for the removal of the President of the Republic;
6. determine whether there are grounds for the application of paragraphs 13 and 14 of Article 55 of the Constitution;
7. determine whether the President of the Republic is incapable of continuing to perform his or her functions;
8. determine whether there are grounds for the removal of a member of the Constitutional Court, his or her arrest or initiation of administrative or criminal proceedings through the judicial process;
9. decide on the suspension or prohibition of a political party in cases prescribed by law.

### **Article 101**

The Constitutional Court may hear cases submitted by:

1. the President of the Republic;
2. at least one third of the deputies;

3. presidential and parliamentary candidates on disputes concerning election results;

4. the government in cases prescribed by Article 59 of the Constitution.

The Constitutional Court shall only hear cases that have been properly submitted.

#### **Article 102**

The Constitutional Court shall render its decisions and findings no later than thirty days after a case has been filed.

The decisions of the Constitutional Court shall be final, may not be subject to review and shall enter into legal force upon their publication.

The Constitutional Court shall decide by a majority vote of its total number of members on matters pertaining to paragraphs 1-4 of Article 100 of the Constitution, and with a vote of two thirds of its members on matters pertaining to paragraphs 5-9 of Article 100 of the Constitution.

### **Law of the Republic of Armenia on the Constitutional Court**

30 December 1997

#### **Chapter 1**

##### **General Principles**

#### **Article 1**

##### **Composition and establishment of the Constitutional Court**

The Constitutional Court shall be made up of nine Members. Five Members shall be appointed by the National Assembly, the other four by the President of the Republic.

The National Assembly shall appoint Members of the Constitutional Court in a manner established by the Constitution.

The Constitutional Court shall be considered established when more than half its Members are appointed.

#### **Article 2**

##### **Designation of the President of the Constitutional Court**

The President of the Constitutional Court shall be designated from among its Members by the National Assembly on the basis of a proposal made by the President of the National Assembly.

If the National Assembly is unable to designate a President of the Constitutional Court within 30 days of the formation of the Constitutional Court, the President of the Constitutional Court then shall be designated by the President of the Republic.

The President of the Republic shall designate a President of the Constitutional Court from among the Members of the Constitutional Court.

#### **Article 3**

##### **Qualifications required of Members of the Constitutional Court**

Any citizen of the Republic of Armenia who is 35 years of age and has the right to vote can be appointed to the Constitutional Court if he/she has completed higher education, has at least 10 years of work experience, has experience in the legal field in the government or scientific institutions, is of high moral character and has a command of the Armenian language.

A Member of the Constitutional Court may not hold any other public office or be engaged in any other paid occupation, except for scientific, educational and creative work.

A Member of the Constitutional Court may not be a Member of any political party or engage in any political activity.

A Member of the Constitutional Court may not be an author or co-author of the legal acts provided for by paragraphs 1 and 2 of Article 100 of the Constitution.

#### **Article 4**

##### **Oath of a Member of the Constitutional Court**

A Member of the Constitutional Court shall assume his/her office in the presence of the President of the Republic at a session of the National Assembly by taking the following Oath:

"By assuming the Office of Member of the Constitutional Court, I swear before the people of the Republic of Armenia

that I will defend the Constitution, be impartial and hold high the calling of the Member of the Constitutional Court.”

#### **Article 5**

##### **Powers of the Constitutional Court**

According to Article 100 of the Constitution and in the manner prescribed by the present Law, the Constitutional Court:

- 1.shall decide on whether the laws, the findings of the National Assembly, the orders and decrees of the President of the Republic and the findings of the Government are in conformity with the Constitution;
- 2.shall decide, prior to the ratification of an international treaty, whether the obligations assumed therein are in conformity with the Constitution;
- 3.shall rule on disputes concerning referenda and the results of Presidential and parliamentary elections;
- 4.shall ascertain the existence of insurmountable obstacles facing a Presidential candidate or the fact of the removal of such obstacles;
- 5.shall determine whether there are grounds for the removal of the President of the Republic;
- 6.shall determine whether there are grounds for the appeal provided for in paragraphs 13 and 14 of Article 55 of the Constitution;
- 7.shall determine whether the President of the Republic is incapable of continuing to perform his or her functions;
- 8.shall determine whether there are grounds for the removal of a Member of the Constitutional Court, the arrest or the initiation of administrative or criminal proceedings through the judicial process;
- 9.shall decide on the suspension or prohibition of a political party in cases prescribed by law.

#### **Article 6**

##### **Fundamental principles guiding the activities of the Constitutional Court**

The fundamental principles guiding the activities of the Constitutional Court shall be independence, the adversarial principle, collegiality, and transparency.

#### **Article 7**

##### **Guarantees for the material security of the Constitutional Court**

The President of the Constitutional Court shall present to the Government for inclusion in the State budget the projected expenses of the Constitutional Court.

The budget of the Constitutional Court shall be part of the State budget.

The Government shall provide the Constitutional Court with its own building and with the equipment necessary to ensure its normal functioning.

#### **Article 8**

##### **Legislation on the Constitutional Court**

The powers of the Constitutional Court shall be defined by the Constitution; the procedures of its composition and activities shall be defined by the Constitution and by the present Law.

### **Chapter 2**

#### **Members of the Constitutional Court**

#### **Article 9**

##### **Equality of Members of the Constitutional Court**

Members of the Constitutional Court shall have equal rights.

When a decision or finding of the Constitutional Court is being adopted, each Member of the Constitutional Court shall have the right to one vote.

#### **Article 10**

##### **Independence of Members of the Constitutional Court**

A Member of the Constitutional Court shall be independent and subject only to the law. The exertion of any influence on a Member of the Court in relation to his/her activities is prohibited and shall be punishable by law.

#### **Article 11**

##### **Irremovability of Members of the Constitutional Court**

A Member of the Constitutional Court shall be irremovable and may hold office until the age of 70.

A Member of the Constitutional Court may be removed from office on the grounds and in accordance with the

procedures specified by the Constitution and the present Law.

#### **Article 12**

##### **Personal immunity of Members of the Constitutional Court**

Members of the Constitutional Court shall have personal immunity.

A Member of the Constitutional Court may not be detained and subjected to administrative or criminal prosecution through judicial proceedings without the consent of the body that has appointed him/her and a decision of the Constitutional Court.

In the case of the arrest or search of a Member of the Constitutional Court, the President of the Constitutional Court and the body that has appointed him/her must be immediately informed.

A Member of the Constitutional Court may be arrested or searched only on the basis of a warrant of the Prosecutor-General of the Republic of Armenia.

The security of the Court and its Members shall be ensured in a manner prescribed by the law.

#### **Article 13**

##### **Material security of the President and Members of the Constitutional Court.**

In order to ensure the activities of the Member of the Constitutional Court, the state shall provide the Member with adequate living and working conditions.

The level of remuneration of the President and Members of the Constitutional Court shall be determined by law.

In cases where the powers of a Member of the Constitutional Court are terminated because of subparagraph 1 of paragraph 1 or subparagraph 2 of paragraph 2 of Article 14 of the present Law, a Member shall be granted a pension equal to 75% of his/her salary as a Member of the Constitutional Court.

The vacation of a Member of the Constitutional Court shall be 36 working days.

As a result of the necessity of conducting preliminary investigations for an appeal or a case the President of the Constitutional Court may recall Members from their vacation.

Upon the request of the President of the Constitutional Court judicial qualifications may be granted to the Members of the Constitutional Court.

The respective specialist in the staff of the Constitutional Court shall receive court ranks from the President of the Constitutional Court.

#### **Chapter 3**

##### **Termination of the membership of the member of the Constitutional Court**

#### **Article 14**

##### **Grounds for termination of Membership of a Member of the Constitutional Court**

Membership of the Constitutional Court shall be terminated automatically and the post shall be considered vacant when a Member:

- 1.has reached the age of retirement;
- 2.has died;
- 3.has had his/her citizenship withdrawn;
- 4.has applied in writing to the body that appointed him/her, requesting the termination of his powers, and has informed the Constitutional Court of that appeal and in not less than 15 days, but not later than in a month, has reiterated his/her resignation;
- 5.is determined by a Court of law to be unable to work, missing or dead;
- 6.has been found guilty by a Court of law.

Membership in the Constitutional Court may be terminated on the basis of a ruling of the Constitutional Court when a Member:

- 1.has been absent three consecutive times from the sessions of the Court without an excuse;
- 2.has been unable to fulfil for four months his/her duties as a Member of the Constitutional Court because of some temporary disability or other lawful reason;
- 3.has committed an act disrespectful of the honour and dignity of a Member of the Constitutional Court.

In cases when membership of the Constitutional Court has been terminated because of the reasons provided for by

paragraph 1 above, the President of the Constitutional Court, in a period of two days after the vacancy has occurred, shall apply respectively either to the President of the Republic or the National Assembly, requesting to appoint a new Member. The Chairperson of the National Assembly shall inform the National Assembly of that request at its next session.

If a situation has arisen as a consequence of any of the reasons provided for in paragraph 2 above, the President of the Constitutional Court shall inform the body that appointed that Member about the situation in writing.

The termination of the membership under the conditions specified in subparagraph 4 of paragraph 1 of this Article may become a subject for the discussion for the body that has appointed the Member on the basis of a ruling of the Constitutional Court, passed in a manner prescribed by the law.

#### **Article 15**

##### **Procedure for filling a vacant position of the President or a Member of the Constitutional Court**

The appointment of a new Member of the Constitutional Court shall be made within two months of the termination of a Member's Membership in the Court on the basis of the procedures set down by the Constitution and the present Law.

If the vacant position of the President of the Constitutional Court is not filled by the National Assembly within 30 days, the President of the Republic shall appoint the President of the Constitutional Court within one month.

#### **Chapter 4**

##### **The organisation of the activities of the Constitutional Court**

#### **Article 16**

##### **Organisation of the activities of the Constitutional Court**

The President of the Constitutional Court shall organise and direct the activities of the Constitutional Court. The Vice-President of the Court shall replace him/her in his/her absence under the instruction of the President of the Court.

A Member of the Constitutional Court, appointed by the President of the Constitutional Court, shall replace the Vice-President of the Court in the latter's absence, in a manner consistent with the procedures prescribed by the Constitution, the present Law and procedures established by the Constitutional Court.

#### **Article 17**

##### **The President of the Constitutional Court**

The President of the Constitutional Court shall:

- 1.prepare the sessions of the Constitutional Court;
- 2.give instructions to the Members of the Constitutional Court, in order to prepare the review of issues during the sessions of the Court;
- 3.convene and preside over the sessions of the Constitutional Court;
- 4.present to the Constitutional Court the issues to be reviewed at the sessions;
- 5.make rulings on the preservation of order during the review of cases, makes requests to the parties and witnesses, which are mandatory for all;
- 6.represent the Constitutional Court in its relations with other bodies and organisations;
- 7.be responsible for the general management of the staff of the Constitutional Court, appoint and dismiss the chief of staff, approve the rules of procedure and the list of positions of the staff;
- 8.be responsible for the expenditures of the Constitutional Court and ensure its normal functioning;
- 9.exercise other powers granted him/her by the present Law.

#### **Article 18**

##### **Election of the Vice-President of the Constitutional Court**

The Constitutional Court shall elect and recall a Vice-President of the Constitutional Court upon recommendation of the President of the Court and by a majority vote of the Members of the Court.

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**Chapter 5****The principles governing the review of cases by the Constitutional Court****Article 19  
Collegiality**

The review of cases and the adoption of decisions or findings in cases by the Constitutional Court shall be done on the basis of collegiality.

The decisions and findings of the Constitutional Court shall be adopted by voting.

**Article 20  
Openness**

The sessions of the Constitutional Court shall be held in public.

By a majority vote, the Constitutional Court may decide to hold a session or part of a session in the absence of the media and the public in the interests of community morals, public order and state security, and for the privacy of the parties and the case.

The decisions and findings adopted by the Constitutional Court shall be announced publicly during the sessions of the Court.

The Constitutional Court may allow the sessions to be photographed, taped, video-recorded or broadcast.

**Article 21  
Oral proceedings**

The review of cases in the Constitutional Court shall be conducted orally, except for cases prescribed by Article 21(1) of the present Law. During the review of cases, the Court shall hear the statements of the parties and witnesses, the conclusions of experts, and make public the documents related to the cases.

Those documents of which copies have been distributed to the Members of the Court and the parties before the session may be exempt from the requirement of being read during the session.

**Article 21(1)  
Written proceedings**

In cases dealing with the results of the elections of deputies, as well as in cases provided for by Articles 56 and 62 of the present Law, upon the decision of the Constitutional Court, the review of a case at the session of the Constitutional Court may be conducted in written proceedings.

The review of the case in the Constitutional Court may be done orally, if this is requested by the parties in a written appeal.

During the sessions conducted in written proceedings, the parties, their representatives, public officials, experts and other persons summoned by the Constitutional Court to take part in the review shall submit their statements, conclusions and replies to the questions posed by the Members of the Constitutional Court, upon the decision of the Constitutional Court, both in written form and orally, in a time frame set forth by the Constitutional Court.

In case of written proceedings, all the materials of the case shall be submitted to the Members of the Constitutional Court at least five days prior to the session.

**Article 21(2)  
Adversarial principle**

At a session of the Constitutional Court the review of cases shall be carried out according to the adversarial principle. The parties contribute to the adoption by the Constitutional Court of a resolution of the case by freely expressing their position and presenting arguments and counter-arguments.

**Article 22  
Continuity**

During each session the Constitutional Court shall review a case without interruptions, except for the periods of rest and breaks as determined by the Constitutional Court.

Until the review of the case under consideration has been completed or postponed the Court may consider other cases only in exceptional circumstances and if it so decides.

**Article 23  
Equality of the parties**

During a session of the Constitutional Court, the parties shall have equal procedural rights and equal opportunity to exercise them.

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**Article 24****Language used for the review of cases**

The review of cases during Constitutional Court sessions shall be conducted in the Armenian language.

Persons participating in a session who do not know the Armenian language shall be entitled to address the Court in another language. The services of an interpreter shall be provided by the Court.

**Chapter 6****The appeal to the Constitutional Court****Article 25****The right to appeal to the Constitutional Court**

The Constitutional Court may hear cases submitted by:

- 1.the President of the Republic;
- 2.at least one third of the Members of the National Assembly;
- 3.Presidential and parliamentary candidates on disputes concerning election results;
- 4.the Government, in cases prescribed by Article 59 of the Constitution;
- 5.the National Assembly in cases prescribed by Article 57 of the Constitution.

**Article 26****Admissibility of cases for review by the Constitutional Court**

The Constitutional Court shall only hear cases that have been submitted in due form.

**Article 27****General requirements for the submission of a case**

Appeals shall be presented to the Constitutional Court in writing, signed by the authorised individual, individuals or body.

The appeal must include:

- 1.the name of the Constitutional Court;
- 2.the name and legal address of the appealing party;

3.necessary information on the representative of the appealing party (if any);

4.the Article of the Constitution which constitutes the basis for the appeal to the Constitutional Court;

5.the position of the appealing party on the issue raised by it with reference to the relevant Constitutional norms;

6.the request being made to the Constitutional Court, i.e., the substance of the appeal;

7.the list of documents attached to the appeal.

In addition to the requirements specified in paragraph 2 of this Article, if the appeal is filed on the basis of paragraphs 1 and 2 of Article 100 of the Constitution, those filing the appeal should also indicate the name of the body that has adopted the act which is contested, the title of the act, and the date of its adoption.

**Article 28****Documents to be attached to the appeal**

The following documents must be attached to the appeal presented to the Constitutional Court:

- 1.the authorisation or other documents certifying the authorisation of the representative;
- 2.the Armenian translation of all documents in foreign languages, certified in the manner prescribed by law;
- 3.in the case of an appeal related to paragraphs 1 and 2 of Article 100 of the Constitution, copies of the acts in question.

The appeal may also be accompanied by a list of those witnesses and experts whom it is proposed to summon to the session of the Constitutional Court, as well as by other documents and materials.

After the appeal has been deemed admissible, the appealing party may submit new documents only following the decision of the Constitutional Court.



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**Chapter 7****The preliminary review of the appeal****Article 29****Adoption of the appeal by the Constitutional Court**

Appeals presented to the Constitutional Court shall be subject to mandatory registration.

The registered appeal shall be submitted to the President of the Constitutional Court.

If it is evident that the issue raised in the appeal is not subject to the review of the Constitutional Court, or if the appeal does not correspond in form to the requirements of Articles 27 and 28 of the present Law, or if it is presented to the Court by bodies, a person or persons who are not authorised to make an appeal to the Court, the Court must inform the appealing party in writing within five days of the presentation of the appeal that the appeal does not meet the requirements of the present Law.

The appealing party shall have the right to reapply to the Constitutional Court once it has altered the appeal to meet the requirements of the present Law.

**Article 30****Preliminary study of the appeal**

In the absence of the elements set down in paragraph 3 of Article 29 of the present Law, the appeal shall be subjected to a preliminary study.

The President of the Constitutional Court shall assign one or more Members of the Constitutional Court to undertake a preliminary study of the appeal, which must be completed no later than eight days following the registration of the appeal, unless other deadlines are prescribed by the present Law.

**Article 31****Admitting the case for review**

Based on the results of the preliminary study, the Member(s) shall make a report to the President of the Constitutional Court.

Within three days of the submission of the report, the President of the Constitutional Court shall convene a session of the Constitutional Court to determine whether the Court admits the case for review.

If a decision is made to admit the case for review, the Constitutional Court shall undertake the review of the case no later than twenty days after the registration of the appeal, if there are no other time-limits prescribed in the present Law.

The Constitutional Court shall inform the appealing party as well as interested parties and persons of the decision of the Constitutional Court.

**Article 32****Rejecting a case for review**

The Constitutional Court shall decide not to review a case if:

- 1.the issues raised in the appeal are not subject to the jurisdiction of the Constitutional Court;
- 2.the appealing party is not authorised to appeal to the Constitutional Court;
- 3.the issue raised in the appeal has been the subject of a prior decision of the Constitutional Court.

**Article 33****Withdrawing the appeal**

The appealing party may withdraw the appeal presented to the Constitutional Court at any time until the start of the session scheduled for the review of the case.

**Chapter 8****General rules for the review of cases in the Constitutional Court****Article 34****Sessions of the Constitutional Court**

The Constitutional Court shall review cases during sessions of the Constitutional Court.

A quorum shall be established if a majority of the total number of Members of the Constitutional Court are present.

**Article 35****Convening a session**

Sessions of the Constitutional Court shall be convened and presided over by the President of the Constitutional Court.

In the absence of the President of the Constitutional Court and upon his/her instruction, a session of the Constitutional

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Court may be convened and presided over by the Vice-President of the Constitutional Court, and in the latter's absence, by one of the Members of the Constitutional Court, as instructed by the President of the Constitutional Court.

#### **Article 36**

##### **Preparing the case for review**

To prepare a case for review and to present the circumstances related to the case, the Constitutional Court shall designate a rapporteur (rapporteurs) from among its Members.

The Constitutional Court shall determine whether the review of the case shall be conducted orally or by a written procedure.

In reviewing the appeal and preparing the case for review, a Member (Members) of the Constitutional Court, with the knowledge of the President of the Constitutional Court, shall have the right to request documents, findings and other material from state bodies, official persons, businesses, institutions, organisations and citizens; he/she (they) can instruct to undertake examinations, studies and research.

The persons or bodies summoned to participate in a session shall be determined by the President of the Constitutional Court and the rapporteur (rapporteurs).

Three days prior to the convening of a session, unless other time-limits are provided for by the present Law, Members of the Constitutional Court, the parties and in case of need and by a decision of the President of the Constitutional Court the witnesses shall be forwarded an announcement of the convening of the session of the Constitutional Court, copies of the appeal and documents obtained during the preliminary review of the case.

The announcement of the date and time of the session of the Constitutional Court shall be forwarded to the parties and witnesses by the staff of the Constitutional Court.

#### **Article 37**

##### **The rights of a Member of the Constitutional Court**

A Member of the Constitutional Court shall have the right:

- 1.to familiarise himself/herself with the materials that relate to the issues which either have been discussed or will be discussed at the session;

- 2.to ask questions and receive clarifications on the case under review during the session;

- 3.to express his/her opinion on questions relating to the order of proceedings;

- 4.to make recommendations and motions.

#### **Article 38**

##### **The duties of a Member of the Constitutional Court**

A Member of the Constitutional Court shall have the following duties:

- 1.to execute the instructions of the President of the Court for the preparation of a case under review;

- 2.to participate in the sessions and the vote of the Court;

- 3.to preserve the confidentiality of deliberations and votes undertaken during closed- door meetings;

- 4.to remain faithful to the Oath of the Member of the Constitutional Court.

#### **Article 39**

##### **Parties to the trial**

When issues specified in paragraphs 1 and 3-9 of Article 5 of the present Law are being resolved, the following can be parties in the Constitutional Court:

- 1.the state bodies and public officials who have the right to appeal to the Constitutional Court;

- 2.the state bodies and public officials who have adopted or promulgated the legal acts that are specified in point 1 of Article 5 of the present Law and are being contested in the Constitutional Court;

- 3.the state body the decisions of which are being contested in the Constitutional Court;

- 4.the President of the Republic, when the grounds for measures taken as provided for by paragraphs 13 and 14 of Article 55 of the Constitution are being examined;

- 5.the political party of which the suspension or termination of activities is being decided in the Constitutional Court;

- 6.a Member of the Constitutional Court in cases brought under review on the basis of paragraph 8 of Article 5 of the present Law.

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**Article 40**  
**Naming of respondents**

If the state organs and individuals specified in Article 25 of the present Law have not referred to the respondent or have named the wrong respondent in their appeal to the Constitutional Court, the latter shall name the respondent or the proper respondent in the case in its decision to admit the case.

**Article 41**  
**Representation before the Court**

Parties may appear before the Constitutional Court in person as well as through their representatives.

The head of the body appealing to the Constitutional Court, the head of the body having adopted the act in question, or a deputy representing at least one-third of deputies may appear as a representative.

Any party may be represented by its representatives before the Constitutional Court.

A party before the Constitutional Court may have no more than three representatives.

**Article 42**  
**Rights of the parties**

The parties may:

- 1.familiarise themselves with the materials attached to the case and make extracts thereof;
- 2.produce documents necessary for the review of the case;
- 3.present their own point of view on the case;
- 4.put questions to the other party, its representatives, experts and witnesses;
- 5.make motions or proposals.

**Article 43**  
**Duties of the parties**

The parties must:

- 1.attend the Constitutional Court session by the latter's invitation;
- 2.give statements and answer questions;

- 3.produce necessary documents, references or materials concerning the case by order of the Constitutional Court;

- 4.abide by the rules of the Constitutional Court set for the review of cases.

**Article 44**  
**The procedures of a session**

At a fixed time after having been assured of the validity of the session, the President shall declare the session to be valid and announce the case to be reviewed.

The President shall verify the presence of the parties and witnesses and verify the authority of the representatives of the parties, then shall raise the question whether to begin the review of the case. If the Court considers it impossible to begin the review of the case, then a decision shall be made to postpone the review.

The President shall explain to the parties their rights and duties.

The review of a case at the Constitutional Court session shall start with the report of the rapporteur. The Members of the Constitutional Court may put questions to the rapporteur.

Following the report, the Constitutional Court shall hear the opinion of the Members of the Court and the suggestions of the parties as to the order of proceedings for the review of the case and shall reach a decision on this matter. The order for the review of a case decided by the Constitutional Court may be subject to change. During the process of reviewing the case, proposals by Constitutional Court Members regarding the order of examining materials shall be considered immediately.

**Article 45**  
**Joinder of cases under review by the Constitutional Court**

Each case before the Constitutional Court shall be reviewed at a separate session. Only cases referring to the same issue may be joined and considered at the same session by a decision of the Constitutional Court.

**Article 46**  
**Records of the Constitutional Court**

The record of the sessions of the Constitutional Court shall be kept by the secretariat of the Court.

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The record of the session shall be signed by the Presiding Member and the secretary making the record.

The parties may look through the record of the session and introduce their remarks, which shall be attached to the record.

#### **Article 47**

##### **Statements of the parties**

The President shall ask the parties to provide statements on the case under review and to present arguments in support of their point of view.

The Constitutional Court shall hear the statements of the parties in full.

After hearing the statements of the parties, the Members of the Constitutional Court, the opposing party as well as experts (by the permission of the Court) may put questions to the party presenting the statement.

The parties shall have no right to use their presentations to make political statements.

#### **Article 48**

##### **Experts' findings, rights and duties**

A person possessing special knowledge of the issues in the case under review and not having any interest in the outcome of the case may be summoned as an expert at the Constitutional Court session.

The President of the Constitutional Court shall warn the expert that he/she may be subject to legal prosecution for presenting obviously falsified findings or for refusing to present a finding.

The Constitutional Court shall decide the framework of problems on which the experts' findings are required.

An expert may:

- 1.familiarise himself/herself with the case by the permission of the Constitutional Court;
- 2.put questions to the parties and witnesses with the permission of the Constitutional Court;
- 3.request additional materials.

After having presented his/her conclusion, the expert must answer the questions of the Members of the Court and the parties.

The written finding, bearing the signature of the expert, shall be submitted to the Constitutional Court.

#### **Article 49**

##### **Statements of witnesses**

When necessary, the Constitutional Court shall summon to the session as witnesses and shall hear the statements of those individuals who may be aware of any circumstances which may shed light on the case under review.

The witness shall be warned by the President of the Constitutional Court that the making of obviously false statements or refusal to provide statements are punishable by law.

The witness must tell all the circumstances known to him/her; he/she must answer the questions of the Members of the Court and of the parties.

#### **Article 50**

##### **Liability of experts and witnesses**

The presentation of obviously false findings or obviously false statements or the refusal to provide findings or statements to the Constitutional Court shall be punishable by Law.

#### **Article 51**

##### **Resumption of the case under review**

After the delivery of concluding statements by the parties, the Constitutional Court may decide to resume the review of the case, should it be considered necessary to examine further circumstances and evidence essential for the case.

The parties shall have the right to make statements on the newly examined aspects of the case following the resumption of the review of the case.

After the delivery of concluding statements by the parties, the President of the Court shall declare the case under review closed.

#### **Article 52**

##### **Adoption of decisions or conclusions on the case**

The Constitutional Court shall adopt a decision or conclusion on the case at a closed session at which only Members of the Constitutional Court are present.

A Member of the Constitutional Court may express his/her own point of view on the issues under discussion; he/she may state his/her position regarding the conclusion of the case.

The number and duration of presentations at the session shall not be restricted.

The results of the session shall be recorded by a Member of the Court on the President's instructions. The questions put to the vote and the results of the vote shall be registered for the record. The record shall be signed by the Members of the Constitutional Court who have participated in the session.

The results of the voting shall not be published by name.

The session shall continue until the Court adopts a decision or a conclusion.

#### **Article 53** **Dismissal of a case**

The Constitutional Court shall dismiss a case if:

1. during the session grounds were discovered that could have caused the Court to reject the appeal under Article 32 of the present Law;
2. the act of which the constitutionality is being questioned has been abrogated or has been invalidated before the review of the case or during the process of review, and it has not been applied.

#### **Article 54** **Mandatory character of the orders of the Court**

When performing duties under Article 5 of the present Law, the fulfilling of the orders of the Court presented to State organs, legislative bodies, institutions, organisations and citizens shall be mandatory.

The orders of the Constitutional Court shall be fulfilled within five days after their receipt, unless the Court has specified a different time-limit.

During the review of the case, upon revealing instances of violation of law, the Constitutional Court shall inform the relevant state bodies and public officials of these violations.

Refusing or avoiding implementation of the orders, failing to meet time-limits, not fulfilling the orders or fulfilling them inadequately shall be punishable by law.

### **Chapter 9**

#### **The characteristics of a case under review at the Constitutional Court**

##### **Article 55**

#### **Consideration of a case on the conformity with the Constitution of laws, resolutions of the National Assembly, decrees and orders signed by the President of the Republic, and government resolutions**

With regard to the issues specified in paragraph 1 of Article 100 of the Constitution, the following may appeal to the Court:

1. the President of the Republic;
2. at least one-third of the Members of the National Assembly.

The Constitutional Court shall determine whether the acts or certain provisions thereof referred to in the appeal filed with the Constitutional Court are in conformity with the Constitution, on the basis of the following factors:

1. the form of the act;
2. the time at which the act was adopted, as well as whether it was signed, made public and implemented in compliance with established procedures;
3. the content of the act;
4. the necessity for the protection and free exercise of human rights and freedoms enshrined in the Constitution, the grounds for and limits of their permissible restriction;
5. the principle of the separation of powers as enshrined in the Constitution;
6. the permissible limits of powers of state bodies and public officials;
7. the necessity of ensuring the direct application of the Constitution.

##### **Article 56**

#### **Consideration of cases of the conformity with the Constitution of obligations assumed under an international agreement**

Before the ratification of an international agreement by the National Assembly, the President of the Republic shall appeal to the Constitutional Court with the question concerning the conformity with the Constitution of obligations assumed within the agreement.

The Constitutional Court may adopt one of the following decisions on the case:

1. recognise the obligations deriving from the international agreement as being in conformity with the Constitution;
2. recognise the obligations deriving from the international agreement as a whole or parts of the obligations as not being in conformity with the Constitution.

#### **Article 57**

**Consideration of disputes relating to the results of referenda and the results of the election of the President and deputies.**

With regard to the issues specified in paragraph 3 of Article 100 of the Constitution, the following may appeal to the Constitutional Court:

1. the President of the Republic;
2. at least one third of the Members of the National Assembly;
3. candidates for the office of President of the Republic and for the National Assembly, on issues related to the results of elections.

The state body that has summarised the results of referenda or elections may act as a respondent.

Factual circumstances relating to the case under review by the Constitutional Court may not be a subject for examination.

On issues related to the results of referenda and of elections for the office of President of the Republic and for the National Assembly, appeals to the Constitutional Court may be made within seven days after the official announcement of the results.

#### **Article 58**

**Consideration of issues on determining whether the obstacles for an effective campaigning for a Presidential candidate are insurmountable or have been removed**

With regard to issues specified in paragraph 4 of Article 100 of the Constitution, the following may appeal to the Constitutional Court:

1. the President of the Republic;
2. at least one third of the Members of the National Assembly.

Appeals to the Constitutional Court requesting a determination that obstacles to the effective campaigning of a candidate for the office of President of the Republic are insurmountable can be made not later than ten days before the election of the President of the Republic.

The Constitutional Court shall accept the appeal for a preliminary review, review the case and decide upon it within four days after receiving the appeal.

#### **Article 59**

**Consideration of the issue of the existence of grounds for the removal of the President of the Republic from his position**

With regard to the issue specified in paragraph 5 of Article 100 of the Constitution, the National Assembly may appeal to the Constitutional Court in cases and in the manner laid down by paragraph 2 of Article 57 of the Constitution.

While exercising this power, the Constitutional Court may:

1. demand materials; criminal, civil, administrative case-files; verdicts, decisions, findings, certificates and other documents from the offices of the public prosecutor, from the judicial or investigative authorities;
2. summon and hear authorities and citizens whose statements may bear upon the decision of the case.

#### **Article 60**

**Consideration of the question whether measures applied in compliance with paragraphs 13 and 14 of Article 55 of the Constitution have been well-founded**

With regard to issues specified in paragraph 6 of Article 100 of the Constitution, the following may appeal to the Constitutional Court:

1. the President of the Republic;
2. at least one third of the Members of the National Assembly.

While acting within the authority of the Constitution, the Constitutional Court may:

- 1.summon and hear the President of the Republic, the President of the National Assembly, the Prime Minister, Members of the National Assembly, highest officers of the armed forces, other authorities and citizens;
- 2.receive from state organs and authorities any documents, including those which may contain state secrets.

The Constitutional Court, in cases prescribed by paragraph 6 of Article 100 of the Constitution, shall accept an appeal for preliminary review, consider the case and issue its findings within twenty-four hours after the appeal has been received.

#### **Article 61**

##### **Consideration of the issue of the incapacity of the President of the Republic to perform his duties and exercise his prerogatives**

With regard to the issue specified in paragraph 7 of Article 100 of the Constitution, the Government may appeal to the Constitutional Court.

While exercising this power, the Constitutional Court shall have the rights set out in Article 60 of the present Law.

#### **Article 62**

##### **Consideration of the issue of the termination of the office of a Member of the Court, that of his/her arrest or of making him/her subject to administrative or criminal liability on the basis of a Court order**

With regard to the issue specified in paragraph 8 of Article 100 of the Constitution, the following can appeal to the Constitutional Court:

- 1.the President of the Republic;
- 2.at least one third of the Members of the National Assembly.

While exercising this power, the Constitutional Court shall have the rights set out in Article 59 of the present Law.

While exercising this power, the Member of the Court whose Membership is being discussed and whose arrest or administrative or criminal liability may be decided upon shall not cast a vote.

The National Assembly shall reach the decision to terminate the Court Member's term of office by a majority vote of the total number of deputies.

#### **Article 63**

##### **Consideration of the issue of suspending or prohibiting the activities of a political party**

With regard to the issues provided for by paragraph 9 of Article 100 of the Constitution, the Constitutional Court may be appealed to by:

- 1.the President of the Republic;
- 2.at least one third of deputies.

When exercising this power, the Constitutional Court shall exercise the rights set out in Articles 59 and 60 of the present Law.

The Constitutional Court may decide to suspend or terminate the activities of a political party if violations of the Constitution or the requirements of the relevant law on the political parties have been detected in the activities of that party.

When exercising this power, the Constitutional Court shall reach a decision by at least two-thirds of the total number of the Court's Members voting.

#### **Chapter 10**

##### **The decisions of the Constitutional Court, requirements for a decision, and the order of adoption of a decision**

#### **Article 64**

##### **The decisions of the Constitutional Court**

The Constitutional Court shall adopt findings and conclusions.

The findings of the Constitutional Court are final and they are not to be revised. They shall come into force from the time of their publication.

The application of verdicts of the Constitutional Court shall be mandatory throughout the territory of the Republic.

#### **Article 65**

##### **Types of decisions**

The Constitutional Court shall adopt findings on the issues raised in paragraphs 1-4 and 9 of Article 100 of the Constitution.

The Constitutional Court shall adopt conclusions regarding issues raised in paragraphs 5-8 of the Article 100 of the Constitution.

The Constitutional Court shall make findings about the issues connected with the preparation of cases for review, as well as with other problems connected with the organisation of its activities, which shall be done on the basis of the majority of the votes of the Members present at the session, with the exception of the cases provided for by the present Law.

#### **Article 66**

##### **Adopting findings and conclusions**

The findings and conclusions of the Constitutional Court shall be adopted by an open vote, by a roll-call of the Members.

The President shall cast his/her vote last.

The Constitutional Court shall adopt findings on the basis of a majority of the votes of the total number of Members, with the exception of the case provided for by Article 63 of the present Law.

The Constitutional Court shall adopt conclusions by a two-thirds majority vote at least of the total number of Members.

A Member of the Constitutional Court shall not have the right to abstain during a vote or to refuse to vote.

If the Constitutional Court does not adopt a decision or a conclusion on the matter being deliberated at a closed session, the appeal shall be deemed rejected.

#### **Article 67**

##### **Requirements to be met by findings and conclusions**

With regard to issues specified in paragraphs 1 and 2 of Article 100 of the Constitution, a decision shall be adopted based both on the literal meaning of the Act and existing legal practice.

The Constitutional Court shall adopt findings and conclusions only as to the issues raised in the appeal.

While adopting findings and conclusions, the Constitutional Court shall not be restricted by the reasons and arguments raised in the appeal.

The findings and conclusions of the Constitutional Court shall be made public during the session and shall be attached to the case file.

#### **Article 68**

##### **The contents of the finding or conclusion**

Depending on the nature of the case, a finding or a conclusion by the Constitutional Court shall include the following information:

- 1.the title of the finding or the conclusion, the year, the date and the place of its adoption;
- 2.the necessary information about the parties;
- 3.the issue under review, including reasons and grounds;
- 4.the Article of the Constitution in accordance with which the Court is empowered to consider the case;
- 5.the essence of the appeal in brief;
- 6.documentary and other evidence which has been investigated by the Court;
- 7.those Articles of the Constitution and the present Law in accordance with which a finding or a conclusion has been passed by the Court;
- 8.arguments supporting the finding or the conclusion adopted by the Court, and if it is necessary also the arguments refuting the submissions of the parties;
- 9.a statement of the finding or conclusion;
- 10.a statement that the finding is final and it is not to be revised;
- 11.a statement that the finding shall take effect immediately after its publication.

The finding or the conclusion regarding the case under review by the Court shall be signed by the President of the session.

#### **Article 69**

##### **Communication and publication of the finding or the conclusion**

Within three days after their adoption, the findings and conclusions of the Constitutional Court shall be sent to:

- 1.the parties;



2.the President of the Republic, the National Assembly, the Court of Appeals (and until the establishment of that Court, to the Supreme Court) and the Public Prosecutor.

The findings and conclusions of the Constitutional Court shall be published in the official press and bulletins.

#### **Article 70**

##### **Consequences of not applying the decision**

Failure to apply the decision of the Constitutional Court or failure to obey it adequately as well as preventing its observance will expose offending persons to liability.

#### **Chapter 11**

##### **Concluding Principles**

#### **Article 71**

##### **Location of the Constitutional Court**

Sessions of the Constitutional Court shall be held at its seat in Yerevan.

The Constitutional Court may also arrange sessions at other locations in accordance with a decision adopted by at least a two-thirds vote of the total number of Members.

#### **Article 72**

##### **Using State symbols at the Constitutional Court**

The State flag of the Republic of Armenia shall be raised at the seat of the Constitutional Court.

The State coat of arms and the State flag of the Republic of Armenia shall be placed in the Session Hall of the Constitutional Court.

The Members of the Constitutional Court shall wear special uniforms at the sessions, the style of which shall be determined by the Constitutional Court.

#### **Article 73**

##### **The seal of the Constitutional Court**

The Constitutional Court shall be a legal body; it shall have a seal with the State coat of arms of the Republic of Armenia on which appears the name of the Constitutional Court.

#### **Article 75**

##### **Entry into force of the present Law**

The present Law shall come into force from the time of its publication.

#### **Article 74**

##### **The staff of the Constitutional Court**

The activities of the Constitutional Court shall be conducted by its staff in accordance with its regulations.

The Constitutional Court shall accept appeals one month after the appointment of the first President of the Court.

Within the time-limit specified in paragraph 2 above, the Constitutional Court may be appealed to on issues concerning the results of referenda no sooner than a month before and not later than two months after the appointment of the President of the Court.

## Azerbaijan Constitutional Court

### Constitution

Adopted by referendum on 12 November 1996; came into force on 27 November 1996.

- extracts -

### Third Section State Power

### Chapter V Legislative Power

...

#### Article 86 Inspection and approval of results of elections of deputies of the *Milli Mejlis* (National Assembly) of the Azerbaijani Republic

The accuracy of election results is checked and approved by the Constitutional Court of the Azerbaijani Republic as specified by law.

...

#### Article 88 Sessions of the National Assembly of the Azerbaijani Republic

I....

If after elections to the National Assembly of the Azerbaijani Republic the validity of election of 83 of its deputies has not been approved before 1 February then the day of commencement of the first session of the National Assembly of the Azerbaijani Republic shall be set by the Constitutional Court of the Azerbaijani Republic.

...

#### Article 95 Competence of the National Assembly of the Azerbaijani Republic

1. The following matters fall within the competence of the National Assembly of the Azerbaijani Republic:

...

10.the appointment of judges of the Constitutional Court of the Azerbaijani Republic, Supreme Court of the Azerbaijani Republic and Economic Court of the Azerbaijani Republic based in each case on a recommendation by the President of the Azerbaijani Republic;

...

12.dismissal of the President of the Azerbaijani Republic by way of impeachment based on a recommendation of the Constitutional Court of the Azerbaijani Republic;

13.dismissal of judges based on a recommendation by the President of the Azerbaijani Republic;

...

## **Chapter VI**

### **Executive power**

...

#### **Article 104**

#### **Inability of the President of the Azerbaijani Republic to exercise his powers**

I.The President of the Azerbaijani Republic is considered to have vacated his office prematurely upon his resignation, complete inability to exercise his powers due to illness or dismissal from office in cases and in a manner provided for in the present Constitution.

II.When the President of the Azerbaijani Republic intends to resign, his application to resign shall be presented to the Constitutional Court of the Azerbaijani Republic. If the Constitutional Court of the Azerbaijani Republic is satisfied that the President of the Azerbaijani Republic himself sent in his resignation, it shall make a decision to accept his resignation. From that moment the President is considered to have vacated his office due to resignation.

III.Where the National Assembly of the Azerbaijani Republic receives information concerning the complete inability of the President of the Azerbaijani Republic to exercise his powers due to poor health, it shall apply to the Constitutional Court of the Azerbaijani Republic for clarification of this fact. The Constitutional Court shall adopt a decision by a majority of 6 votes. If the Constitutional Court of the Azerbaijani Republic

confirms this fact, the question shall be deemed to be settled.

...

#### **Article 107**

#### **Dismissal of the President of the Azerbaijani Republic from office**

I.If the President of the Azerbaijani Republic has committed a serious crime the question of his dismissal may be submitted to the National Assembly of the Azerbaijani Republic on the initiative of the Constitutional Court of the Azerbaijani Republic based on conclusions of the Supreme Court of the Azerbaijani Republic received by the Constitutional Court within 30 days.

II.The President of the Azerbaijani Republic may be dismissed from office by a resolution of the National Assembly taken by a majority consisting of 95 votes. This resolution is signed by the President of the Constitutional Court of the Azerbaijani Republic. If the Constitutional Court of the Azerbaijani Republic fails to sign the said decree within one week it shall not come into force.

III.A decree dismissing the President of the Azerbaijani Republic from office must be accepted within 2 months of the date of application of the Constitutional Court of the Azerbaijani Republic to the National Assembly of the Azerbaijani Republic. If no such decree is made within the said term, then the accusation against the President of the Azerbaijani Republic is considered to have been rejected.

...

#### **Article 109**

#### **Competence of the President of the Azerbaijani Republic**

The President of the Azerbaijani Republic:

...

9.submits proposals to the National Assembly of the Azerbaijani Republic about the appointment of judges to the Constitutional Court of the Azerbaijani Republic, the Supreme Court of the Azerbaijani Republic and the Economic Court of the Azerbaijani Republic; appoints judges of other courts of the Azerbaijani Republic; by consent of the National Assembly of the Azerbaijani Republic appoints and dismisses the Prosecutor General of the Azerbaijani Republic;

...

## **Chapter VII**

### **Judicial power**

#### **Article 125**

##### **Judicial power**

- I. Judicial power in Azerbaijan is implemented by the law courts.
- II. Judicial power is implemented through the Constitutional Court of the Azerbaijani Republic, the Supreme Court of the Azerbaijani Republic, the Economic Court of the Azerbaijani Republic and the ordinary and specialised law courts of the Azerbaijani Republic.
- III. Judicial power is implemented by way of constitutional, civil and criminal legal proceedings and other forms of legislation provided for by law.
- IV. The Prosecutor's Office of the Azerbaijani Republic and lawyers participate in all legal proceedings, except constitutional proceedings.
- V. The judicial system and legal proceedings in the Azerbaijani Republic are laid down by law.
- VI. The use of legal means in order to change the powers of law courts and the establishment of extraordinary law courts which are not provided for by law are prohibited.

#### **Article 126**

##### **Requirements to be met by candidates to judicial positions**

- I. Judges shall be citizens of the Azerbaijani Republic not younger than 30, having voting rights, higher legal education and least 5 years' experience working in the sphere of law.
- II. Judges may not occupy any other posts, irrespective of the procedure for their election or appointment, may not be involved in business, commercial or other activities for remuneration except scientific, teaching and creative activities, may not be involved in political activity or join political parties and may not receive remuneration other than wages and money received for scientific, teaching and creative activity.

...

#### **Article 128**

##### **Immunity of judges**

...

- V. Decisions to dismiss judges of the Constitutional Court of the Azerbaijani Republic, the Supreme Court of the Azerbaijani Republic and the Economic Court of the Azerbaijani Republic are taken by the National Assembly of the Azerbaijani Republic with a majority consisting of at least 83 votes; decisions to dismiss other judges are taken by the National Assembly of the Azerbaijani Republic with a majority consisting of at least 63 votes.

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#### **Article 130**

##### **Constitutional Court of the Azerbaijani Republic**

- I. The Constitutional Court of the Azerbaijani Republic consists of 9 Judges.
- II. Judges of the Constitutional Court of the Azerbaijani Republic are appointed by the National Assembly of the Azerbaijani Republic on the basis of a recommendation by the President of the Azerbaijani Republic.
- III. The Constitutional Court of the Azerbaijani Republic, at the request of the President of the Azerbaijani Republic, the National Assembly of the Azerbaijani Republic, the Cabinet of Ministers of the Azerbaijani Republic, the Supreme Court of the Azerbaijani Republic, the Prosecutor's Office of the Azerbaijani Republic, or the *Ali Mejlis* of the Autonomous Republic of Nakhichevan makes decisions in the following matters:
  1. the conformity of laws of the Azerbaijani Republic, decrees and orders of the President of the Azerbaijani Republic, decrees of the National Assembly of the Azerbaijani Republic, decrees and orders of the Cabinet of Ministers of the Azerbaijani Republic and normative legal acts of central bodies of executive power with the Constitution of the Azerbaijani Republic;
  2. the conformity of decrees of the President of the Azerbaijani Republic, decrees of the Cabinet of Ministers of the Azerbaijani Republic and normative legal acts of central bodies of executive power with the laws of the Azerbaijani Republic;
  3. the conformity of decrees of the Cabinet of Ministers of the Azerbaijani Republic and normative legal acts of central bodies of executive power with decrees of the President of the Azerbaijani Republic;

4.in cases provided for by law, the conformity of decisions of the Supreme Court of the Azerbaijani Republic with the Constitution and laws of the Azerbaijani Republic;

5.the conformity of acts of municipalities with the Constitution of the Azerbaijani Republic, laws of the Azerbaijani Republic, decrees of the President of the Azerbaijani Republic, decrees of the Cabinet of Ministers of the Azerbaijani Republic (in the Autonomous Republic of Nakhichevan also their conformity with the Constitution and laws of the Autonomous Republic of Nakhichevan and decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan);

6.the conformity of interstate agreements of the Azerbaijani Republic, which have not yet come into force, with the Constitution of the Azerbaijani Republic; the conformity of intergovernmental agreements of the Azerbaijani Republic with the Constitution and laws of the Azerbaijani Republic;

7.the prohibition of political parties or other public unions;

8.the conformity of the Constitution and laws of the Autonomous Republic of Nakhichevan, decrees of the *Ali Mejlis* of the Autonomous Republic of Nakhichevan and decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan with the Constitution of the Azerbaijani Republic; the conformity of laws of the Autonomous Republic of Nakhichevan and decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan with the laws of the Azerbaijani Republic; the conformity of decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan with decrees of the President of the Azerbaijani Republic and decrees of the Cabinet of Ministers of the Azerbaijani Republic;

9.the settlement of disputes connected with the distribution of powers between legislative, executive and judicial bodies.

iv.The Constitutional Court of the Azerbaijani Republic shall interpret the Constitution and laws of the Azerbaijani Republic at the request of the President of the Azerbaijani Republic, the National Assembly of the Azerbaijani Republic, the Cabinet of Ministers of the Azerbaijani Republic, the Supreme Court of the Azerbaijani Republic, the Prosecutor's Office of the Azerbaijani Republic and the *Ali Mejlis* of the Autonomous Republic of Nakhichevan.

v.The Constitutional Court of the Azerbaijani Republic also exercises other powers provided for in the present Constitution.

vi.The Constitutional Court of the Azerbaijani Republic makes decisions on questions concerning its competence. Decisions of the Constitutional Court of the Azerbaijani Republic shall have binding effect over the entire territory of the Azerbaijani Republic.

vii.Laws and other acts, individual provisions of these documents and intergovernmental agreements of the Azerbaijani Republic held to be unconstitutional by the Constitutional Court of the Azerbaijani Republic cease to be valid under the terms specified in the decision of the Court. International treaties of the Azerbaijani Republic which are impugned by the Constitutional Court do not come into force.

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## **Fifth Section Rights and the Law**

...

## **Chapter 11 Changes in the Constitution of the Azerbaijani Republic**

...

### **Article 153 Procedure for submitting proposals on changes in the text of Constitution of the Azerbaijani Republic**

If proposals on changes to the text of the Constitution of the Azerbaijani Republic are presented by the National Assembly of the Azerbaijani Republic or the President of the Azerbaijani Republic, then the Constitutional Court of the Azerbaijani Republic should give its conclusion before any such changes are made.

### **Article 154 Limitations on powers of the Constitutional Court of the Azerbaijani Republic**

The Constitutional Court of the Azerbaijani Republic shall not have competence to examine changes to the text of the Constitution of the Azerbaijani Republic made by way of referendum.

## **Law on the Constitutional Court of the Azerbaijani Republic**

Entered into force on 27 November 1997

### **Chapter I**

#### **General Provisions**

##### **Article 1**

#### **Purpose of the Constitutional Court of the Azerbaijani Republic**

The Constitutional Court of the Azerbaijani Republic (hereinafter referred to as the Constitutional Court) shall be the supreme body of constitutional justice on matters attributed to its jurisdiction by the Constitution of the Azerbaijani Republic.

##### **Article 2**

#### **The Legal Basis for the Activity of the Constitutional Court**

The legal basis for the activities of the Constitutional Court shall be the Constitution of the Azerbaijani Republic and the present Law.

##### **Article 3**

#### **The Basic Objectives and Tasks of the Constitutional Court**

The basic objective of the Constitutional Court is to ensure the supremacy of the Constitution of the Azerbaijani Republic.

The fundamental tasks of the Constitutional Court shall be to decide the matters laid out in Article 130, paragraph 3 of the Constitution of the Azerbaijani Republic, to interpret the Constitution and laws of the Azerbaijani Republic on the basis of petitions made by those bodies listed in Article 130, paragraph 4 of the Constitution of the Azerbaijani Republic and to implement other powers provided for in the Constitution of the Azerbaijani Republic.

##### **Article 4**

#### **Protection of Human Rights and Freedoms in the Constitutional Court**

In its activity the Constitutional Court shall protect citizens' human rights and freedoms.

In cases of violation of individuals' rights and freedoms by normative legal documents in force citizens may apply through the appropriate courts to the Supreme Court of the Azerbaijani Republic with a request to refer the case to the

Constitutional Court. The procedure of exercising this right is determined by the Law of the Azerbaijani Republic on Courts and Judges as well as the laws of the Azerbaijani Republic on Criminal and Civil Procedures.

##### **Article 5**

#### **Fundamental Principles of Activity of the Constitutional Court**

The activities of the Constitutional Court shall be based on the fundamental principles of the supremacy of the Constitution of the Azerbaijani Republic, justice, independence, collective responsibility and public hearings and judgments.

##### **Article 6**

#### **Foundations of the Independence of the Constitutional Court**

The Constitutional Court shall be an independent State body and shall not depend in its organisational, financial or any other forms of activities on any legislative, executive or other judicial bodies, local self-government bodies, political parties, public associations or trade unions, or on their officials or on legal entities or individuals.

### **Chapter II**

#### **Basis for Organisation and Activities of the Constitutional Court**

##### **Article 7**

#### **Structure, Organisation and Powers of the Constitutional Court**

The structure, organisation and powers of the Constitutional Court shall be governed by Articles 86, 88, 95, 104, 107, 109, 125, 130, 153 and 154 of the Constitution of the Azerbaijani Republic.

##### **Article 8**

#### **Oath of a Judge of the Constitutional Court**

On the day of his/her appointment a judge of the Constitutional Court shall take the following Oath at the session of the National Assembly of the Azerbaijani Republic: "I do swear to execute properly and honestly the duties of judge of the Constitutional Court of Azerbaijani Republic, to protect the Constitution of the Azerbaijani Republic and to make fair decisions on the matters examined on the bases of law and justice."

The powers of a judge of the Constitutional Court shall commence from the moment this Oath is taken.

#### **Article 9**

##### **Requirements to be Met by Candidates for the Position of Judge of the Constitutional Court**

According to Article 126, paragraph 1 of the Constitution of the Azerbaijani Republic any citizen of the Azerbaijani Republic of not less than 30 years of age, having voting rights, possessing higher legal education and at least 5 years' experience in the legal system may be appointed a judge of the Constitutional Court.

According to Article 126, paragraph 2 of the Constitution of the Azerbaijani Republic judges of the Constitutional Court may not hold any other elected or appointed posts, except teaching, scientific and other creative activities, nor may they be involved in business, commercial or other paid activities or in political activities or belong to any political party. Besides their official salary and proceeds from teaching, scientific or creative activities no other profits may be obtained by judges of the Constitutional Court.

#### **Article 10**

##### **Term of Office of Judges of the Constitutional Court**

Judges of the Constitutional Court shall be appointed for a period of 10 years.

After expiration of the term of office, a judge of the Constitutional Court may be re-appointed to the same position only once.

#### **Article 11**

##### **Independence of Judges of the Constitutional Court**

According to Article 127, paragraph 1 of the Constitution of the Azerbaijani Republic judges of the Constitutional Court shall be independent while exercising their powers and shall be subordinate only to the Constitution of the Azerbaijani Republic and the present Law. The judges are irremovable during the term of their office.

#### **Article 12**

##### **Immunity of Judges of the Constitutional Court**

According to Article 128, paragraphs 1-3 of the Constitution of the Azerbaijani Republic judges of the Constitutional Court are entitled to immunity.

A judge of the Constitutional Court may not be held criminally responsible, detained or arrested, nor may administrative penalties determined by a court be applied

to them, nor may they be subjected to a personal search or examination. Immunity of the judge extends to his/her residential and official premises, means of transportation and communication, postal and telephonic correspondence, private property and documents.

A judge of the Constitutional Court detained on suspicion of having committed a criminal or administrative offence shall be released immediately as soon as his/her identity is determined. In this case, the body which has detained the judge of the Constitutional Court shall be required to notify promptly the Director of Public Prosecutions of the Azerbaijani Republic. The Director of Public Prosecutions of the Azerbaijani Republic shall verify the legality of the detention of the judge of the Constitutional Court as a person suspected of having committed a criminal or administrative offence.

A judge of the Constitutional Court accused of a criminal offence may be removed from office in accordance with the procedure specified in the Article 128, paragraphs 4 and 5 of the Constitution of the Azerbaijani Republic.

A judge of the Constitutional Court removed from office shall receive only the salary stipulated for judges of the Constitutional Court.

A judge of the Constitutional Court removed from office may be held criminally responsible only by virtue of a decree of the Director of Public Prosecution of the Azerbaijani Republic.

The powers of a judge of the Constitutional Court removed from office may be restored if a verdict of "not guilty" is passed regarding him/her or if the criminal case is dropped at the preliminary investigation stage due to a lack of evidence or if a corpus delicti has not been made out in his/her actions or if his/her guilt in the alleged crime has not been proved.

No legal proceedings can be instituted against judges of the Constitutional Court for their actions or votes or for the opinions they express in this capacity, nor can any testimonies or explanations can be claimed from them in relation to such matters.

**Article 13****Appointment of the President and Vice-President of the Constitutional Court**

Following the appointment of judges of the Constitutional Court by the National Assembly of the Azerbaijani Republic on the recommendation of the President of the Azerbaijani Republic, by virtue of Article 95, paragraph 1, item 10, Article 109, item 9 and Article 130, paragraph 2 of the Constitution of the Azerbaijani Republic the appointment of the President and Vice-President shall be made according to the procedure specified in Article 109, item 32 of the Constitution of the Azerbaijani Republic.

The President and Vice-President of the Constitutional Court may be removed from their offices only at their own request. In this case, they remain in office as judges of the Constitutional Court.

**Article 14****Rights of Judges of the Constitutional Court**

The following rights shall be vested in the judges of the Constitutional Court:

- to participate in all sessions of the Constitutional Court;
- to participate in voting when the Constitutional Court adopts decisions on matters related to its jurisdiction;
- to ask questions of the parties involved in the case and the persons concerned during the consideration of matters by the Constitutional Court;
- to request any document or other information on matters to be examined by the Constitutional Court from legislative, executive and other judicial bodies, local self-government bodies, political parties, social unions and trade unions and from officials of these bodies, legal persons and individuals, as well as to listen to officials' explanations on these matters;
- to express their individual opinions in cases of disagreement with decisions adopted by the Constitutional Court;
- to exercise other rights specified by the present Law.

**Article 15****Responsibilities of Judges of the Constitutional Court**

Judges of the Constitutional Court bear the following responsibilities:

- to be governed in their activities by the Constitution of the Azerbaijani Republic and to ensure its supremacy;
- to examine cases before the Constitutional Court objectively, in an unbiased and just manner;
- not to miss any session of the Constitutional Court without good reason;
- to participate in votes on matters examined by the Constitutional Court;
- to refrain from acts or statements tending to bring discredit on the high status of judges of the Constitutional Court;
- to refrain from violating the requirements listed in Article 9, paragraph 2 of the present Law;
- to execute the instructions of the President and Vice-President of the Constitutional Court connected with the preparation and examination of matters related to the powers of the Constitutional Court;
- to refrain from expressing opinions on the substance of matters examined by the Constitutional Court until a valid decision has been adopted by the Court in question.

**Article 16****President of the Constitutional Court**

The President of the Constitutional Court shall:

- represent the Constitutional Court in its relations with the legislative, executive and other judicial bodies, political parties, trade unions, public associations, foreign governments and international organisations, the mass media and also any other legal persons or individuals;
- organise the work of the Constitutional Court;
- raise matters related to the powers of the Constitutional Court during sessions of the Constitutional Court;
- convene sessions of the Constitutional Court and preside over them;
- determine the range of matters to be decided by the Vice-President of the Constitutional Court;
- distribute tasks in connection with the preparation and examination of matters related to the competence of



the Constitutional Court among judges of the Constitutional Court;

-reject petitions and other applications over which the Constitutional Court has no jurisdiction according to the Constitution of the Azerbaijani Republic and the present Law;

-make appropriate instructions concerning resources allocated from the State budget for activities of the Constitutional Court;

-manage the staff of the Constitutional Court;

-exercise other powers specified in the present Law.

The President of the Constitutional Court shall be endowed with all the rights and bear all the responsibilities of a judge of the Constitutional Court.

#### **Article 17**

##### **Vice-President of the Constitutional Court**

The Vice-President of the Constitutional Court shall decide on all matters defined by the President of the Constitutional Court, carry out specific functions delegated by the President and take the place of the President of the Constitutional Court in the latter's absence or inability to execute his/her responsibilities.

#### **Article 18**

##### **Equality of Rights of Judges of the Constitutional Court**

When considering matters related to the competence of the Constitutional Court, all the judges of the Constitutional Court, including the President and Vice-President, shall have equal rights.

#### **Article 19**

##### **Premature Termination of the Powers of a Judge of the Constitutional Court**

The powers of a judge of the Constitutional Court shall be prematurely terminated in the following cases:

1. death of the judge;
2. the judge's voluntary resignation by means of written application;
3. the judge's renouncement of citizenship of the Azerbaijani Republic, adopting the nationality of a different State or acquiring obligations to another State;

4. entry into legal force of a verdict of the judge's guilt adopted by the Court or the passing of a Court decision imposing compulsory medical treatment;

5. a decision by the Court that the judge is incapable or has limited capability;

6. a decision by the Court that the judge has the status of a dead or missing person;

7. invalidation of the judge's appointment as the result of a revealed lack of conformity with the requirements set forth regarding candidates to be judges of the Constitutional Court by Article 126, paragraph 1 of the Constitution of the Azerbaijani Republic;

8. violation of restrictions specified by Article 126, paragraph 2 of the Constitution of the Azerbaijani Republic;

9. non-participation without reason in three successive sessions of the Constitutional Court or absence without reason from ten sessions within the period of one year;

10. refusal by the judge to vote on matters considered by the Constitutional Court;

11. failure by the judge to execute his/her duties due to illness during a period of not less than 4 months confirmed by an adequate finding of an ad hoc Medical Commission appointed by the Constitutional Court.

In cases provided for in items 1-6 of paragraph 1 of this Article the decision on the premature termination of the powers of a judge of the Constitutional Court shall be made directly in accordance with Article 109, item 32 of the Constitution of the Azerbaijani Republic.

In the cases specified in items 6-11 of paragraph 1 of the present Article proposals concerning the termination of the judge's powers shall be made by the Constitutional Court in accordance with Article 109, item 32 of the Constitution of the Azerbaijani Republic.

### **Chapter III**

#### **Principles of Proceedings at the Constitutional Court**

#### **Article 20**

##### **Unbiasedness, Impartiality and Equality of the Parties**

According to Article 127, paragraph 2 of the Constitution of the Azerbaijani Republic the judges of the Constitutional Court in the process of constitutional proceedings consider the cases objectively, impartially, on the basis of the facts

and the equality of parties as well as in accordance with the Constitution of the Azerbaijani Republic and the present Law.

#### **Article 21**

##### **Independence of Court Proceedings**

According to Article 127, paragraph 3 any direct or indirect restrictions, illegal pressure, dealings or interference in proceedings held at the Constitutional Court committed by any individual and for any reasons are completely inadmissible.

Persons committing these acts shall be held liable in accordance with the law.

#### **Article 22**

##### **Principle of Publicity**

According to Article 127, paragraph 5 of the Constitution of the Azerbaijani Republic constitutional proceedings in the Constitutional Court shall be held in public.

The public may only be excluded from proceedings when the Constitutional Court considers that this is necessary in the interests of the protection of a state, professional or commercial secret or secrets or for the protection of private or family life.

Constitutional proceedings shall be oral and shorthand reports of the sessions of the Constitutional Court shall be taken.

Public sessions of the Constitutional Court may be attended by representatives of the mass media accredited by the Constitutional Court.

Information concerning the Constitutional Court sitting shall be published in the official state newspapers at least 5 days prior to the session. In urgent cases when it is impossible to observe this rule information concerning the time of the Constitutional Court's session shall be announced by television and radio.

#### **Article 23**

##### **Adversarial Principle (of Constitutional Proceedings)**

According to Article 127, paragraph 7 of the Constitution of the Azerbaijani Republic the constitutional proceedings shall be conducted on the basis of the adversarial principle.

In the course of constitutional proceedings the Constitutional Court shall not be limited to the examination of the evidence and arguments of the parties and persons

concerned and shall strive for a thorough, complete and impartial examination of matters considered.

#### **Article 24**

##### **Language of the Constitutional Proceedings**

According to Article 127, paragraph 10 of the Constitution of the Azerbaijani Republic constitutional proceedings shall be conducted in the official language of the Azerbaijani Republic.

Participants in cases before the Constitutional Court who are unable to speak the language of the proceedings shall be given access to translated materials of the case and the possibility of speaking in their native language at the proceedings.

#### **Article 25**

##### **Collective Responsibility Principle**

Sessions of the Constitutional Court shall be held in conformity with the principle of collective responsibility.

#### **Article 26**

##### **Direct nature of Constitutional Proceedings**

While considering matters related to its competence the Constitutional Court shall examine all the documents, materials and evidence on the case directly, as well as listen to the parties, persons concerned, witnesses and experts and announce the documents examined during proceedings.

### **Chapter IV**

#### **Sessions of the Constitutional Court**

#### **Article 27**

##### **Quorum for Sessions of the Constitutional Court**

Sessions of the Constitutional Court shall have authority provided that at least 6 judges participate in them.

#### **Article 28**

##### **General Rules to be Observed at Sessions of the Constitutional Court**

As the judges of the Constitutional Court enter the hall of the court session, the clerk of the court session shall announce: "All rise for the Constitutional Court of the Azerbaijani Republic". Those present in the hall of the court session must stand until invited to sit by the judge presiding over the court session.

The session of the Constitutional Court shall be conducted by the presiding judge for the session. The presiding judge shall open the court session and present information concerning matters to be considered by Constitutional Court. If it is impossible to complete the consideration of a case within one working day the presiding judge shall declare the session of the Constitutional Court to be suspended and appoint the date of its resumption. During any working day the presiding judge may declare several suspensions in the session of the Constitutional Court.

On completion of consideration of the matters listed on the agenda of the session of the Constitutional Court, the presiding judge shall declare the session closed.

As the judges of the Constitutional Court leave the hall of the session those present in the hall shall stand up.

#### **Article 29**

##### **Withdrawal of Petitions or Inquiries sent to the Constitutional Court**

Any body which has lodged a petition or inquiry with the Constitutional Court shall have the right to withdraw it before the session in which it is to be considered is held.

#### **Article 30**

##### **Postponement or Adjournment of a Session of the Constitutional Court**

The postponement of a scheduled session of the Constitutional Court or adjournment of a session in progress shall be possible under the following circumstances:

- 1.absence of a quorum at the Constitutional Court;
- 2.non-participation of any of the parties, persons concerned, witnesses or experts if this may impede thorough, complete and impartial examination of the case;
- 3.where materials and documents required by the Constitutional Court were not submitted or were not presented within the specified time;
- 4.where a well-grounded petition of the parties or persons concerned requesting postponement or adjournment of session is granted by the Constitutional Court;
- 5.the existence of other obstacles or impediments to thorough, complete and impartial examination of cases by the Constitutional Court.

#### **Article 31**

##### **Preparation for Sessions of the Constitutional Court**

Upon presentation of requests to the Constitutional Court or while resolving matters related to the competence of Constitutional Court according to the Constitution of the Azerbaijani Republic the rapporteur on the matter in question shall be appointed by the President of the Constitutional Court from the judges of Constitutional Court.

The rapporteur judge shall study all aspects of the inquiry and within the period of time envisaged by this law prepare a session of the Constitutional Court on the matter in question. The rapporteur judge shall collect the necessary documents and materials, submit inquiries to the parties and other documents to the persons concerned as well as ascertain their opinions on the given matter; summon witnesses, experts and other persons; undertake other necessary measures to ensure thorough, complete and impartial consideration of the matter; prepare a report on the matter in question.

All the measures undertaken by the rapporteur judge while preparing the session are carried out on behalf of the Constitutional Court.

#### **Article 32**

##### **Drawing Up of the Constitutional Case**

Once the preliminary stage for the session of the Constitutional Court is completed the constitutional case shall be drawn up. The following documents shall be included in the constitutional case:

- 1.the petitions, inquiries, applications or any other documents serving as the basis for instituting the constitutional case;
- 2.materials attached to the petitions, inquiries, applications or other documents serving as the basis for instituting the constitutional case;
- 3.documents adjoined to the constitutional case by the rapporteur judge;
- 4.opinions of experts involved in the constitutional case;
- 5.additional materials presented by the parties or persons involved;
- 6.other documents pertaining to the constitutional case;

7.the rapporteur judge's report.

Following the drawing up of the constitutional case, judges of the Constitutional Court may familiarise themselves with the case.

### **Article 33**

#### **Judge Presiding at the Session of the Constitutional Court**

The President of the Constitutional Court or the Vice-President (either in the President's absence or by his/her instruction), or if both are absent then the oldest judge of the Constitutional Court shall preside over the sessions of the Constitutional Court. The rapporteur judge cannot preside over the session of the Constitutional Court.

The functions of the judge presiding over the session of the Constitutional Court shall be as follows:

- to conduct the session;
- to enable the parties and persons concerned to express their views openly;
- to create the conditions necessary for a thorough, complete and impartial examination of the case;
- to procure testimonies of witnesses and experts;
- to enable the parties and persons concerned to put questions to each other as well as to witnesses and experts (the Presiding judge shall prevent the asking of questions not related to the constitutional case and distracting attention from the issues discussed);
- to bring forward for discussion in the Constitutional Court pleadings submitted at the session by the parties or persons concerned;
- to interrupt the parties or interested subjects, witnesses or experts if they do not speak to the point of the constitutional case in question;
- to keep order in the court;
- to remove persons disrupting the order in the court;
- to organise the votes of the judges of the Constitutional Court in the deliberation room;
- to announce decisions adopted by the session of the Constitutional Court.

### **Article 34**

#### **Powers of a Judge of the Constitutional Court at Constitutional Court Sessions**

The following powers are vested in the judges of the Constitutional Court during the sessions of the Constitutional Court:

- to put questions to the judge presiding over the session of the Constitutional Court;
- to put questions to the rapporteur judge, parties, persons involved, witnesses and experts with the permission of the judge presiding over the session of the Constitutional Court;
- to familiarise themselves with the pleadings and other materials presented at the session of the Constitutional Court;
- to express their opinion on the procedure followed in conducting the session;
- to require the judge presiding over the session of the Constitutional Court to keep order in the court.

In the deliberations room judges of the Constitutional Court shall express their opinions regarding decisions to be adopted by the Constitutional Court and vote for or against the decision in question.

## **Chapter V**

### **Constitutional Proceedings**

### **Article 35**

#### **Forms of Constitutional Proceedings**

Constitutional proceedings shall be carried out in the two following forms:

- 1.ordinary constitutional proceedings;
- 2.special constitutional proceedings.

Ordinary constitutional proceedings in the cases considered by the Constitutional Court shall be held in the following instances:

- 1.proceedings in cases related to consideration of pleadings concerning the matters specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic;

2. proceedings in cases related to petitions on the prohibition of political parties and other public associations;

3. proceedings in cases related to petitions on distribution of powers between legislative, executive and judicial authorities.

Special constitutional proceedings in the cases considered by the Constitutional Court shall be held in the following instances:

1. proceedings in cases related to petitions concerning the interpretation of the Constitution and Laws of the Azerbaijani Republic;

2. proceedings in cases related to petitions of the National Assembly of the Azerbaijani Republic held to examine information concerning the complete inability of the President of the Azerbaijani Republic to execute his/her duties due to his/her state of health;

3. proceedings in cases related to consideration of the resignation of the President of the Azerbaijani Republic;

4. proceedings in cases related to consideration of the issues involved in the impeachment of the President of the Azerbaijani Republic;

5. proceedings in cases related to verification and approval of the results of elections to the National Assembly of the Azerbaijani Republic;

6. proceedings in cases concerning the date of the first session of a newly-elected National Assembly of the Azerbaijani Republic;

7. proceedings in cases concerning the opinion of the Constitutional Court on modifications to the Constitution of the Azerbaijani Republic as proposed by the National Assembly of the Azerbaijani Republic or the President of the Azerbaijani Republic.

#### **Article 36**

##### **Parties in Ordinary Constitutional Proceedings**

Petitioners and Respondents constitute the parties in ordinary constitutional proceedings.

According to Article 130, paragraph 3 of the Constitution of the Azerbaijani Republic the President of the Azerbaijani Republic, the National Assembly of the Azerbaijani Republic, the Cabinet of Ministers of the Azerbaijani Republic, the

Supreme Court of the Azerbaijani Republic, the Public Prosecutor's Office of the Azerbaijani Republic and the Supreme Assembly of the Autonomous Republic of Nakhichevan can be petitioners in ordinary constitutional proceedings.

In conformity with Article 130, paragraph 3 of the Constitution of the Azerbaijani Republic the following bodies may be respondents in ordinary constitutional proceedings:

1. a state body which has adopted a normative legal act if a petition is submitted as to non-conformity of this normative legal act with the Constitution and laws of the Azerbaijani Republic, decrees of the President of the Azerbaijani Republic or resolutions of the Cabinet of Ministers of the Azerbaijani Republic;

2. the Supreme Court of the Azerbaijani Republic if a petition is submitted on non-conformity of its guidelines with the Constitution and laws of the Azerbaijani Republic;

3. a local self-government body which has adopted a municipal act if a petition is submitted on non-conformity of this act with the Constitution and laws of the Azerbaijani Republic, decrees of the President of the Azerbaijani Republic or resolutions of the Cabinet of Ministers of the Azerbaijani Republic (in the Autonomous Republic of Nakhichevan also the Constitution and laws of the Autonomous Republic of Nakhichevan or decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan);

4. an official who has signed an interstate treaty on behalf of the Azerbaijani Republic which has not come into force if a petition is submitted as to non-conformity of this treaty with the Constitution of the Azerbaijani Republic;

5. an official who has signed an intergovernmental treaty on behalf of the Azerbaijani Republic if a petition is submitted as to non-conformity of this treaty with the Constitution and laws of the Azerbaijani Republic;

6. political parties and other public associations, if a petition has been submitted on their prohibition;

7. a legislative, executive or judicial body accused by a petitioner of infringement of the distribution of powers.

In the process of ordinary constitutional proceedings the petitioners and respondents (with the exception of respondents envisaged in the present Article, paragraph 2, items 4 and 5) are represented by their legal representatives.

**Article 37****Interested Parties in Special Constitutional Proceedings**

Bodies which, pursuant to the Constitution of the Azerbaijani Republic, shall have the right to apply to the Constitutional Court and bodies and persons whose interests are affected by these petitions and their legal representatives constitute interested parties in special constitutional proceedings.

In the process of special constitutional proceedings the interested parties may be represented by their legal representatives.

**Article 38****Rights and Liabilities of the Parties and Interested Parties (Persons Concerned)**

The parties and persons concerned shall have the right to become acquainted with the materials of the constitutional case, take extracts from them and make copies. During consideration of the case, the parties and persons concerned may declare objections, present evidence, participate in the surveys of evidence, put questions to each other, as well as to witnesses and experts, submit pleadings, answer questions put to them, object to pleadings, evidence and statements from the other party and present a final address.

The parties and persons concerned must respect the Constitutional Court and comply with the requirements of the special constitutional proceedings. The parties and persons concerned must appear in the Constitutional Court at the time noted in the summons, observe the order adopted in the Constitutional Court and comply immediately with the orders of the judge presiding over the Constitutional Court.

**Article 39****Witnesses**

A person possessing any information regarding the constitutional case considered at the session of the Constitutional Court shall be called a witness. A person may be summoned to the session of the Constitutional Court on the suggestion of parties or persons concerned or following a decision of the Constitutional Court for the purpose of giving witness testimonies. Witnesses must present testimony concerning the facts known to them which are to be ascertained in the constitutional case.

Witnesses must respect the Constitutional Court and observe requirements of ordinary constitutional

proceedings. Witnesses must appear promptly on summons from the Constitutional Court, respect procedure adopted by the Constitutional Court and execute immediately the orders of the judge presiding over the session of the Constitutional Court.

Criminal proceedings specified by the legislation of the Azerbaijani Republic shall be instituted against witnesses for intentionally false statements or refusal to give testimony.

**Article 40****Experts**

Persons possessing scientific or other specialised knowledge on the constitutional case considered at the session of the Constitutional Court may be invited by the Constitutional Court, the rapporteur judge, the parties or persons involved in their capacity as experts.

Experts must provide impartial and well-grounded answers to questions asked of them. In order to answer questions, experts may apply to the Constitutional Court with requests to be familiarised with all the materials of the constitutional case and any other necessary documents. If experts consider materials in their possession not sufficient to answer the questions put to them, or when they are unable to answer such questions as they have insufficient knowledge, they should inform the Constitutional Court. In order to answer the questions asked, experts may, with the permission of the judge presiding over the Constitutional Court, put questions to the parties, persons concerned and witnesses.

Experts must respect the Constitutional Court and observe the requirements of the special constitutional proceedings. Experts must appear promptly upon the summons of the Constitutional Court, respect the procedure adopted by the Constitutional Court and execute immediately the orders of the judge presiding over the session of the Constitutional Court.

**Article 41****Commencement of Consideration of a Constitutional Case in the Constitutional Court**

The consideration of a constitutional case in the Constitutional Court shall commence with a verification of the presence in Court of the participants.

The judge presiding over the session of the Constitutional Court shall give the floor to the Secretary for the court session to provide information concerning the presence in court of the parties, persons concerned, witnesses and

experts, as well as regarding reasons for the absence of those not participating.

The judge presiding over the session of the Constitutional Court shall announce the name of the constitutional case, as well as the composition of the Constitutional Court participating in the session, the Secretary of the court session and the parties and persons concerned and, when necessary, shall verify the authority of the parties and the persons concerned (interested parties).

#### **Article 42**

##### **Interpretation of Rights and Obligations of Persons Participating in Consideration of Constitutional Cases**

The judge presiding over the session of the Constitutional Court shall explain their rights and obligations to each person participating in the consideration of the constitutional case.

#### **Article 43**

##### **Consequences of the Non-Appearance of a Person Participating in the Consideration of a Constitutional Case at a Session of the Constitutional Court**

If any person participating in the consideration of a constitutional case at a session of the Constitutional Court fails to appear, the Constitutional Court shall hear the opinions of the parties and persons concerned on the possibility of examining the case in the absence of the person who has not appeared and shall make a decision on continuing the consideration of the case or postponing consideration to another date.

#### **Article 44**

##### **Exclusion of Witnesses from the Court Before they have Given Testimony**

Before giving testimony, witnesses participating in the consideration of a constitutional case shall be excluded from the courtroom.

#### **Article 45**

##### **Statement of the Rapporteur Judge**

Consideration of the substance of a constitutional case shall commence with the report of the rapporteur judge. The rapporteur judge shall explain the substance of the matter considered, analyse the circumstances of the constitutional case and briefly give a summary of the contents of the documents in the constitutional case and the measures undertaken to prepare the matter for consideration.

The rapporteur judge shall not have the right to predetermine the result of the constitutional case. Judges of the Constitutional Court may put the questions to the rapporteur judge.

#### **Article 46**

##### **Treatment of Pleadings (Petitions)**

During consideration of the constitutional case the parties, persons concerned and experts shall have the right to submit pleadings to the Constitutional Court.

Pleadings submitted in a written form shall be read out by the Secretary to the court session and shall be attached to the constitutional case following an instruction of the judge presiding over the session of the Constitutional Court.

Pleadings shall be accepted or refused by decisions adopted at the same session of the Constitutional Court.

#### **Article 47**

##### **Right of the Constitutional Court to Use Fresh Evidence**

While considering a constitutional case, the Constitutional Court may introduce a decision to summons and question new witnesses and experts, as well as to use additional documents and materials.

#### **Article 48**

##### **Presentations by the Parties During Ordinary Constitutional Proceedings**

During ordinary constitutional proceedings, following the presentation by the rapporteur judge, the judge presiding over the session of the Constitutional Court shall allow the parties to address the court. The petitioner shall speak first, followed by the respondent.

The parties may introduce several representatives and each of them shall have the right to speak at the session.

The petitioner shall explain the substance of the matter and shall present evidence in order to support his/her arguments.

The respondent shall express his/her position with regard to the petition and shall present evidence in order to support this position.

Following statements of both of the parties, the judge presiding over the session of the Constitutional Court shall provide the judges with the possibility of putting questions to the party speaking. Then the possibility of asking questions shall be guaranteed to the other party.

**Article 49****Presentations by Persons Concerned (Interested Parties) in the Course of Special Constitutional Proceedings**

In the course of special constitutional proceedings, after the presentation by the rapporteur judge, the judge presiding over the session of the Constitutional Court shall allow the persons concerned to address the court. The first to speak shall be the representatives of the state bodies invested by the Constitution of the Azerbaijani Republic with the right to apply to the Constitutional Court. Next the representatives of bodies or persons whose interests are affected by the petition shall be allowed to speak.

Interested parties may be represented by several representatives. All representatives of the persons concerned shall have the right to speak.

Representatives of the state bodies invested by the Constitution of the Azerbaijani Republic with the right to apply to the Constitutional Court shall explain the reasoning of their petitions and express their opinion with regard to any resolution of the Constitutional Court.

Representatives of bodies and persons whose interests are affected by these petitions, or persons themselves if they participate in the course of special constitutional proceedings, shall express and substantiate their views with regard to the petitions in question.

After presentations by each of the persons concerned, the judge presiding over the session of the Constitutional Court shall give the judges the opportunity to put questions to the parties concerned who have made presentations. The other persons concerned shall then be given the same opportunity.

**Article 50****Witness Testimonies**

Witness testimonies shall commence with questions to witnesses of petitioners or the state bodies invested by the Constitution of the Azerbaijani Republic with the right to apply to the Constitutional Court. Then questions shall be put to the witnesses for the respondents or, in cases specified by the Constitution of the Azerbaijani Republic, to the subjects whose interests are affected by the petition; and finally witnesses called on the initiative of the Constitutional Court shall be examined.

The judge presiding over the session of the Constitutional Court shall invite each witness to tell the Constitutional Court the circumstances of the case under consideration

which are known to them. After the presentation by the witness questions may be put to him/her. The witnesses shall first be questioned by the petitioner or the representatives of state bodies invested by the Constitution of the Azerbaijani Republic with the right to apply to the Constitutional Court, then by the respondents or, in cases specified by the Constitution of the Azerbaijani Republic, the subject whose interests are affected by the petition.

During the examination of witnesses, the judges of the Constitutional Court may at any time put questions to the witnesses.

**Article 51****List of Documents**

An oral statement of the documents attached to the materials of the constitutional case as well as documents submitted for the court session shall be made at the session of the Constitutional Court. The parties and persons concerned may then present observations regarding the list of documents.

The documents submitted at sessions of the Constitutional Court shall be attached to the constitutional case on the basis of a decision passed by the Constitutional Court.

**Article 52****Expert Testimonies**

Expert testimonies shall commence with the hearing of the experts named by the petitioners or the state bodies or the bodies empowered by the Constitution of the Azerbaijani Republic to apply to the Constitutional Court. Then the experts named by the respondents or, in cases specified by the Constitution of the Azerbaijani Republic, the experts named by the subjects whose interests are affected by the petition shall be heard and finally the experts called on the initiative of the Constitutional Court shall be heard.

The judge presiding over the session of the Constitutional Court shall invite the experts to express their opinion to the Constitutional Court on the case under consideration. When experts have given their opinions they may be asked questions. First the experts shall be asked the questions by petitioners or the state bodies invested by the Constitution of the Azerbaijani Republic with the right to apply to the Constitutional Court, then the respondents or, in cases specified by the Constitution of the Azerbaijani Republic, the subjects whose interests are affected by the petition shall put their questions.

During the hearing of the experts, the judges of the Constitutional Court may ask them questions at any time.



**Article 53****Concluding Statements of the Parties and Concluding Remarks of the Persons Concerned**

In the course of constitutional proceedings, the parties shall have the right to deliver closing statements on the constitutional case under consideration, in which they shall analyse the researched material and evidence and give a legal evaluation of this evidence and material and of its importance for the case and for the decision to be taken by the Constitutional Court.

The Constitutional Court may grant the parties time to prepare their closing statements.

In the process of special constitutional proceedings, the interested subjects shall have the right to deliver final statements on the deciding of the constitutional case under consideration and circumstances which should be taken into consideration by the Constitutional Court when making a decision.

Following the closing statements by the parties, the Constitutional Court shall retire to the deliberation room.

If the concluding statements of the parties or concluding remarks of the persons concerned reveal circumstances indicating that the judicial examination of the case was not carried out completely and thoroughly then the Constitutional Court may adopt a decision to continue judicial examination of the constitutional case.

**Article 54****Minutes of Court Sessions**

The Secretary of the Constitutional Court session shall keep records of the session. The record of the session shall include the following:

- 1.the date of the session of the Constitutional Court;
- 2.the location of the session of the Constitutional Court;
- 3.the surname, first name and title of the judge presiding over the session of the Constitutional Court;
- 4.the surnames, first names and titles of the judges of the Constitutional Court participating in the session of the Constitutional Court;
- 5.the surname, first name and title of the Secretary of the court session of the Constitutional Court;

6.the agenda of the Constitutional Court;

7.information concerning the parties, persons concerned and their representatives participating in the consideration of the constitutional case;

8.information concerning the attendance of the parties, persons concerned, witnesses and experts participating in consideration of the constitutional case;

9.information concerning decisions of the Constitutional Court in the order in which they were taken;

10.the presentation by the rapporteur judge as well as presentations and pleadings by the parties, persons concerned, questions and answers;

11.orders of the judge presiding over the session of the Constitutional Court and decisions passed by the Constitutional Court;

12.presentations by witnesses and experts, questions and answers;

13.the concluding statements by the parties or final statements by the persons concerned.

Each page of the records of sessions of the Constitutional Court shall be signed by the judge presiding over the session of the Constitutional Court and the Secretary of the court session and the records shall be attached to the materials of the constitutional case.

The parties or persons concerned shall have access to the records of the session of the Constitutional Court and may comment on the records.

The Constitutional Court should examine within a period of 10 days the comments on the records of session of the Constitutional Court and adopt a well-grounded resolution concerning attachment of the comments to the records (minutes).

**Chapter VI****Specific Features of Constitutional Proceedings in Various Types of Constitutional Cases****Article 55****Procedure of Applying to the Constitutional Court in Cases specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic**

In the cases specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic, applications to the Constitutional Court shall be presented in written form.

Applications shall include the following:

- 1.the name of the Constitutional Court;
- 2.the name and address of the applicant body;
- 3.the title and date of adoption (signing) of the document specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic together with the name of the adopting body and source of the document's publication;
- 4.the Articles of the Constitution of the Azerbaijani Republic confirming the right to apply to the Constitutional Court and authorities of the Constitutional Court to examine the application in question;
- 5.the grounds for the applicant body's claims;
- 6.the claims of the applicant body;
- 7.a list of documents and materials attached to the application;
- 8.a list of persons participating in the session of the Constitutional Court on behalf of the petitioner;
- 9.the signature of the head of the body submitting the application.

The following documents should be attached to the application:

- 1.a copy of the normative legal act specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic;
- 2.a document certifying the authority of the applicant body's representative participating in the session of the Constitutional Court.

#### **Article 56**

#### **Refusal of the Constitutional Court to Examine Applications specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic**

The Constitutional Court shall refuse to examine an application in cases specified by Article 130, paragraph 3,

items 1-6 and 8 of the Constitution of the Azerbaijani Republic on the following grounds:

- if the application does not fall within the jurisdiction of the Constitutional Court;
- if the application is submitted by a state body or an official not authorised to submit such an application to the Constitutional Court;
- if the same application has been previously considered by the Constitutional Court and a valid decision adopted by the Constitutional Court on this matter is currently in force;
- if the application is not compiled in accordance with the requirements of Article 55 of the present Law.

#### **Article 57**

#### **Time-Limits for Consideration of Applications in Cases Specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic**

Applications submitted to the Constitutional Court in cases specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic shall be discussed at the sessions of the Constitutional Court within a week of their submission and a valid decree on further consideration or refusal of the application shall be adopted.

A decree concerning further consideration of the application or its refusal shall be dispatched to the applicant body or official within 7 days of the day of its adoption.

Consideration of the substance of the applications accepted by the Constitutional Court shall commence no later than two months after the day of their acceptance.

Interstate and intergovernmental agreements of the Azerbaijani Republic which have not entered into legal force shall not be ratified unless valid applications concerning their compliance with the Constitution of the Azerbaijani Republic (in the case of interstate agreements) or with the Constitution and the laws of Azerbaijan (in the case of intergovernmental agreements) have been discussed.

#### **Article 58**

#### **Procedure for Submitting Applications concerning Prohibition of Political Parties and Other Public Associations**

In the cases specified in Article 130, paragraph 3, item 7 of the Constitution of the Azerbaijani Republic, a written application shall be submitted.

The application shall include the following information:

- 1.the name of the Constitutional Court;
- 2.the name and address of the applicant body;
- 3.the name and address of the political party or public association which is the respondent to the application;
- 4.the Article of the Constitution of the Azerbaijani Republic authorising an application to the Constitutional Court and confirming the competence of the Constitutional Court to examine the application;
- 5.the grounds for the applicant body's claim for the prohibition of the political party or public association;
- 6.the applicant body's specific claims regarding the prohibition of the political party or public association;
- 7.a list of documents and materials attached to the application;
- 8.a list of persons from the applicant body participating in the session of the Constitutional Court;
- 9.the signature of the head of the applicant body.

A document certifying the authorities of the representative of the applicant body to participate in the session of the Constitutional Court should be attached.

#### **Article 59**

##### **Refusal to Accept Applications concerning Prohibition of Political Parties and Public Associations**

The Constitutional Court shall refuse to accept applications concerning the prohibition of political parties or public associations in the following instances:

- if the application concerns the prohibition of a political party or public association which has not completed the registration procedure laid down by the legislation of the Azerbaijani Republic;
- if the application has been submitted by a state body or an official not authorised to submit such applications to the Constitutional Court;
- if the application is not compiled in accordance with the requirements of Article 58 of the present Law.

#### **Article 60**

##### **Time-Limit for Consideration of Applications concerning the Prohibition of Political Parties or Public Associations**

An application concerning the prohibition of political parties or public associations shall be examined at a session of the Constitutional Court within three days of its submission and a decision shall be adopted as to whether it is to be accepted or refused for consideration.

The decision to accept or refuse to consider the application shall be delivered to the applicant body or official and to the political parties or public associations on the same day.

Consideration of the substance of an application by the Constitutional Court shall commence not later than 15 days after its acceptance.

#### **Article 61**

##### **Procedure for Submitting Petitions on the Settlement of Disputes on the Separation of Powers between the Legislative, Executive and Judicial Authorities**

In the cases specified in Article 130, paragraph 3, item 9 of the Constitution of the Azerbaijani Republic, written applications shall be submitted to the Constitutional Court.

The application shall include:

- 1.the name of the Constitutional Court;
- 2.the name and address of the applicant body;
- 3.the name and address of the respondent authority;
- 4.the Article of the Constitution of the Azerbaijani Republic giving a right to submit applications and petitions to the Constitutional Court and confirming the competence of the Constitutional Court to examine the applications;
- 5.the grounds for the petition of a body submitting a petition on the violation of the separation of powers by the respondent body;
- 6.the demands made by the applicant body to the respondent body;
- 7.a list of documents and materials attached to the petition;
- 8.a list of persons participating in the session of the Constitutional Court on behalf of the applicant body;
- 9.the signature of the director of the applicant body.

A document certifying the authority of the applicant body to participate in the session of the Constitutional Court should be attached to the petition.

#### **Article 62**

##### **Refusal to Consider Petitions in Disputes concerning the Separation of Powers between the Legislative, Executive and Judicial Authorities**

The Constitutional Court shall refuse to accept petitions on disputes concerning the separation of powers between the legislative, executive and judicial authorities in the following instances:

- if the petition does not concern the separation of powers between the legislative, executive and judicial authorities;
- if the petition has been submitted by a state body or official not authorised to submit such a petition to the Constitutional Court;
- if the petition does not meet the requirements of Article 61 of the present Law.

#### **Article 63**

##### **Time-Limits for Consideration of Petitions in Disputes concerning the Separation of Powers between the Legislative, Executive and Judicial Authorities**

Petitions in disputes concerning the separation of powers between legislative, executive and judicial authorities shall be raised for discussion at a session of the Constitutional Court within 7 days of their submission and a valid decision concerning their acceptance or refusal shall be adopted.

The decision to accept or refuse to consider a petition shall be delivered on the day of its adoption to the body or official which submitted the petition.

Consideration of the substance of the petition shall commence not later than twenty days after the date of its acceptance.

#### **Article 64**

##### **Procedure for Submitting Petitions on the Interpretation of the Constitution of the Azerbaijani Republic and the Laws of the Azerbaijani Republic**

In the cases specified in Article 130, paragraph 4 of the Constitution of the Azerbaijani Republic, petitions shall be submitted in written form.

The petition should include the following:

- 1.the name of the Constitutional Court;
- 2.the name and address of the body submitting the petition;
- 3.the name and address of body which adopted the normative legal act to be interpreted;
- 4.the Article of the Constitution of the Azerbaijani Republic granting the right to submit petitions to the Constitutional Court and affirming the competence of the Constitutional Court to consider the petition;
- 5.the title and date of adoption of the normative legal act to be interpreted;
- 6.the contents of the application of the body submitting the petition;
- 7.a list of documents and materials attached to the application;
- 8.a list of persons participating in the session of the Constitutional Court on behalf of the petitioning body;
- 9.the signature of the head of the body submitting the petition.

The following documents should be attached to the petition:

- 1.a copy of the legal act to be interpreted;
- 2.a document certifying the authority of the representatives of the State body submitting the petition to participate in the session of the Constitutional Court.

#### **Article 65**

##### **Refusal to Consider Petitions concerning the Interpretation of the Constitution of the Azerbaijani Republic and Laws of the Azerbaijani Republic**

The Constitutional Court shall refuse to consider petitions concerning the interpretation of the Constitution of the Azerbaijani Republic and laws of the Azerbaijani Republic in the following instances:

- if the petition does not fall within the jurisdiction of the Constitutional Court;
- if the petition is submitted by a state body or official not authorised to submit such a petition to the Constitutional Court;

-if the petition does not meet the requirements laid out in Article 64 of the present Law.

#### **Article 66**

##### **Time-Limit for the Consideration of Petitions concerning the Interpretation of the Constitution of the Azerbaijani Republic and Laws of the Azerbaijani Republic**

Petitions (requests) concerning the interpretation of the Constitution of the Azerbaijani Republic or the laws of the Azerbaijani Republic shall be raised for discussion at a session of the Constitutional Court within 7 days of their submission and a decision on their acceptance or refusal shall be adopted.

The decision to accept or refuse to consider a petition shall be delivered to the body or official which submitted the petition not later than one week after the decision.

Consideration of the substance of the petition (request) shall commence not later than two months after the day of adoption of a decision to accept it.

#### **Article 67**

##### **Procedure of Consideration of Applications Submitted by the National Assembly of the Azerbaijani Republic for the Examination of Information concerning the Complete Inability of the President of the Azerbaijani Republic to Execute his/her Duties due to his/her State of Health**

In the cases specified in Article 104, paragraph 3 of the Constitution of the Azerbaijani Republic, the National Assembly of the Azerbaijani Republic shall adopt an appropriate resolution on applying to the Constitutional Court.

The inquiry should include the following:

- 1.the name of the Constitutional Court;
- 2.the date of the session of the National Assembly of the Azerbaijani Republic at which the decision by the National Assembly of the Azerbaijani Republic to make an inquiry was adopted;
- 3.the Article of the Constitution of the Azerbaijani Republic authorising the submission of an inquiry to the Constitutional Court and confirming the competence of the Constitutional Court to examine the inquiry;
- 4.the source of information concerning complete inability of the President of the Azerbaijani Republic to execute his/her duties;

5.a list of documents and materials attached to the inquiry;

6.a list of persons participating in the session of the Constitutional Court from the National Assembly of the Azerbaijani Republic;

7.the signature of the President of the National Assembly of the Azerbaijani Republic.

#### **Article 68**

##### **Refusal to Consider Applications Submitted by the National Assembly of the Azerbaijani Republic for the Examination of Information concerning the Complete Inability of the President of the Azerbaijani Republic to Execute his/her Duties due to his/her State of Health**

The Constitutional Court shall refuse to consider applications submitted by the National Assembly of the Azerbaijani Republic for the examination of information concerning the complete inability of the President of the Azerbaijani Republic to execute his/her duties due to his/her state of health in the following cases:

-if the decision to make the inquiry was adopted at a session of the National Assembly of the Azerbaijani Republic at which the quorum laid down by the Constitution of the Azerbaijani Republic was not present or if the inquiry did not get the required majority of votes;

-if the inquiry does not meet the requirements of Article 67 of the present Law.

#### **Article 69**

##### **Time-Limits for the Consideration of Applications Submitted by the National Assembly of the Azerbaijani Republic for the Examination of Information concerning the Complete Inability of the President of the Azerbaijani Republic to Execute his/her Duties due to his/her State of Health**

Applications submitted by the National Assembly of the Azerbaijani Republic for the examination of information concerning the complete inability of the President of the Azerbaijani Republic to execute his/her duties due to his/her state of health shall be raised for discussion at the session of the Constitutional Court the day after their receipt and a decision concerning acceptance or refusal of the applications in question shall be adopted.

The decision to accept or refuse to consider applications shall be adopted by a majority of the Court consisting of not less than 5 judges. The decision on the acceptance or

refusal of an application shall be delivered to the President of the Azerbaijani Republic and the National Assembly of the Azerbaijani Republic on the day of its adoption.

Consideration of the substance of the application shall commence not later than three days after the day of its acceptance.

A decision of the Constitutional Court on impeachment of the President of the Azerbaijani Republic in connection with a complete inability to execute his/her duties due to his/her state of health shall be adopted by a majority of the court consisting of not less than 5 judges.

If the Constitutional Court does not affirm the complete inability of the President of the Azerbaijani Republic to execute his/her duties due to his/her state of health the matter shall be considered settled and written notice of this shall be delivered immediately to the National Assembly of the Azerbaijani Republic.

#### **Article 70**

##### **Procedure for Consideration of the Resignation of the President of the Azerbaijani Republic**

In the cases specified in Article 104, paragraph 2 of the Constitution of the Azerbaijani Republic, the President of the Azerbaijani Republic shall submit a written application to the Constitutional Court.

The Constitutional Court of the Azerbaijani Republic shall not have the right to refuse to consider the President of the Azerbaijani Republic's application to resign.

The President of the Azerbaijani Republic's application to resign shall be considered in substance by the Constitutional Court not later than three days after its receipt.

If the Constitutional Court is confident as to the voluntary character of the President of the Azerbaijani Republic's application it shall adopt a resolution accepting the resignation of the President of the Azerbaijani Republic.

If the Constitutional Court is not convinced that the President of the Azerbaijani Republic's application to resign was made voluntarily, a resolution refusing to accept the resignation of the President of the Azerbaijani Republic shall be passed.

All these resolutions shall be adopted by the Constitutional Court by a majority of the Court consisting of not less than 5 judges and shall be delivered immediately to the National Assembly of the Azerbaijani Republic.

#### **Article 71**

##### **Procedure for Consideration of the Impeachment of the President of the Azerbaijani Republic**

Pursuant to Article 107, paragraph 1 of the Constitution of the Azerbaijani Republic, if the President commits a serious crime the Constitutional Court may move of its own initiative to dismiss the President of the Azerbaijani Republic from office.

A proposal to impeach the President of the Azerbaijani Republic shall be submitted by not less than three judges of the Constitutional Court. This proposal shall be submitted in written form to the President of the Constitutional Court. Within 3 days after the proposal is made a session of the Constitutional Court shall be called and the matter in question shall be considered. If the Constitutional Court finds the proposal to be unfounded, a majority of not fewer than 5 judges shall be required to adopt a resolution to this effect.

If the proposal is found to be well-grounded, the Constitutional Court shall apply to the Supreme Court of the Azerbaijani Republic to decide whether the President of the Azerbaijani Republic has committed a serious crime. A decision on this matter shall be adopted by a majority of the Court consisting of not less than 6 judges. Within thirty days of receiving the matter, the Supreme Court of the Azerbaijani Republic shall consider it and provide a written opinion to the Constitutional Court.

If the Constitutional Court comes to the conclusion that no corpus delicti of a serious crime has been made out in the actions of the President of the Azerbaijani Republic, the matter shall be considered to be settled.

Bearing in mind the opinion of the Supreme Court of the Azerbaijani Republic, the Constitutional Court by a majority consisting of not less than 7 judges can adopt a resolution moving for the impeachment of the President of the Azerbaijani Republic in connection with the existence of the corpus delicti of a serious crime in his/her actions. This resolution shall be delivered immediately to the National Assembly of the Azerbaijani Republic.

If the National Assembly of the Azerbaijani Republic, guided by the procedure laid down in Article 107, paragraph 2 of the Constitution of the Azerbaijani Republic, adopts a resolution on impeachment of the President of the Azerbaijani Republic, this resolution shall be dispatched immediately to the Constitutional Court. Having received the resolution of the National Assembly of the Azerbaijani Republic, the Constitutional Court must verify within one

week whether the requirements of the Constitution and relevant laws of the Azerbaijani Republic were observed in the adoption of this resolution. The resolution of the Constitutional Court supporting the resolution of the National Assembly of the Azerbaijani Republic must be adopted by a majority consisting of not less than 7 judges. The resolution of the National Assembly of the Azerbaijani Republic to impeach the President of the Azerbaijani Republic shall be signed by the President of the Constitutional Court in conformity with Article 107 of the Constitution of the Azerbaijani Republic.

If the Constitutional Court does not adopt a resolution supporting the resolution of the National Assembly of the Azerbaijani Republic, the resolution to impeach the President of the Azerbaijani Republic shall not enter into legal force.

#### **Article 72**

##### **Procedure of Verification and Confirmation of the Results of the Elections to the National Assembly of the Azerbaijani Republic**

Pursuant to Article 86 of the Constitution of the Azerbaijani Republic, the Constitutional Court shall verify and confirm the results of the elections of members (deputies) to the National Assembly of the Azerbaijani Republic.

Not later than one month after the day of the announcement of the results of general elections to the National Assembly of the Azerbaijani Republic, a session of the Constitutional Court shall be called to verify the legality of the elections.

Not later than one week after the day of the announcement of the results of repeated elections to the National Assembly of the Azerbaijani Republic, a session of the Constitutional Court shall be called to verify the fairness of the elections.

Several rapporteur judges may be appointed to consider this matter.

The President and members of the Central Election Committee, together with persons issued documents certifying them as elected deputies and their representatives may participate in the session of the Constitutional Court held in order to verify the legality of elections to the National Assembly of the Azerbaijani Republic.

Following the results of the verifications, the Constitutional Court shall adopt a resolution on complete approval, partial approval or non-approval of the results of the elections of

deputies to the National Assembly of the Azerbaijani Republic. The resolution in question shall be passed by a majority consisting of not less than 5 judges.

#### **Article 73**

##### **Procedure for Appointing the Date of the First Session of a Newly-Elected National Assembly of the Azerbaijani Republic**

Pursuant to Article 88, paragraph 1 of the Constitution of the Azerbaijani Republic the Constitutional Court shall appoint the first session of the newly-elected National Assembly of the Azerbaijani Republic if the validity of the election of the 83 deputies has not been confirmed by the 1st day of February after elections are held.

If the election of 83 deputies of the National Assembly of the Azerbaijani Republic is confirmed by the Constitutional Court after the 1st day of February the date of the first session of the newly-elected National Assembly shall be appointed at the same session (of the Constitutional Court).

A decision on this date shall be adopted by a majority consisting of not less than 5 judges of the Constitutional Court.

#### **Article 74**

##### **Procedure for Adopting Opinions of the Constitutional Court with regard to Proposals on Modifications to the Constitution of the Azerbaijani Republic Set Forth by the National Assembly of the Azerbaijani Republic or the President of the Azerbaijani Republic**

According to Article 153 of the Constitution of the Azerbaijani Republic, where proposals are made by the National Assembly of the Azerbaijani Republic or the President of the Azerbaijani Republic concerning modifications to the Constitution of the Azerbaijani Republic the opinion of the Constitutional Court in this matter shall be required.

The text of modifications to the Constitution of the Azerbaijani Republic shall be submitted for discussion at a session of the Constitutional Court within a period of 7 days after their introduction.

A well-founded opinion concerning the compliance of the proposed modifications with the principles of the Constitution of the Azerbaijani Republic shall be adopted by the Constitutional Court.

If a referendum on modifications to the text of the Constitution of the Azerbaijani Republic is held the summary of the Constitutional Court's opinion shall be entered into voting-papers.

## **Chapter VII**

### **Resolutions and Decisions of the Constitutional Court**

#### **Article 75**

##### **Resolutions of the Constitutional Court**

A resolution of the Constitutional Court shall be the written document adopted at a session of the Constitutional Court containing conclusions obtained as the result of consideration of the substance of a constitutional case.

Resolutions of the Constitutional Court shall be adopted by a majority consisting of not less than 5 judges unless otherwise provided in the Constitution of the Azerbaijani Republic or the present Law.

Resolutions of the Constitutional Court shall be passed on behalf of the Azerbaijani Republic.

A resolution of the Constitutional Court shall be final and cannot be set aside or modified by any authority or person.

Resolutions of the Constitutional Court shall be signed by the judge presiding over the session of the Constitutional Court.

#### **Article 76**

##### **Procedure for Adoption of Resolutions of the Constitutional Court**

Resolutions of the Constitutional Court shall be passed in the deliberating room. Upon completion of examination of the constitutional case by the Constitutional Court, the judges shall move to the deliberating room in order to pass the resolution. Only those judges participating in the consideration of the constitutional case in question may be present in the deliberating room. The presence of other persons in the deliberating room shall not be permitted.

The meeting shall be chaired by the judge presiding over the session of the Constitutional Court. After an exchange of opinions by the judges, an open vote shall be conducted. The President of the Constitutional Court shall be the last to vote.

No information concerning events which took place in the deliberating room shall be disseminated by judges of the Constitutional Court.

A written resolution of the Constitutional Court shall be prepared by either the rapporteur judge or by another judge on the authorisation of the President of the Constitutional Court.

#### **Article 77**

##### **Dissenting Opinion of a Judge of the Constitutional Court**

A judge of the Constitutional Court who disagrees with the resolution of the Constitutional Court may express his/her dissenting opinion in written form. The dissenting opinion of the judge of the Constitutional Court shall be attached to the resolution of the Constitutional Court.

#### **Article 78**

##### **Contents of a Resolution of the Constitutional Court**

A resolution of the Constitutional Court shall consist of three parts: an introduction, a statement of the facts and a conclusion.

The introduction of the resolution of the Constitutional Court shall include the following:

- the name of the resolution;
- the date and place of passing of the resolution;
- the composition of the Constitutional Court, the Secretary of the court session and the parties or persons concerned.

The statement of the facts of the resolution of the Constitutional Court shall include:

- the actual circumstances of the constitutional case;
- information on the documents pertaining to the constitutional case;
- the facts established in the process of consideration of the constitutional case;
- information on the normative legal documents used in the consideration of the constitutional case.

The conclusion of the resolution of the Constitutional Court shall include:

- the Articles of the Constitution of the Azerbaijani Republic or other laws of the Azerbaijani Republic by which the Constitutional Court was guided while passing the resolution;



-remarks of the Constitutional Court on which the conclusions of the Constitutional Court are based;

-the conclusions of the Constitutional Court in the constitutional case in question;

-the procedure of promulgation of the resolution and the time at which the resolution shall come into force.

A resolution of the Constitutional Court must be grounded on evidence.

#### **Article 79**

##### **Announcement of Resolutions of the Constitutional Court**

Upon the adoption of the resolution, the judges shall return to the courtroom and the judge presiding over the session shall announce the resolution.

#### **Article 80**

##### **Legal Force of Resolutions Adopted by the Constitutional Court**

Pursuant to Article 130, paragraph 6 of the Constitution of the Azerbaijani Republic, decisions of the Constitutional Court shall have binding force all over the territory of the Azerbaijani Republic.

Decisions of the Constitutional Court which have entered into legal force must be executed. Criminal proceedings shall be instituted in a manner specified by the legislation of the Azerbaijani Republic for non-execution of resolutions of the Constitutional Court.

#### **Article 81**

##### **Entry into Force of a Resolution of the Constitutional Court**

Resolutions of the Constitutional Court shall enter into legal force within the following time-limits:

- 1.resolutions adopted in connection with matters specified in Article 130, paragraph 3, items 1-6 and 8 of the Constitution of the Azerbaijani Republic shall have legal force from the time specified in the resolution itself;
- 2.resolutions concerning the prohibition of political parties and other public associations, the separation of powers between the legislative, executive and judicial authorities, as well as the interpretation of the Constitution and laws of the Azerbaijani Republic, shall have legal force from the day of their promulgation;

- 3.other resolutions on matters which come under the jurisdiction of the Constitutional Court shall come into legal force on the day of their announcement.

#### **Article 82**

##### **Loss of Legal Force by Laws and Other Acts as well as their Non-Entry into Legal Force Following Resolutions of the Constitutional Court of the Azerbaijani Republic**

Pursuant to Article 130, paragraph 7 of the Constitution of the Azerbaijani Republic, laws and other legal acts or their specific provisions and intergovernmental treaties of the Azerbaijani Republic shall lose legal force after the period specified in the relevant resolution of the Constitutional Court. As far as international treaties of the Azerbaijani Republic are concerned, they shall not come into legal force if they are in conflict with the Constitution.

#### **Article 83**

##### **Inadmissibility of Official Interpretations of Resolutions of the Constitutional Court**

No one may provide an official interpretation of the resolutions of the Constitutional Court.

#### **Article 84**

##### **Decisions of the Constitutional Court**

The Constitutional Court shall make decisions in order to accept matters for proceedings, settle issues arising during sessions of the Constitutional Court, as well as in other cases specified by the present Law.

Decisions of the Constitutional Court shall be adopted by a majority consisting of not less than 5 judges.

Decisions of the Constitutional Court adopted in the process of considering constitutional cases shall be recorded in the Minutes of recorded sessions of the Constitutional Court while other decisions of the Constitutional Court shall be published.

#### **Article 85**

##### **Promulgation of Resolutions and Decisions of the Constitutional Court**

Resolutions of the Constitutional Court as well as decisions to be promulgated shall be published in the official newspaper of the Azerbaijani Republic.

Resolutions and decisions of the Constitutional Court, shorthand reports of public sessions of the Constitutional Court and other materials relating to the activities of the Constitutional Court shall be published in the *“Vedomosti Konstitutsionnogo Suda Azerbajdzhanskoi Respubliki”* (Bulletins of the Constitutional Court of the Azerbaijani Republic).

## **Chapter VIII**

### **Activities of the Constitutional Court: Organisation, Finances and Supplies**

#### **Article 86**

##### **Internal Regulations of the Constitutional Court**

In order to organise its activities, the Constitutional Court shall adopt Internal Regulations.

#### **Article 87**

##### **Symbols of the Constitutional Court**

The State flag of the Azerbaijani Republic, the State coat of arms of the Azerbaijani Republic and the official emblem of the Constitutional Court shall constitute the symbols of the Constitutional Court.

On the occasion of the swearing-in of a newly-elected President of the Azerbaijani Republic and at sessions of the Constitutional Court, judges of the Constitutional Court shall wear special uniforms.

The design and description of the Constitutional Court and the special uniform of judges of the Constitutional Court shall be approved by a resolution of the Constitutional Court.

#### **Article 88**

##### **The Badge and Identity Documents of Judges of the Constitutional Court**

Judges of the Constitutional Court shall be issued badges and identity documents.

A description of the identity documents shall be approved by the Constitutional Court.

#### **Article 89**

##### **Seal of the Constitutional Court**

The Constitutional Court shall possess a seal depicting the State coat of arms of the Azerbaijani Republic and the name of the Constitutional Court.

The design of the seal of the Constitutional Court shall be adopted by a resolution of the Constitutional Court.

#### **Article 90**

##### **Location of the Constitutional Court**

The Constitutional Court shall be located in the city of Baku.

Sessions of the Constitutional Court are held in the Constitutional Court building. If for any reason sessions of the Constitutional Court cannot be held in the Constitutional Court building, sessions may, following instructions of the President of the Constitutional Court, be held at another place.

Routine order in the Constitutional Court building shall be determined by the Internal Regulations of the Constitutional Court.

#### **Article 91**

##### **Financial Support for the Activities of the Constitutional Court**

Activities of the Constitutional Court shall be financed from the State budget of the Azerbaijani Republic. The resources allocated for the annual activities of the Constitutional Court may not be reduced as compared with those allocated for the previous financial year.

#### **Article 92**

##### **Official Salary and Allowances for the Judges of the Constitutional Court**

The President of the Constitutional Court shall receive a monthly salary equal to the official salary of the President of the National Assembly of the Azerbaijani Republic.

The Vice-President of the Constitutional Court shall receive a monthly salary equal to 90% of the official salary of the President of the Constitutional Court.

Judges of the Constitutional Court shall receive a monthly salary equal to 80% of the official salary of President of the Constitutional Court.

In order to compensate expenses incurred in the execution of their duties judges of the Constitutional Court shall receive a monthly allowance equal to that of members of the National Assembly of the Azerbaijani Republic.

**Article 93****Vacations of Judges of the Constitutional Court**

Judges of the Constitutional Court shall be granted an annual vacation period of 40 calendar days.

The Constitutional Court judges' vacations shall be granted by the President of the Constitutional Court. The vacation of the President of the Constitutional Court shall be granted according to the procedure laid down in Article 109, item 32 of the Constitution of the Azerbaijani Republic.

Simultaneous vacations of one judge of the Constitutional Court together with another judge of the Constitutional Court are prohibited.

**Article 94****Other Guarantees for Judges of the Constitutional Court**

Judges of the Constitutional Court shall be exempted from military call-up and musters.

The health and life of a judge of the Constitutional Court shall be insured under the state budget for a sum equal to 5 years of his/her official salary.

A judge of the Constitutional Court who does not have a dwelling in Baku or Sumgait or within the district of Absheron shall be given an official flat.

The place of fixed abode of a judge of the Constitutional Court shall be provided with telephone communication.

Upon expiration of the terms of authorities a former judge of the Constitutional Court at the retirement age shall receive a life pension equal to 80% of the official salary of a judge of the Constitutional Court.

**Article 95****Staff of the Constitutional Court**

The staff of the Constitutional Court shall provide legal, organisational and financial support for and deal with the logistics of the activities of the Constitutional Court.

The staff of the Constitutional Court shall act in conformity with the regulations on the staff of the Constitutional Court, approved by the President of the Constitutional Court.

With a view to ensuring its work the Constitutional Court may create a library, printing office and academic research centre.

The structure, list of staff members of the Constitutional Court and estimate of running costs and salaries of employees shall be determined by the President of the Constitutional Court.

The President of the Constitutional Court shall provide leadership for the activities of the staff of the Constitutional Court.

**Article 96****Duties of the Staff of the Constitutional Court**

Duties of the staff of the Constitutional Court are as follows:

- to ensure the smooth operation of the Constitutional Court and its judges;
- to prepare the necessary inquiries and other information necessary for the work of the Constitutional Court;
- to provide the Constitutional Court with Secretaries for the court sessions;
- to arrange shorthand reports for the sessions of the Constitutional Court;
- to conduct the clerical work for the Constitutional Court;
- to ensure the registration and keeping of documents of the Constitutional Court;
- to provide logistical and financial support for the activities of the Constitutional Court and its judges;
- to execute various instructions of the President, Vice-President and the judges of the Constitutional Court connected with the activities of the Constitutional Court;
- to execute other duties connected with the activities of the Constitutional Court.

**Article 97****Rights and Liabilities of the Staff of the Constitutional Court**

The staff of the Constitutional Court shall be employed and dismissed by the President of the Constitutional Court.

The rights, obligations and responsibilities of the staff of the Constitutional Court shall be regulated by the labour laws of the Azerbaijani Republic and the regulations on the staff of the Constitutional Court.

**Article 98****Entry into Force of this Law**

~~The present Law shall enter into force on the day of its promulgation.~~

The Court shall be established and its activity shall commence upon the naming and swearing in of a minimum of 6 judges.

## Denmark

### Supreme Court

**Constitution**

entered into force on 5 June 1953

- extracts -

**Part VI****Article 59**

1.The High Court of the Realm shall consist of up to fifteen of the eldest - according to seniority of office -ordinary members of the highest court of justice of the Realm, and an equal number of members elected for six years by the *Folketing* according to proportional representation. One or more substitutes shall be elected for each elected member. No Member of the *Folketing* shall be elected a member of the High Court of the Realm, nor shall a Member of the *Folketing* act as a member of the High Court of the Realm. Where in a particular instance some of the members of the highest court of justice of the Realm are prevented from taking part in the trial of a case, an equal number of the members of the High Court of the Realm last elected by the *Folketing* shall retire from their seats.

2.The High Court of the Realm shall elect a president from among its members.

3.Where a case has been brought before the High Court of the Realm, the members elected by the *Folketing* shall retain their seats in the High Court of the Realm for the duration of such case, even if the period for which they were elected has expired.

4.Rules for the High Court of the Realm shall be provided by Statute.

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**Article 60**

1.The High Court of the Realm shall try such actions as may be brought by the King or the *Folketing* against Ministers.

2.With the consent of the *Folketing* the King may also cause to be tried before the High Court of the Realm other persons for crimes which he may deem to be particularly dangerous to the State.

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**Article 61**

The exercise of the judicial power shall be governed only by Statute. Extraordinary courts of justice with judicial power shall not be established.

**Article 62**

The administration of justice shall always remain independent of the executive power. Rules to this effect shall be laid down by Statute.

**Article 63**

1. The courts of justice shall be entitled to decide any question bearing upon the scope of the authority of the executive power. However, a person who wants to query such authority shall not, by bringing the case before the courts of justice, avoid temporary compliance with orders given by the executive power.
2. Questions bearing upon the scope of the authority of the executive power may be referred by Statute for decision to one or more administrative courts. Provided that an appeal from the decision of the administrative courts shall lie to the highest court of the Realm. Rules governing this procedure shall be laid down by Statute.

**Article 64**

In the performance of their duties the judges shall be directed solely by the law. Judges shall not be dismissed except by judgment, nor shall they be transferred against their will, except in the instances where a rearrangement of the courts of justice is made. However, a judge who has completed his sixty-fifth year may be retired, but without loss of income up to the time when he is due for retirement on account of age.

**Article 65**

1. In the administration of justice all proceedings shall be public and oral to the widest possible extent.
2. Laymen shall take part in criminal procedure. The cases and the form in which such participation shall take place, including what cases are to be tried by jury, shall be provided for by Statute.

**Administration of Justice Act**

(as amended by Act of 14 June 1995; entered into force 1 January 1996)

- extracts -

**s2**

1. The *Højesteret* (Supreme Court) is the highest court in Denmark. It has its seat in Copenhagen and consists of a President and 15 other Supreme Court judges. If necessary the place of the President may be taken by the most senior of the Court's judges who is present at the time.

2. If the President does not participate in the hearing of a case his place is taken by the judge whom, after consulting the members of the Court, the President has designated for that purpose.

**s2a**

1. Cases before the Supreme Court, unless otherwise specified by law, are heard by a bench of at least 5 judges. The allocation of cases between different judges is decided by the President. If the number of Supreme Court judges required to hear a case is not available the President may call on one or more *Landsret* (High Court) judges to sit on the bench.
2. In accordance with a special decision of the Court, rulings on the types of case listed below may be delivered by a committee consisting of at least 3 judges designated by the President after consulting the members of the Court:
  1. decisions and rulings not resulting from the hearing of a lawsuit;
  2. in civil matters, judgments whereby an appeal is dismissed, judgments in cases in which the respondent appears without giving notice of opposition and judgments solely concerning costs and procedural penalties;
  3. judgments on interlocutory appeals.
3. In so far as the Court considers it expedient a single member may act on behalf of the committee. However, all members of the committee must participate in the adoption of judgments and rulings, with the exception of rulings dismissing interlocutory appeals.

**s3**

The Supreme Court has a Registry, under the management of a Registrar. The Registrar is responsible for the collection of court costs and presentation of the relevant accounts and also for matters specifically referred to in Part 3.

**Part 1a****The Board of Appeal**

(Part added by Section 2 of the Act amending the Administration of Justice Act of 14 June 1995)

**s22**

The Board of Appeal shall deal with applications for approval of second and third instance admissibility in accordance with provisions in this Act and in other legislation.

**s23**

1.The Board shall consist of 5 members, a Supreme Court judge (chairman), a High Court judge, a Town Court judge, a lawyer authorised to plead before the Supreme Court and a university teacher of jurisprudence or another lawyer with relevant specialist training. The first four members mentioned shall be appointed on a recommendation to the Minister of Justice from, respectively, the Supreme Court, the High Courts, the Association of Judges and the General Council of the Bar. The Crown, on the recommendation of the Minister of Justice, shall appoint the members for periods of two years. A member may be re-appointed for a further two years. Thereafter no further re-appointment may be made.

2.One or more substitutes shall be appointed for each member of the Board. Subsection (1) applies by analogy.

**s24**

Members of the Board may be removed only in accordance with the regulations which apply to judges. A member shall withdraw when the conditions for his appointment are no longer fulfilled.

**s25**

1.The Board of Appeal shall establish its own rules of procedure.

2.The rules of procedure may contain regulations on obtaining and providing information for use in case hearings. Provisions may also be made relating to the deliberation and consideration of decisions in writing, to the chairman's power to make specific decisions on behalf of the Board or to allow cases to be decided by three of the members of the Board, that is to say a judge, a lawyer and a university teacher.

**s26**

1.The Board of Appeal shall publish each year a report on its activities.

2.A secretariat shall be attached to the Board of Appeal.

3.The Court Administration shall manage the admissibility and administrative matters of the Board of Appeal.

**s27**

If a public authority, in accordance with s252(2), has become involved in a case on the side of one of the parties or intends to do so the said authority may in a written statement support the party's application to the Board of Appeal.

**Part 36****Appeals****s368**

1.Judgments pronounced by a *Byret* (Town Court) may be appealed by the parties to the High Court in whose area of jurisdiction the Town Court is situated. If the matter in dispute is a claim which is stated not to exceed DKr 10 000 an appeal against the judgment may be lodged only with the permission of the Board of Appeal, cf. subsection 2.

2.The Board of Appeal may allow an appeal to be lodged against a judgment as referred to in the second sentence of subsection 1, if the case concerns a fundamental principle or if justified by special reasons. An application for the permission must be submitted to the Board of Appeal within 4 weeks of pronouncement of the judgment concerned. The Board of Appeal may, however, exceptionally, grant such permission if the application is submitted later, but within one year of pronouncement of the judgment.

3.In the absence of any legislation to the contrary, judgments pronounced by a High Court as a Court of

First Instance or by the Maritime and Commercial Court in Copenhagen may be appealed by the parties to the Supreme Court.

4. In the absence of any legislation to the contrary the appeal may concern decisions delivered during the hearing of the case.
5. Decisions concerning costs and procedural penalties or judgments pronounced by a High Court or by the Maritime and Commercial Court in Copenhagen may be appealed separately to the Supreme Court only with the permission of the Board of Appeal. The provisions in s371 apply by analogy.

#### **s369**

1. An appeal may be a request for revision or reversal of a judgment or for a re-trial.
2. Decisions in judgments pronounced by a Town Court concerning costs and procedural penalties may only be challenged separately in a High Court in interlocutory appeal proceedings, cf. s391(1).
3. Judgments by which a case is dismissed because it was not brought before the proper court or was not brought in due time before the courts or the appeal court may only be challenged in the Supreme Court in interlocutory appeal proceedings, cf. s391(3).
4. A person against whom judgment is pronounced as a consequence of his absence or failure to answer a summons may appeal against such judgment only on the grounds of an irregularity in the hearing of the case.

#### **s370**

Parties may not waive the right to appeal before judgment in the case concerned has been pronounced.

#### **s371**

1. Appeals may not be lodged against judgments pronounced by a High Court as court of second instance. The Board of Appeal may, however, permit an examination in a court of third instance if the case concerns a fundamental principle.
2. An application for the permission referred to in the second sentence of subsection (1) above must be submitted to the Board of Appeal within 8 weeks of pronouncement of the judgment concerned. The Board of Appeal may, however, exceptionally, grant such permission if the

application is submitted later, provided it is within one year of pronouncement of the judgment.

#### **s372**

1. The time-limit for an appeal from a Town Court to a High Court is 4 weeks or, for an appeal from a High Court or the Maritime and Commercial Court in Copenhagen to the Supreme Court, 8 weeks. The period of the time-limit is calculated from the date of pronouncement of the judgment, cf. s219.
2. The appeal procedure begins with delivery of the notice of appeal to the office of the appeal court concerned. The notice must be received before the expiry of the time-limit for the appeal or, in the case of the permission referred to in s368(2), or s371, within 4 weeks of the date on which the applicant was informed of the said permission. If the notice of appeal is delivered later it shall be refused. The court of appeal may, however, exceptionally, permit an appeal to be lodged up to one year after pronouncement of the judgment in question. In such a case the notice of appeal must be delivered within four weeks of notification of such permission. The provisions in s398 apply by analogy to the examination of an application for permission to appeal after the expiry of the time-limit. Judgments pronounced by the High Court can only be appealed to the Supreme Court pursuant to the rules of s392(2).
3. An appeal which is discontinued or dismissed on grounds other than failure to observe the time-limit referred to in subsection (2) may, with the permission of the court, be resumed if a notice of appeal is delivered to the office of the court within two weeks of the sitting of the court at which the appeal was discontinued or dismissed.

#### **s373**

1. The notice of appeal must contain the following:

1. details of the judgment appealed;
2. the address of the respondent;
3. the claim of the appellant;
4. the statements, documents and other evidence on which the appellant intends to rely and which were not produced at the lower court;

5.an address in Denmark to which information concerning the case can be delivered to and the judgment served on the appellant.

2.There must be included with the notice of appeal a transcript of the judgment being appealed and duplicates of the notice of appeal. Copies of the documents referred to in subsection(1)(4) must also be provided, if they are in the appellant's possession. The President of the Court can stipulate the number of copies required.

#### **s374**

If the notice of appeal does not satisfy the requirements set out in ss373(1)(1), 373(1)(3) and 373(1)(5) and therefore does not form the basis for a hearing of the case the appellant shall be notified that the case cannot proceed. At the request of the appellant a ruling shall be given on the dismissal of the appeal. The same procedure shall be followed if the appellant, within the time-limit set by the Court, fails to provide a transcript of the judgment and copies of the documents referred to in s373(2).

#### **s375**

The Court shall serve the notice of appeal on the respondent, with information on the contents of the said notice, and shall require the respondent to provide a written answer, unless he merely relies on the existing judgment in accordance with s377(1). The Court shall also decide whether the answer must be presented at a sitting of the Court or be delivered to the Court. The respondent shall also be informed, when the notice of appeal is served on him, that he shall be considered to have elected to rely on the judgment if he either does not appear at the sitting of the Court or does not provide a written answer in due time. Notice of at least two weeks must usually be given for attendance at the sitting of the Court or for presentation of the written answer. This period of notice, which begins on the date of notification of the notice of appeal, may on request be extended.

#### **s376**

1.The written answer must contain the following:

1.the claim of the respondent;

2.the statements, documents and other evidence on which the respondent intends to rely and which were not produced at the lower court;

3.an address in Denmark to which information concerning the case can be delivered to and the judgment served on the respondent.

2.Objections to the appeal, which can be withdrawn, must be stated in the written reply. If the respondent contends that the appeal should be dismissed and wishes this issue to be decided separately, cf. s253, he may confine himself in his written reply to stating his objections to the appeal being heard.

3.The written reply must be accompanied by the documents referred to in subsection (1)(2) above, if they are in the respondent's possession.

4.If the Court has decided that the written reply is to be presented at a sitting of the Court the respondent must provide the appellant with a copy of his reply and of the accompanying documents no later than the date of their presentation to the Court. If the Court has decided that the documents are to be delivered to the Court the respondent must send a copy of his reply and of the accompanying documents to the appellant no later than the date of their delivery to the Court.

#### **s377**

1.No written reply need be provided if the respondent merely relies on the existing judgment and does not wish, as part of the appeal proceedings, to rely on other statements, documents or the like other than those which were presented at the lower court.

2.The respondent shall be considered to have elected to rely on the judgment as referred to in subsection (1) above if he does not provide a written answer in due time in accordance with the provision of this Act, cf. s375. If the Court has decided that the written reply is to be delivered to the Court it shall inform the appellant if the written reply is not delivered in due time.

#### **s378**

1.The Court shall decide whether the preliminary proceedings for the appeal should consist of the exchange of further pleas or of a sitting of the Court or whether the preliminary proceedings should be concluded and a date set down forthwith for a court hearing. The provisions of ss376(3) and (4) apply by analogy with regard to the provision of further pleas. The decisions taken may subsequently be revised.



2.The Court may order a party to submit a pleading before a date fixed by the court. If such pleading is not submitted within the time-limit, the rules of s386 will apply.

3.If a preliminary sitting is held the Court can decide that the court hearing should take place directly thereafter, if the parties agree to this, or that sufficient information on the appeal has been provided and that it can be heard forthwith.

#### **s379**

Once notice of the appeal has been served on the respondent, the appellant may not withdraw the appeal if the respondent in due time, cf. s375, provides a reply which is not merely reliance on the existing judgment and wishes the case to continue.

#### **s380**

1.Documents and copies of documents on which a party wishes to rely but which were not previously provided and notification of other evidence which a party wishes to produce during the hearing but which was not included in that party's written pleas must be sent to the Court and to the opposing party as soon as possible and not later than two weeks before the court hearing.

2.A request for the production of evidence outside the court hearing must be made as early as possible and, at the latest, two weeks after the Court has received the written reply or a later written pleading.

#### **s381**

The Court may permit a party to produce evidence which is not presented in accordance with s380 if the failure to respect the time-limit is considered excusable.

#### **s382**

1.The Court may refuse to take account of claims made in the lower court but which are not made in the notice of appeal or in a duly submitted defence, cf. s375, and which are not covered by the provisions of s377, even if the other party does not object, if the claim should have been made at an earlier stage of the appeal.

2.Objections as referred to in s376(2) which are not put forward in the written reply in accordance with the provisions of this section may be taken into account only if the conditions of s383(2) are satisfied.

#### **s383**

1.Claims and statements which were not made in the lower court may, if the opposing party objects, only be taken into account with the permission of the Court.

2.The Court may grant the permission referred to in subsection (1) above if the failure to make the relevant claims and statements at an earlier stage is excusable or if there is reason to suppose that a refusal to grant the permission would lead to a disproportionate loss for the party concerned. In appeals to a High Court such permission may also be granted if the opposing party has sufficient opportunity to safeguard its interests.

3.If claims which were not made in the lower court are not put forward in the notice of appeal or in a duly submitted defence, cf. s375, the Court may, even if the opposing party does not object, refuse to take them into consideration if they should have been made at an earlier stage of the appeal. This also applies to statements which were not made in the lower court and are not put forward during the preparation of the appeal.

#### **s384**

The Court may refuse to consider claims and statements which were not made in the lower court and which would make it necessary for the Court to pronounce judgments on matters which were not at issue in the lower court, even if the opposing party does not object.

#### **s385**

1.In appeals being heard by a High Court the provisions of s365(3) apply by analogy.

2.In appeals being heard by the Supreme Court it is the responsibility of the appellant to prepare and, within a time-limit set by the Court, to provide the Court with a summary of the documents relating to the subject of the appeal, to be read during the hearing of the appeal. The President of the Court may, after consulting the General Council of the Bar, lay down general rules concerning the drafting of the summary and its delivery to the Supreme Court.

**s386**

- 1.If the appellant fails to appear at a hearing of the Court before which the appeal is being heard the Court shall dismiss the appeal. This applies also if the appellant has not in due time provided the Supreme Court with the summary in the required form, cf. s385(2). The Court may also dismiss the case if the appellant has not in due time provided the High Court with copies, cf. s385(1), cf. s365(3). If the respondent, instead of relying on the previous judgment, has presented another claim the case shall proceed at the request of the respondent on the basis of the available documents and the evidence produced by the respondent and his oral pleading. If the appellant fails to appear during the preliminary proceedings the Court may still, at the request of the respondent, allow the case to proceed on the basis of the available documents and a written pleading from the respondent. If further court hearings are held the appellant shall also be summoned to attend. If the respondent has extended the scope of his claim or presented statements not made in the court of first instance account may only be taken of such extension or such statements if presented at a court hearing attended by the appellant or in a written pleading notice of which was served on the appellant.
- 2.If the respondent fails to appear at a hearing of the Court before which the appeal is being heard the case shall proceed on the basis of the available documents and the evidence produced by the appellant and his oral pleading. The Court may decide that this shall also apply if the respondent has not in due time provided the High Court with copies of pleas and documents, cf. s385(1), cf. s365(3). If the respondent fails to appear during the preliminary proceedings the Court may still, at the request of the appellant, allow the case to proceed on the basis of the available documents and a written pleading from the appellant. If further court hearings are held the respondent shall also be summoned to attend. If the appellant has extended the scope of his claim or presented statements not made in the court of first instance account may only be taken of such extension or such statements if they are presented at a court hearing attended by the respondent or in a written pleading notice of which was served on the respondent.
- 3.If both parties fail to appear at a hearing of the Court before which the appeal is being heard the Court shall dismiss the appeal.

4.Failure to appear at a court hearing on resumption of the preliminary proceedings shall have the consequences referred to in subsections (1)-(3) only if notice to this effect is given in the summons to appear.

5.The Court may decide not to attach the consequences referred to in subsections (1)-(3) to a failure of one of the parties to appear, especially if it may be considered that there was a lawful excuse for such non-appearance or if the other party requests a stay of proceedings.

**s387**

1.The Court may decide that the court hearing or part of it shall be conducted on the basis of written submissions if:

- 1.the parties agree thereto,
- 2.the object of the hearing is solely to decide if the appeal may proceed, or
- 3.it is considered appropriate in view of the particular nature of the case.

**s388**

1.If the appeal court remits the case for re-trial either of the parties may within four weeks of pronouncement of the judgment submit a written request for a re-trial of the case to the Court to which the case has been remitted. In the event of failure to comply with this time-limit s372(2) applies by analogy.

2.The request for a re-trial must be accompanied by a transcript of the remittal judgment. The case shall then proceed in accordance with normal legal procedure.

**Part 37****Interlocutory appeals****s389**

1.Rulings and decisions pronounced by a Town Court may, in the absence of legislation to the contrary, be appealed to the High Court to whose jurisdiction the Town Court belongs.

2.Rulings and decisions on costs amounting to not more than Dkr 10 000 may not be appealed to the High Court. The Board of Appeal may however grant the permission if justified by special reasons.

3. Requests for permission to lodge an interlocutory appeal referred to in subsection (2) must be submitted to the Board within two weeks of pronouncement of the decision. The Board of Appeal may however, exceptionally, grant the required permission if the request is submitted at a later date, but not more than six months after pronouncement of the decision.

#### **s390**

After judgment has been pronounced in a case orders made during the proceedings may not be the subject of interlocutory appeals by one party and the Court may withdraw an interlocutory appeal already initiated if the matter to which the order relates can be an element in a subsequent appeal in the case.

#### **s391**

1. Decisions in judgments pronounced by a Town Court concerning costs amounting to more than DKr 10 000 or procedural penalties may be the subject of interlocutory appeals lodged separately with the High Court.

2. The Board of Appeal may authorise the lodging of interlocutory appeals against decisions in judgments on costs which, under subsection (1) above, may not be appealed against before the High Court, if this is justified by special reasons. The provisions of s389(3) apply by analogy.

3. Interlocutory appeals may be lodged before a higher court against judgments by which the Court dismisses a case because it was not brought before the proper court or was not brought before the courts or the appeal court in due time. If the judgment was pronounced by a High Court as the instance of appeal, permission for an interlocutory appeal can only be granted by the Board of Appeal. Such permission may be granted if the interlocutory appeal concerns questions of a fundamental nature. Application for an interlocutory appeal permission must be filed with the Board within two weeks from the date of the decision. In exceptional cases the Board of Appeal may, however, grant permission if the application is filed later, but within six months from the date of the decision.

#### **s392**

1. Rulings and decisions pronounced by a High Court or by the Maritime and Commercial Court under the rules of s253 in a case heard by the Court as the court of first instance may be appealed to the Supreme Court if permission is granted by the Supreme Court, cf. s253(4).

2. In other cases the rulings and decisions of the High Court or the Maritime and Commercial Court may be appealed to the Supreme Court, subject to permission from the Board of Appeal. Such permission can be granted if the interlocutory appeal concerns issues of a fundamental nature. Requests for permission to lodge an interlocutory appeal must be submitted to the Board within two weeks of pronouncement of the decision. The Board of Appeal may, however, exceptionally, grant the required permission if the request is submitted at a later date, but not more than six months after pronouncement of the decision.

#### **s393**

1. An interlocutory appeal may be lodged by any person affected by a ruling or decision.

2. An interlocutory appeal is initiated by the delivery of a notice of interlocutory appeal to the Court against whose decision the interlocutory appeal is being lodged. The notice must contain the appellant's claim and, if necessary, a statement of the grounds on which the interlocutory appeal is based. A copy of the notice of interlocutory appeal must at the same time be sent to the opposing party.

3. Interlocutory appeals against decisions delivered by a Town Court may however always be made orally for the court records. This applies also to interlocutory appeals against decisions which are delivered by a High Court or the Maritime and Commercial Court in Copenhagen and are initiated by witnesses, experts or the third parties referred to in s299.

4. An interlocutory appeal may be supported by new statements or evidence.

#### **s394**

1. The time-limit for interlocutory appeals, beginning from the day on which the decision is delivered, is two weeks, cf. s219.

2. The interlocutory appeal must be lodged before expiry of the time-limit for interlocutory appeals or, if the permission referred to in ss389, 391 or 392 is granted, within two weeks of the notification of the permission to the applicant. If the interlocutory appeal is initiated at a later date it shall be dismissed by the Court with which the interlocutory appeal against the decision is lodged. The Court may however, exceptionally, permit interlocutory appeals to be lodged up to six months

after the decision. In such cases the notice of interlocutory appeal must be delivered within two weeks of notification of such permission. The provisions in s398 apply by analogy to the examination of an application for permission to appeal after expiry of the time-limit.

#### **s395**

In the absence of any legislation to the contrary an interlocutory appeal has no suspensive effect unless otherwise decided by the Court whose decision is the subject of the interlocutory appeal or the Court with which the interlocutory appeal is lodged.

#### **s396**

1.The Court whose decision is the subject of the interlocutory appeal, if it does not reconsider its decision, cf. ss178 and 222, shall, within one week of receiving the notice of interlocutory appeal or the entry of the interlocutory appeal in the court records, send to the Court with which the interlocutory appeal is lodged:

- 1.the notice of interlocutory appeal or, in the cases referred to in s393(3), a copy of the entry in the court records,
  - 2.a transcript of the decision which is the subject of the interlocutory appeal, and
  - 3.documents of importance for the hearing of the interlocutory appeal.
- 2.The Court may enclose an opinion on the interlocutory appeal.
- 3.The Court shall notify the parties of the transmission of the case and of the content of the opinion.

#### **s397**

- 1.The parties may provide written statements for the Court with which the interlocutory appeal is lodged. Statements which are received by the Court more than ten days after the issuing of the notification referred to in s396(3) may be taken into account only if no decision on the case has already been made.
- 2.The Court with which the interlocutory appeal is lodged may obtain information or statements from the parties to the case or from the Court whose decision is the subject of the interlocutory appeal.

#### **s398**

- 1.The Court shall give a ruling on the case on the basis of the documentary evidence provided.
- 2.If there exist appropriate special grounds the Court may decide in favour of an oral procedure. In such cases the parties shall be summoned to appear. If the appellant fails to appear the interlocutory appeal shall be dismissed.

### **Title V**

#### **Legal remedies against decisions already delivered**

### **Part 82**

#### **Appeals against first instance judgments pronounced by the High Courts**

#### **s940**

- 1.First instance judgments pronounced by a High Court may, in accordance with the rules listed below, be the subject of an appeal by the parties to the Supreme Court. In addition to the judgment the appeal may also consider the previous hearing and the decisions delivered during the hearing.
- 2.In addition to the judgment, the decisions referred to in s904 may also be considered in the appeal.

#### **s941**

- 1.The Public Prosecutor can bring an appeal both in favour and to the prejudice of the accused. Appeals in favour of the accused may also be initiated by the accused himself and, if he is under 18 years of age, by his guardian. If the accused is dead and he was sentenced to a term of imprisonment his spouse and any of his relations in the ascending or descending line and his brothers and sisters can appeal on his behalf. The Public Prosecutor can also in such cases lodge an appeal against a conviction.
- 2.The accused's defence counsel in a High Court is obliged, when requested, to advise the accused as to whether he should appeal against the judgment and also on the drafting and submission of the notice of appeal and the grounds for the appeal.

**s942**

The right to appeal can be waived after judgment has been pronounced. An appeal already lodged may be withdrawn provided the judgment of the Supreme Court has not been pronounced. If the appeal is withdrawn after the hearing in the Supreme Court has begun the Supreme Court may not for that reason discontinue its examination of those grounds of the appeal which are considered under the normal procedure (s959).

**s943**

The basis of the appeal can be that court procedure was disregarded or incorrectly applied; but such disregard or incorrect application of court procedure, whose observance is not a matter to be ensured by the initiative of the Court, may be used as a ground for the appeal only if an interlocutory appeal was lodged in due time with the lower court.

**s944**

*Repealed*

**s945**

1. Besides the grounds for appeal referred to in s943 an appeal may be based only on the grounds:

1. that the Court improperly gave a decision on a matter which, in accordance with the second and third sentences of s885 or s886, is not a matter for a decision by the jury, or convicted improperly in accordance with a finding by the jury against the accused in a situation in which, in accordance with s909, it ought to have acquitted or only imposed a sentence for a lesser offence than that named in the finding or, conversely, wrongly departed from a finding by the jury against the accused pursuant to s909 or acquitted pursuant to s869(2);
2. that the finding by the jury, on which the judgment was based, was incorrect because of improper direction on a matter of law by the chairman of the Court or because in the questions put to the jury there were mistakes arising from an incorrect interpretation of the Criminal Code;
3. that the sentence imposed by the judgment was outside the legally stipulated limits or clearly disproportionate to the gravity of the offence.

2. The appeal may not be based on a claim that the question as to whether the accused should be convicted was wrongly decided as a result of a faulty appraisal of the weight of the evidence, unless the point at issue is one which is not a matter for decision by the jury.

**s946**

1. Disregard or incorrect application of procedural rules must not lead to the overruling of an appealed judgment unless it is considered probable that observance of the rule of procedure concerned could have meant a different outcome of the case.

2. Non-observance of procedural rules which are intended solely for the protection of the accused may not lead to the revision of a decision in a manner prejudicial to him.

**s947**

1. If the Public Prosecutor lodges an appeal to the prejudice of the accused he must within 14 days of pronouncement of the judgment serve a notice on the accused that the judgment is being appealed. The Public Prosecutor may also lodge an appeal in favour of the accused after expiry of the said time-limit; it is also no impediment to an appeal if the accused has waived his right to appeal.

2. A notice of appeal must contain information to the effect that the accused or his defence counsel will later be informed of the date set for the court hearing. A copy of the notice shall be sent to the office of the High Court.

**s948**

1.If the accused wishes to lodge an appeal he must give notice accordingly within 14 days of pronouncement of the judgment or, if he was not present when judgment was pronounced and the judgment is a conviction, of the day on which a copy of the judgment was served on him. The notice of appeal may, if notified at the same time as pronouncement of the judgment or its service on the accused, be given orally either for the records of the Court or to the person who serves notice of the judgment and who in that case has to make the required note in the attestation of delivery of the judgment. Otherwise the notice of appeal, in writing and signed by the accused, shall be delivered to the office of the Public Prosecutor or of the High Court; if the accused is in prison the notice may be served orally for the court records of the Town Court in whose area of jurisdiction the prison is situated or for the record book of the Prison Management (s844). If the accused's notice of appeal is entered in the above-mentioned record book or in court records or is delivered to the office of a High Court a copy either of the entry or of the notice of appeal received shall be forwarded without delay to the Public Prosecutor.

2.As soon as possible after receipt of the notice of appeal the Public Prosecutor shall see to it that a notification containing the information referred to in s947(2) is sought to be served on the accused in the usual way, cf. ss155-158, and shall inform the High Court of the appeal unless the notice of appeal came from the office of that Court.

**s949**

1.If an appeal is lodged by one party the opposing party may, even if the time-limit applicable to him under ss947 or 948 has expired, lodge an appeal if his notice of appeal takes effect within 14 days of notification to him of the other party's notice of appeal.

2.An appeal not notified within the time-limit referred to in ss947 and 948 shall be dismissed by the Supreme Court unless the applicant can show that the circumstance on which the appeal is based came only later to his knowledge or that the non-observance of the time-limit was otherwise due to factors for which he could not be held responsible. The notice of appeal – which must contain the necessary information on the said circumstance or factors – must in addition be lodged not more than 14 days after he is informed of the grounds of the appeal or after the circumstances which

occasioned the non-observance of the time-limit cease to exist.

**s950**

Either in the notice of appeal itself or in a further notification, which must be provided within the time-limits stipulated in ss947, 948 and 949 and in one of the ways specified therein, the appellant must state the ground or grounds on which he bases his appeal. Where specific justification is provided the Supreme Court may allow him to state the grounds of his appeal after the expiry of the above-mentioned time-limit.

**s951**

1.Notice of appeal lodged before expiry of the time-limits stipulated in ss947, 948 and 949(1) has the effect of suspending execution of the sentence in respect of those persons convicted who are the subject of the appeal.

2.If the notice of appeal is lodged in the circumstances referred to in s949(2) the Supreme Court may decide, in its response to the request received, that execution of the sentence should be stayed or suspended; this occurs in any event if the appeal is allowed to proceed.

**s952**

1.As soon as the Public Prosecutor has served the prescribed notices (ss947 and 950) on the accused or has received his notice of appeal with the relevant statement of grounds he shall send the same to the Director of Public Prosecutions together with the pleadings and other documents of the case tried in the High Court and a transcript of the court hearing.

2.If an appeal is lodged by the Public Prosecutor and by another party and is subsequently withdrawn by the Director of Public Prosecutions the latter shall as soon as possible send the documents of the case to the Supreme Court with the comments or requests he considers necessary.

**s953**

The Supreme Court may, on request or *ex officio*, dismiss the appeal by a ruling if it considers that the prescribed time-limits and due form were not complied with or that the appellant is not competent to lodge the appeal or that the grounds on which the appeal relies clearly cannot lead to a reversal of the judgment.

**s954**

- 1.If there are no grounds for immediate dismissal of the appeal the Supreme Court shall appoint defence counsel for the accused, if the latter has not himself selected counsel, and shall arrange for the pleadings and supporting documents to be sent to the Director of Public Prosecutions or to the defence counsel, according to which is first to address the Court (cf. s957), with instructions to transmit them to the opposing party within a stated time-limit – which can be extended by the President – and put the case down for hearing.
- 2.The court hearings which are held before the trial in Court shall be held in camera. Requests to the Court, not made orally in a court hearing, shall be addressed in writing to the Court.

**s955**

- 1.New evidence may be presented to the Supreme Court concerning matters which in the case in question are submitted to the judgment of that Court. If such evidence is produced it is incumbent on the Director of Public Prosecutions or the defence counsel, after prior notice to the opposing party, to take the appropriate necessary steps. If there is disagreement as to whether or in what way any information must be produced or if its production makes necessary an adjournment of the case the Court must be asked to decide the issue. If the Court decides on its own initiative that new information must be produced it shall give the appropriate necessary instructions to the Director of Public Prosecutions.
- 2.If witnesses or experts are to be examined the Supreme Court may decide, when it considers it necessary in order to ensure that the Court has all the evidence required, that they should be examined before the Supreme Court, cf. ss174 and 209. Otherwise the witnesses and experts shall be examined before the Court concerned in accordance with the rules in Parts 67 and 68.
- 3.The Supreme Court may also, if it considers it necessary to ensure that the Court has all the evidence required, decide that witnesses and experts who have been examined previously shall be summoned to be examined in person during the court hearing before the Supreme Court.

- 4.When necessary the Supreme Court may ask the High Court for a further statement on the hearing held before it.

**s956**

- 1.The accused is entitled to participate in the court hearing.
- 2.The absence of the accused is no impediment to the hearing of the appeal if defence counsel is present.

**s957**

- 1.During the hearing before the Supreme Court the party bringing the appeal shall be the first to address the Court. Moreover the hearing shall be conducted according to the procedure which the Supreme Court, pursuant to the rules in Parts 2, 3 and 16 of this Act, shall determine.
- 2.The examination of witnesses before the Supreme Court shall proceed in accordance with the rules set out in ss872-875.

**s958**

- 1.If one party lodges an appeal relying on grounds which could lead to the Supreme Court pronouncing a new judgment on a question of fact, the opposing party, notwithstanding that he now would otherwise be precluded from appealing against the judgment, shall have the right to contend that it should be set aside by reason of irregularities which could lead to the case being remitted for re-trial. However, he must give the opposing party notice in good time before the hearing of the case of his intent to make such a challenge and inform the opposing party of the grounds he intends to rely on in order that the opposing party has time to consider his position.
- 2.If there are special reasons for granting such permission the Supreme Court must permit the party concerned to present grounds of appeal which are not stated in the notice of appeal by him or in the statement of grounds submitted later (s950) or in a notice given by him in accordance with the last sentence of subsection (1) of this section and which are also not of such a nature that the Court must *ex officio* take them into consideration (s959). If it is considered that because of the presentation of those grounds it is necessary for the opposing party to consider its position the Supreme Court shall accordingly order a stay of proceedings.

**s959**

1.The examination by the Supreme Court shall as a rule be limited to the grounds of appeal as presented; there are, however, the following exceptions:

1.When the appeal or any claim made as referred to in s958(1) is based on one of the grounds referred to in s945 the Court may examine whether one of the grounds of appeal referred to in s945 could result in a variation of the decision of the High Court, cf. however the second sentence of s960(3).

2.When an appeal is based only on a procedural error the Supreme Court, if the judgment is not reversed on that ground, can examine whether the Criminal Code was not improperly applied to the prejudice of the accused or whether the sentence imposed was not excessively severe.

3.If, in a situation in which an accused has been convicted, it is found that a procedural rule of importance to his defence was disregarded the Supreme Court may, if it finds that the procedural error casts doubt on the correctness of the conviction, reverse the judgment and remit the case for re-trial, notwithstanding that the error in question was not used as grounds for an appeal.

2.If a judgment relating to a number of accused or to a number of offences committed by the same accused is appealed only by one or more accused or in respect of one or more offences the Supreme Court, if it finds that a ground for appeal which was put forward during the hearing of the case or which the Court in accordance with the provisions of this section has taken into consideration also concerns an accused or an offence in respect of whom or which the judgment was not appealed, may, for the benefit of the accused concerned, apply the appeal ruling also to that part of the case which was not part of the appeal.

**s960**

1.If the Supreme Court concludes that the decision against which the appeal was lodged should be revised it may itself pronounce a new judgment on points of fact, including, pursuant to s945, if the question at issue was the pronouncement of a conviction, cases in which the accused was by a valid jury verdict found guilty of the offence in respect of which his conviction is at issue.

2.If the Supreme Court finds that the decision against which the appeal was lodged must be revised but that the

conditions for the pronouncement of a judgment by the Court on a point of fact are not fulfilled the Supreme Court shall rescind the judgment and, if the grounds for rescission apply also to the proceedings leading to the judgment, shall delete that part or those parts of the proceedings concerned. In connection therewith, if the irregularity concerned is not of such a nature that the High Court should have dismissed the case, it is to be remitted to that Court for re-trial. In so far as it may prove necessary the judgment of the Supreme Court should indicate from which point the new hearing should begin.

3.If an accused in a case in which the Supreme Court intends to pronounce a new judgment on a point of fact is to be convicted according to a provision of criminal law not applied in the judgment being appealed and the application of which the Director of Public Prosecutions has also not raised before the Supreme Court, both parties should exceptionally be given the opportunity to give evidence on the matter. Moreover, if the case is appealed only by the accused any sentence pronounced against him may not be more severe than that imposed by the High Court.

**s961**

1.If re-trial by a lower court is ordered the Director of Public Prosecutions, if he does not withdraw the indictment, must without delay arrange for the case to be brought again before the High Court.

2.Where the High Court considers it necessary it may decide to restart the hearing at an earlier point of the proceedings than that indicated in the order for a re-trial. Before a new judgment is pronounced the parties must always be given the opportunity to give evidence. If the case is appealed only by the accused any sentence pronounced against him may not be more severe than that imposed by the previous judgment, unless the conditions for a new trial are fulfilled.

3.If a new trial is held no juror may be empanelled who served on the jury for the previous trial.

**Part 83****Appeal against judgments pronounced by the Town Court**

.....



**s966**

1. Appeals may not be lodged against a judgment given by a High Court concerning an appeal. The Board of Appeal may allow an appeal against a judgment to be lodged if the case concerns a fundamental principle or if justified by special reasons. An application for the permission must be submitted to the Board of Appeal within 2 weeks of pronouncement of the judgment concerned. If it is the accused who wishes to appeal, time-limits are calculated in accordance with s936(3)(a). The Board of Appeal may, however, exceptionally grant such permission if the application is submitted later, provided it is within one year of pronouncement of the judgment.
2. When a request to lodge an appeal is submitted, the Supreme Court may decide that the execution of the judgment shall be postponed or suspended. This happens in any case when the appeal is allowed.
3. The appeal shall be initiated within two weeks after leave is granted. The other party may also appeal, provided the appeal is initiated within two weeks of this party's being informed of the first party's appeal.
4. Appeals which are initiated in accordance with this paragraph may be based on the grounds set out in s943, s945(1)(3) and s963(1)(1). In addition the rules in Part 82 can be applied to this appeal by analogy.
5. Cases concerning the dissolution of political associations can always be brought before the Supreme Court.

**Part 84****Appeal against judgments pronounced by the Maritime and Commercial Court****s967**

Judgments pronounced by the Maritime and Commercial Court can be appealed to the Supreme Court according to the rules in Part 82, though the rules in s962(2)-(5) apply by analogy. Regarding the grounds for appeal, s966(4) applies.

**Part 85****Interlocutory appeal to a higher Court****s968**

1. Against rulings and other decisions of a High Court or a Town Court which may not – or not for the time being – be the subject of an appeal in accordance with the provisions of ss940 and 962 any person who is the subject of a ruling in a decision may, in so far as there are no specific provisions to the contrary, lodge an interlocutory appeal with a higher court in accordance with the rules listed below. Interlocutory appeals against judgments may be lodged only in the cases referred to in ss1013 and 1016.
2. Against rulings and other decisions pronounced during court hearings or their preliminary proceedings interlocutory appeals may however, other than in cases where the law makes special provision for interlocutory appeals, be lodged only when and in so far as the object of a decision is to adjourn, dismiss or withdraw a case or relates to imprisonment, attachment, search or similar or imposes a penalty or costs or is directed against someone who is not a party to the case.
3. In cases where ordinarily an appeal requires the permission referred to in s966 an interlocutory appeal may be lodged by one party only with the permission of the Board of Appeal. The rules concerning permission to appeal apply by analogy.
4. Interlocutory appeals against rulings and decisions of the Maritime and Commercial Court may be lodged with the Supreme Court in accordance with the aforementioned rules, cf. s967.

**s969**

1. In the absence of any provisions in this Act to the contrary the time-limit for an interlocutory appeal shall be 14 days, starting from the pronouncement of the decision in question; however, the provisions of s949(2) apply by analogy.
2. An interlocutory appeal shall not lead to delay of execution of a decision unless otherwise decided by the Court which pronounced the decision or the Court with which the interlocutory appeal is lodged.
3. An interlocutory appeal against a decision that information should be provided regarding infringement of the confidentiality of communications, cf. s788, or

that material procured in the course of any such infringement should be destroyed, cf. s791, shall have a suspensive effect.

#### **s970**

1. Interlocutory appeals shall be submitted in writing to the Court whose decision is the subject of the appeal or shall be made orally for the records of that Court. If an interlocutory appeal is lodged by the prosecuting authority it shall without delay serve notice thereof on the person provisionally charged and also on any other person considered to be an opposing party in relation to the matter in question unless the prosecuting authority has stated in court in the presence of the person concerned that it intends to lodge such an interlocutory appeal. If an interlocutory appeal is raised by the person provisionally charged or by someone who is not a party in the actual case the Court shall in such circumstances arrange for the prosecuting authority and the person who would otherwise be considered to be the opposing party to be informed of the interlocutory appeal lodged.

2. If the person provisionally charged is in prison and does not have the opportunity to lodge an interlocutory appeal for the records of the Court in accordance with the foregoing provisions he may lodge it for the records of the Town Court within whose jurisdiction the prison is situated or for the records of the Prison Administration (s844); a copy of the record must without delay be provided for the Court whose decision is being appealed. If the person provisionally charged has defence counsel he shall be obliged to assist the person provisionally charged, as provided for in s941(2).

#### **s971**

1. If the Court whose decision is the subject of the interlocutory appeal does not, pursuant to s222 or s178, review its decision in such a way that the purpose of the interlocutory appeal has been achieved it shall without delay transmit the interlocutory appeal to the higher court together with the necessary transcripts and other documents, the latter being certified copies if the originals cannot be sent, and, depending on the circumstances, the comments which the Court may consider necessary.

2. Both the person lodging the interlocutory appeal and the opposing party may submit written statements on the case to the higher court; the same provisions apply to such statements as those given in the last two sentences of s970(1) above on the appeal itself.

#### **s972**

1. The higher court shall not be bound by the assessment of the facts on which the decision appealed against was based. If it considers that further information is necessary it shall, if it does not itself wish to arrange for the provision of that information, issue the appropriate instructions; the provisions in s955 and the third sentence of s965(1) apply here by analogy; if the interlocutory appeal relates to a decision by a Town Court the High Court may immediately issue to it the necessary instructions for provision of further information.

2. Where special grounds call for such action the higher court may exceptionally on request or on its own initiative decide in favour of an oral procedure; in such case defence counsel must always be provided unless the person provisionally charged has himself engaged counsel or the counsel who had previously acted for him is authorised to plead in the higher Court and declares that he is willing to do so.

3. The decision of the Court shall be conveyed in a ruling and notified without delay to all those concerned.

#### **s973**

Interlocutory appeals may not be lodged against a decision given by a High Court concerning an interlocutory appeal. The Board of Appeal may however grant permission for the lodging of such an interlocutory appeal if the interlocutory appeal concerns a fundamental principle or if there are special grounds justifying it. Applications for permission to lodge an interlocutory appeal must be submitted to the Board of Appeal within two weeks of pronouncement of the ruling or, if it is the accused who wishes to lodge an interlocutory appeal and he was not present when the ruling was pronounced, after the ruling has been served on him. The Board may exceptionally grant the permission if the application is submitted later, but not more than one year after pronouncement of the ruling.

#### **s974**

The chairman of the Court may make decisions concerning the preliminary proceedings for the hearing of an interlocutory appeal in the same way as decisions relating to the hearing of an appeal.

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## Georgia

### Constitutional Court

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#### Constitution

adopted on 24 August 1995

- extracts -

#### Chapter III

#### The Parliament of Georgia

...

#### Article 54

1. Any question of the recognition of the authority of a Member of Parliament, or the premature termination of his office, shall be decided by the Parliament. This decision may be appealed to the Constitutional Court.

...

#### Article 63

1. The introduction of a motion to impeach the President of Georgia must be approved by one third of the Members of Parliament, in the circumstances envisaged by Article 75, paragraph 2 of this Constitution. The case shall be submitted to the Supreme Court or the Constitutional Court for judgment.
2. If the Supreme Court confirms that the President has committed the crime alleged or the Constitutional Court confirms the President's violation of the Constitution, the Parliament can vote by a simple majority to put the impeachment of the President to a vote.

...

4. The issue is considered to have lapsed if the Parliament has not made a decision within 30 days. It shall be prohibited to bring the same charge against the President during the following year.

...

#### Article 64

1. The question of the impeachment of the President of the Supreme Court, members of the government, the Prosecutor-General, President of the Chamber of Control and members of the Council of the National
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Bank may be raised by not less than one third of the total number of members of Parliament in cases of violation of the Constitution, high treason or the committal of capital crimes.

2. After receiving a verdict according to the procedure provided for in Article 63, paragraph 2 of the Constitution Parliament shall be authorised to remove the officials listed in paragraph 1 of this article by the vote of the majority of the total members of Parliament. The requirements of Article 63, paragraph 4 extend to such cases as well.

#### **Article 65**

...

4. If a petition or application is made to the Constitutional Court regarding a treaty or international agreement, then its ratification shall be prohibited before a decision is made by the Constitutional Court.

...

### **Chapter IV The President of Georgia**

...

#### **Article 75**

...

2. In the case of violation of the Constitution, of high treason or other criminal offences the Parliament may remove the President of Georgia from office according to the procedures of Article 63 of the Constitution and according to the procedures determined by organic law if:

- a. the violation of the Constitution is confirmed by the Constitutional Court;
- b. elements of high treason or other criminal offences are confirmed by the Supreme Court.

...

### **Chapter V Judicial power**

#### **Article 82**

1. Judicial power shall be exercised by means of constitutional review and the administration of justice and in other forms determined by law.

...

#### **Article 83**

1. The Constitutional Court of Georgia shall be the legal organ of constitutional review. The powers and modes of creation and operation of the Constitutional Court shall be laid down by the Constitution and organic laws.

...

#### **Article 88**

1. The Constitutional Court of Georgia shall exercise judicial power in accordance with the norms of constitutional procedure.

2. The Constitutional Court of Georgia shall consist of nine judges. Three members of the Court shall be appointed by the President, three members shall be elected by the Parliament by a majority of at least three fifths of the total number of deputies and three members shall be appointed by the Supreme Court. The term of office of the members of Constitutional Court shall be ten years. The Constitutional Court shall elect the President of the Court from amongst its members for a period of five years. The election of a President for a second term shall not be permissible.

3. A member of the Constitutional Court may not be a person who has previously held this position.

4. Members of the Constitutional Court must be citizens of Georgia having attained the age of 35 years and having a high level of legal education. The procedures for their nomination, appointment, election and termination of office and other matters of constitutional jurisdiction and activities of the Constitutional Court shall be determined by law.

5. Members of the Constitutional Court shall have personal immunity. The institution of criminal proceedings against a member of the Constitutional Court, his detention or arrest, and the search of his place of work,

car or place of residence without the consent of the President of the Constitutional Court shall be prohibited. In cases where a member is caught in the act of committing a crime this should be immediately reported to the Constitutional Court. If the Constitutional Court does not give its consent the detained or arrested member must be released immediately.

#### Article 89

1. Upon the petition or application of the President, of no less than one fifth of the Members of Parliament, of the courts, of supreme representative bodies of Abkhazia and Adjara, of the public defenders or of a citizen and under the rules established by organic law, the Constitutional Court of Georgia shall:

a. rule on the conformity with the Constitution of laws, the normative acts issued by the President and the normative acts of the supreme bodies of authority of Abkhazia and Adjara;

b. consider conflicts of powers between the state bodies;

c. consider questions of the constitutionality of the creation and activity of political parties;

d. consider disputes connected with the question of the constitutionality of referenda and elections;

e. consider disputes connected with questions of the constitutionality of treaties and international agreements;

f. on the basis of complaints of citizens, consider questions of the constitutionality of normative acts on the issues envisaged by the second chapter of this Constitution;

g. exercise other powers determined by the Constitution and organic laws of Georgia.

2. The decision of the Constitutional Court is final. Normative acts or their parts recognised as unconstitutional shall cease to have effect from the moment the appropriate decision of the Constitutional Court is published.

## Law of Georgia on the Constitutional Court of Georgia

31 January 1996

[As amended by the Law of Georgia of 21 March 1996 on changes and additions in the Law of Georgia on the Constitutional Court of Georgia]

### Chapter One

#### General provisions

#### Article 1

1. The Constitutional Court of Georgia (hereinafter the Constitutional Court) shall be the body of constitutional supervision, which shall guarantee the supremacy of the Constitution of Georgia, constitutional justice, and the protection of the constitutional rights and freedoms of individuals.

2. The jurisdiction of the Constitutional Court shall extend over the entire territory of Georgia.

#### Article 2

The Constitutional Court shall perform its activities on the basis of the principles of legality, co-operation, openness and equality and on the basis of the adversarial principle within the whole term of its authority on the basis of the independence, immunity and the tenure of members of the Constitutional Court.

#### Article 3

The organisation of the Constitutional Court, its jurisdiction and procedure are determined by the Constitution and the present Law. Other procedures of organisation and the administration of constitutional justice of the Constitutional Court are determined by law and the regulations of the Constitutional Court.

#### Article 4

1. Members of the Constitutional Court shall be independent in performing their duties. They shall evaluate actual circumstances and take decisions only in accordance with the Constitution of Georgia. Interference in their activities is impermissible and punishable by law.

2. Expenses connected with the organisation and activities of the Constitutional Court shall be determined by the separate article of the state budget of Georgia. The President of the Constitutional Court shall submit a

draft copy of the expenses connected with the activity of the Constitutional Court in accordance with the procedure determined by law.

3. The State shall be obliged to guarantee to the members of the Constitutional Court working and living conditions which are sufficient to ensure their independence.
4. The State shall guarantee the security of members of the Constitutional Court and their families.

## Chapter Two

### Staff and structure of the Constitutional Court

#### Article 5

The Constitutional Court shall consist of nine judges – members of the Constitutional Court, who shall elect among themselves the President of the Constitutional Court, two Vice-Presidents and the secretary.

#### Article 6

1. Three members of the Court shall be appointed by the President, three members shall be elected by the Parliament of Georgia by not less than three-fifths of the total number of deputies and three members shall be appointed by the Supreme Court.
2. For appointment as a member of the Constitutional Court the candidate's prior written agreement is necessary.

#### Article 7

A member of the Constitutional Court must be a citizen of Georgia who has attained the age of 35 years and has a high level of legal education.

When electing the members of the Constitutional Court of Georgia the President of Georgia, the Parliament and the Supreme Court shall take into consideration the professional experience of a candidate, which should be appropriate to the high status of a member of the Constitutional Court.

*[Second paragraph inserted by the Law of Georgia on changes and additions to the Law of Georgia on the Constitutional Court of Georgia, 21 March 1996.]*

#### Article 7<sup>1</sup>

The President of Georgia shall appoint three members of the Constitutional Court taking into consideration the requirements of Article 7 above. The President of Georgia shall issue a decree appointing the members of the Constitutional Court.

*[Inserted by the Law of Georgia on changes and additions to the Law of Georgia on the Constitutional Court of Georgia, 21 March 1996.]*

#### Article 7<sup>2</sup>

The Parliament of Georgia shall elect three members of the Constitutional Court taking into consideration the requirements of Article 7. The following shall have the right to nominate a candidate for election as a member of the Constitutional Court: the Speaker of the Parliament, a Parliamentary faction and a group of not less than ten members of the Parliament which is not affiliated with any faction.

The Speaker of the Parliament shall acquaint all those present with the list of candidates and their written agreements to be elected as a member of the Constitutional Court before voting commences at the sitting of the Parliament. A separate ballot shall be conducted for each candidate. Voting shall be secret.

The same candidate can be nominated for election as a member of the Constitutional Court only twice.

The three candidates who receive the most votes but not less than three fifths of the total number of members of Parliament shall be considered elected on the basis of the vote.

The Speaker of the Parliament, a Parliamentary faction and a group of not less than ten members of the Parliament shall be authorised to nominate the same candidate for confirmation by the Parliament ten days after the first vote if three candidates participated in the elections and one of them did not receive a sufficient number of votes.

If the first ballot is held on the last day of the Parliamentary session or the election of a candidate is impossible within the remaining period of the session a new ballot shall be held at the first sitting of the next session of Parliament.

If more than three candidates participated in the elections and the necessary number of judges was not chosen a new ballot shall be held. In this case only those three candidates who received the most votes in the first round shall be voted on.

*[Inserted by the Law of Georgia on changes and additions to the Law of Georgia on the Constitutional Court of Georgia, 21 March 1996.]*

### **Article 7<sup>3</sup>**

The Supreme Court of Georgia shall appoint three members of the Constitutional Court of Georgia taking into consideration the requirements of Article 7 above.

The President of the Supreme Court of Georgia shall nominate candidates for appointment to the Constitutional Court at a sitting of the Full Court of the Supreme Court.

Three candidates who receive two thirds of the votes of the members attending the sitting of the Full Court shall be considered appointed on the basis of the ballot.

*[Inserted by the Law of Georgia on changes and additions to the Law of Georgia on the Constitutional Court of Georgia, 21 March 1996.]*

### **Article 8**

The term of office of a member of the Constitutional Court shall be 10 years. A person who has held this position before cannot be a member of the Constitutional Court.

### **Article 9**

1. Members of the Constitutional Court, before taking office, shall take the following oath in the presence of the President of Georgia, the Speaker of the Parliament and the President of the Supreme Court: "I solemnly swear to observe faithfully the duties of members of the Constitutional Court and while executing them to be subject to nothing and no one except the Constitution of Georgia".

2. The authority of a member of the Constitutional Court shall commence from the day of his taking the oath.

### **Article 10**

1. After the oath has been taken by every member of the Constitutional Court, or not later than 10 days after the premature termination of the duties of the President of the Constitutional Court, a sitting of the Constitutional Court shall be held to elect the President of the Constitutional Court for a five-year term. Two Vice-Presidents of the Constitutional Court shall be elected by the same procedure and for the same term.

2. The new President or Vice-President of the Constitutional Court shall be elected not earlier than one month and not later than one week before the expiration of the duties of the previous President or Vice-President of the Constitutional Court.

3. The nomination of a candidate to the office of President of the Constitutional Court shall occur by the agreement of the President of Georgia, the Speaker of the Parliament and the President of the Supreme Court.

4. A candidate for the office of Vice-President of the Constitutional Court shall be nominated by the President of the Constitutional Court.

5. The President and the Vice-Presidents of the Constitutional Court shall be considered elected if supported by not less than five members of the Constitutional Court in a secret ballot.

6. A person who has held this position before cannot be the President or the Vice-President of the Constitutional Court.

7. The premature termination of the duties of the President or of the Constitutional Court shall be permitted in the event of the existence of the grounds listed in Article 16 of the present Law.

### **Article 11**

1. The Constitutional Court shall consist of the Full Court and two chambers.

2. The composition of the Full Court shall include all nine members of the Constitutional Court and its sittings shall be presided over by the President of the Constitutional Court.

3. The composition of each chamber shall include four members of the Constitutional Court. Sittings of the

chambers shall be presided over by the Vice-Presidents of the Constitutional Court.

4. The composition of the chambers shall be confirmed by the Full Court upon the submission of the President of the Constitutional Court. Members of the Constitutional Court appointed by the President of Georgia, by the Parliament and the Supreme Court should be represented in the chambers as equally as possible.

5. The staff of the chambers should be renewed within 10 days after the election of the new President of the Constitutional Court.

#### **Article 12**

1. The President of the Constitutional Court shall:

a. submit the regulations of the Constitutional Court to the Full Court for confirmation. Any member of the Constitutional Court has the right to submit requests for changes and additions to the regulations;

b. distribute cases in accordance with the procedure established by the regulations of the Constitutional Court;

c. submit to the Full Court candidates for the offices of Vice-President and Secretary of Constitutional Court;

d. convene the Full Court in accordance with the procedure established by the regulations of the Constitutional Court, preside over its sittings, sign judgments, rulings, conclusions and other decisions of the sittings adopted at the Full Court;

e. manage the activities of the staff of the Constitutional Court, and have the right to appoint and dismiss the employees according to legislation;

f. manage the budget allocation of the Constitutional Court;

g. exercise other powers envisaged by legislation and regulations.

2. Once a year the President of the Constitutional Court shall inform the President of Georgia, the Parliament and the Supreme Court of the position of constitutional justice in Georgia.

#### **Article 13**

1. A Vice-President of the Constitutional Court shall preside at the sessions of a chamber and perform certain functions of the President of the Constitutional Court at the President's request. If the President is absent or unable to perform the duties of the office, these duties by his order, shall be performed by one of the Vice-Presidents; in the absence of such an order these duties shall be performed by the eldest Vice-President.

2. If the Vice-President of the Constitutional Court temporarily performing duties of the President is unable to perform his own functions then these shall be performed by the eldest member of the appropriate chamber.

#### **Article 14**

1. The Secretary of the Constitutional Court shall be elected by the Full Court from the members of the Constitutional Court for a five-year term.

2. Besides the powers held as a member of the Constitutional Court the Secretary of the Constitutional Court shall:

a. prepare the sittings of the Full Court and chambers;

b. organise the execution and procedure for the recording of the sittings of the Full Court and the chambers;

c. sign the records of the Constitutional Court in accordance with the procedure set down in the regulations of the Constitutional Court;

d. take measures to ensure the execution of decisions of the Constitutional Court;

e. foster the development of a system for the processing of necessary information by computer;

f. organise the sending of official documentation of the Constitutional Court.



**Article 15**

1. A member of the Constitutional Court shall have personal immunity. A member of the Constitutional Court shall not be brought before a criminal court, detained or arrested, nor shall his place of residence, car, place of work or his person be subject to search, without the consent of the Constitutional Court, except where he is caught in the act of committing a crime, in which case the Constitutional Court should be immediately notified. If the Constitutional Court does not give its consent for the detention or arrest, a detained or arrested member must be released immediately.
2. When the Constitutional Court gives its consent for bringing a member of the Constitutional Court before the criminal court or for his detention or arrest, the power of that member of the Constitutional Court shall be suspended until a final decision is adopted by the court; if a verdict of "not guilty" is reached or the case against the member is stopped on the basis of rehabilitation the powers of the member of the Constitutional Court shall be restored from the day on which the final decision is reached.
3. The decision provided for in the first paragraph of this article shall be considered adopted if supported by more than half of the participants in the sitting of the Full Court.

**Article 16**

1. The term of office of a member of the Constitutional Court can be terminated prematurely by a decision of the Constitutional Court if:
  - a. he is unable to perform his duties for 6 months in succession;
  - b. a final verdict of guilty is reached against him;
  - c. he reveals professional secrets;
  - d. he holds an occupation incompatible with the statute of a member of the Constitutional Court or performs activities forbidden by law;
  - e. he loses citizenship of Georgia;
  - f. the Court recognises him as incapacitated;
  - g. he dies;

h. he resigns.

2. The decision shall be considered to be adopted if it is supported by more than half of the participants in a sitting of the Full Court of the Constitutional Court.
3. The decision shall be communicated to the President, the Parliament and the Supreme Court of Georgia.
4. A new member of the Constitutional Court shall be appointed not earlier than one month and not later than one week before the expiration of the term of office of the member of the Constitutional Court in question.

**Article 17**

1. The office of a member of the Constitutional Court shall be incompatible with any other occupation or activities undertaken for remuneration, except scientific and pedagogical activities. A member of the Constitutional Court cannot be a member of a political party, or participate in political activities.
2. A member of the Constitutional Court must resign from other occupations and cease activities forbidden by this article from the day on which he takes the oath.

**Article 18**

If the term of office of a member of the Constitutional Court expires while he is participating in the examination of a case, his term of office shall be prolonged until a final decision on the case has been reached.

**Chapter Three****Authority of the Constitutional Court****Article 19**

The Constitutional Court shall be competent to discuss and decide, on the basis of a petition or application:

- a. the question of the conformity of the laws and regulations of the Georgian Parliament and normative acts of the President of Georgia and of the Abkhazian and Adjarian supreme state bodies with the Constitution of Georgia;
- b. conflicts of powers between state bodies;
- c. questions on the formation of political associations of citizens and on the constitutionality of their activities;

- d. disputes concerning referenda and the constitutionality of elections;
- e. questions on the constitutionality of normative acts adopted in connection with the issues dealt with in Chapter II of the Constitution of Georgia\*;
- f. questions on the constitutionality of international treaties and agreements;
- g. questions on the recognition of the powers of a member of the Parliament of Georgia, or on the premature termination of these powers;
- h. questions on the violation of the Constitution of Georgia by the President of Georgia, the President of the Supreme Court of Georgia, officials, the Procurator General, the President of the Chamber of Control and members of the Council of the National Bank.

[\* *Citizenship of Georgia – Rights and Freedoms of the Individual.* – Ed.]

#### Article 20

1. If, while considering a specific case, an ordinary court concludes that there are sufficient grounds for considering the law or other normative acts applied by the court in its decision on the case, to be fully or partly inconsistent with the Constitution, it shall suspend its examination of the case and apply to the Constitutional Court. The examination of the case shall be resumed after a judgment on this issue has been reached by the Constitutional Court.
2. The recognition of a law or other normative act as unconstitutional shall not lead to the invalidation of rulings and judgments of the Court adopted earlier on the basis of the act in question, it shall only cause the suspension of their execution in accordance with the procedure established by procedural legislation.

#### Article 21

1. The questions listed in Article 19 points a, d, f and h and Article 20 of the present Law shall be examined by the Full Court of the Constitutional Court.
2. The questions listed in Article 19 points b, c, e and g of the present Law shall be examined by a chamber of the Constitutional Court.
3. If, when deciding the case, the votes of the members of the Full Court or the chamber are equally divided, the petition or application shall be considered undecided.

4. A member of the Constitutional Court participating in the examination of a case shall have no right to abstain from voting.

5. While examining the case and reaching its judgment the chamber shall act as the Constitutional Court.

#### Article 22

The time allowed for the examination of the petition or application should not exceed 30 days from the day on which the Constitutional Court begins its examination of the case. In a particular case the time allowed for the examination may be extended by not more than 30 days, by the Full Court of the Constitutional Court.

#### Article 23

1. If a petition or application concerning the issues envisaged in Article 19 points a and e and Article 20 of the present Law is allowed this shall cause the normative act or part of it to be abrogated as unconstitutional from the moment the corresponding judgment of the Constitutional Court is published.
2. If a petition on the issue specified in Article 19 point b of the present Law is allowed this shall cause the normative act violating the competence to be abrogated from the moment of its enforcement.
3. If a petition on the issue specified in Article 19 point c of the present Law is allowed this shall render invalid the act of registration of the citizens' political association.
4. If a petition on the issue specified in Article 19 point d of the present Law is allowed this shall cause the holding of elections or of a referendum on the issue submitted for referendum to be disallowed and shall invalidate the results of any such election or referendum.
5. If a petition on the issue specified in Article 19 point f of the present Law is allowed this shall cause the international treaty or agreement in question or its separate provisions for Georgia to be recognised as invalid.
6. If a petition on the issue specified in Article 19 point g of the present Law is allowed this shall cause the relevant decision of the Parliament of Georgia to be reversed and from the day on which the judgment of the Constitutional Court is published shall restore the powers of a member of the Parliament, if they were suspended, and shall cause the premature termination

of his powers, if his powers were not suspended by the Parliament of Georgia.

7. On the issue specified in Article 19 point h of the present Law the Constitutional Court shall determine the constitutionality of a person's actions as provided for by Articles 63 and 64 of the Constitution.

#### **Article 24**

1. Every state body, legal person and individual, political and public association of citizens and local self-government body shall be obliged to comply with the requirements connected with the decision on a case by the Constitutional Court and its members in connection with their powers.
2. The Constitutional Court and its members shall be competent to collect information connected with the decision on the case from every state body, legal person and individual, scientific institution and information centre and to summon specialists in accordance with the regulations for carrying out expert and consultative work.
3. Failure to comply with such requirements or preventing them from being fulfilled shall be punishable by law on the basis of the authority of the Constitutional Court and its members.

#### **Article 25**

1. The decision of the Constitutional Court shall be final and failure to execute it shall be punishable by law.
2. A normative act or the part of one recognised as unconstitutional shall cease to have legal effect from the day on which the appropriate decision of the Constitutional Court is published.
3. If the Constitutional Court considers that the effects of the normative act are causing irreparable harm to one party it shall suspend the action of the disputed act before taking a final decision.

#### **Article 26**

The Constitutional Court shall have no right to decide on the conformity of the whole law or other normative act with the Constitution if the petitioner or applicant requests the recognition of only a certain provision or provisions of the law or other normative act as unconstitutional.

### **Chapter Four**

#### **General rules for the consideration and deciding of cases before the Constitutional Court**

#### **Article 27**

1. Cases shall be considered at open sittings of the Constitutional Court.
2. A sitting of the Constitutional Court or a part of it may be closed to the public on the initiative of the Court or by agreement of the parties for the protection of personal information or of professional, commercial or state secrets. Witnesses, experts and interpreters may be present at a closed sitting in the case of necessity. The Constitutional Court may also grant the right to be present at a closed sitting to other persons if the parties so agree.
3. A decision regarding the hearing of a case at a closed sitting shall be adopted by the Constitutional Court in the judges' conference room.
4. Persons under the age of 16 years shall not be admitted to a Court sitting unless they are witnesses; nor shall armed persons other than those protecting the security of the Court be admitted, and the latter shall be admitted only with the permission of the President of the Constitutional Court.

5. The decision of the Constitutional Court shall be announced publicly.

#### **Article 28**

Proceedings before the Constitutional Court shall be conducted in Georgian. The Court shall be obliged to guarantee an interpreter to a participant in a case who has no possession of the official language.

#### **Article 29**

The parties shall have the right to familiarise themselves with the case, make transcripts and copies, provide evidence, participate in the investigation of evidence, put questions to witnesses, experts and specialists, bring solicitations before the Court, give oral or written explanations, file their own submissions, express their opinions concerning every issue raised during the examination of the case and submit arguments against the interventions, appeals and submissions of the other party.

**Article 30**

- 1.The parties shall have the right to entrust the protection of their interests to a lawyer or other person having a high level of legal education at every stage of the proceedings.
- 2.The parties shall have the right to entrust the exercise of their powers to their agent or representative at every stage of the proceedings.

**Article 31**

The basis for invoking the jurisdiction of the Constitutional Court shall be the filing of a written petition or application with the Constitutional Court.

A petition or application should be well supported with appropriate arguments. The petition or application must include the evidence which confirms the grounds on which the opinion of the petitioner or applicant is based.

**Article 32**

The administration of a warning to witnesses to be honest at the Constitutional Court, the taking of measures against those who violate an order at the Court sitting and the examination of evidence shall occur in accordance with the procedure established by law.

**Article 33**

- 1.The President of Georgia, and not less than one fifth of the members of the Georgian Parliament shall have the right to introduce a petition before the Constitutional Court on the conformity with the Constitution of Georgian laws, the regulations of the Georgian Parliament, normative acts of the President of Georgia, Supreme State Bodies of Abkhazia and Adjara and normative acts adopted by appropriate bodies before the Constitution of Georgia entered into force.
- 2.The body against whose normative act the petition is submitted shall be the respondent in matters listed in paragraph 1 above and in cases where the petition deals with a normative act adopted before the entry into force of the Constitution, the appropriate successor body adopting this act shall be the respondent and in cases where no such body exists the President of Georgia or the Parliament by the decision of the Constitutional Court shall be the respondent.

**Article 34**

- 1.The President of Georgia shall have the right to submit a petition to the Constitutional Court concerning the distribution of powers among the state bodies, if he considers that his sphere of competence is being infringed or the constitutional powers of state bodies are being infringed; not less than one fifth of the members of the Parliament of Georgia shall have the right to submit a petition to the Constitutional Court, if they consider that the constitutional powers of the Parliament of Georgia or another state body are being infringed; state bodies listed in Article 89 of the Constitution of Georgia shall also have such a right if they consider that their constitutional powers are being infringed.
- 2.In the cases listed in paragraph 1 of this article, the state body whose normative act in the petitioner's opinion caused the infringement of the petitioner's constitutional powers shall be the respondent.
- 3.As soon as the petition or application on competence is received, the Constitutional Court shall send a copy of the petition or application to the President of Georgia, the Parliament and the Supreme Representative Bodies of Abkhazia and Adjara. If within 15 days of delivery of the copy, one of these bodies declares that allowing the petition or application would cause an infringement of its powers the Constitutional Court shall be obliged to include the body as a party to the case.

**Article 35**

- 1.The President of Georgia, not less than one fifth of the members of the Georgian Parliament and the supreme state bodies of Abkhazia and Adjara shall have the right to introduce a petition at the Constitutional Court on the formation of political associations of citizens and on the constitutionality of their activities.
- 2.In the cases provided for in paragraph 1 above the political associations of citizens and the body which registered them shall be the respondents.

**Article 36**

- 1.The following shall have the right to submit a petition to the Constitutional Court on the constitutionality of holding a referendum:
  - a.not less than one fifth of the members of the Parliament of Georgia if the President of Georgia on his own

initiative or at the request of electors has called or in spite of the request of Georgian Parliament has not called a referendum;

- b.the public defender of Georgia, if despite the electors' request a referendum is not called;
- c.not less than one fifth of the members of the Georgian Parliament and the Public Defender (Ombudsman) of Georgia, if they consider that the holding of a referendum contradicts the requirements of Article 74.2 of the Constitution of Georgia.

2.In the case specified in paragraph 1 of this article the President of Georgia shall be the respondent.

#### **Article 37**

1.The following shall have the right to introduce a petition before the Constitutional Court concerning elections:

- a.not less than one fifth of the members of the Parliament of Georgia if they consider the election of the President of Georgia to be being held in violation of the requirements of Article 70 of the Constitution of Georgia;
- b.the President of Georgia or not less than one fifth of the members of the Georgian Parliament if they consider that the elections of the Georgian Parliament have been called or are being held in violation of Article 49 paragraphs 1 and 2 and Article 50 paragraphs 1 to 4 of the Constitution of Georgia.

2.In the cases provided for by the paragraph 1 point a above the central electoral commission of Georgia shall be the respondent and in the cases listed in point b above the President of Georgia or the central electoral commission of Georgia shall be the respondent.

#### **Article 38**

1.The President of Georgia and not less than one fifth of the members of the Georgian Parliament shall have the right to introduce a petition on the constitutionality of international treaties and agreements or their individual provisions.

2.The introduction of a petition concerning the conformity with the Constitution of an international treaty or agreement which is subject to ratification, or of particular provisions thereof, shall be possible before their ratification.

3.The introduction of a petition concerning the conformity with the Constitution of an international treaty or agreement which was ratified before the recognition of the powers of the first Constitutional Court, or of particular provisions thereof, shall also be possible after their ratification.

4.In the case specified in paragraph 3 above the introduction of the petition shall be possible within 3 months after the recognition of the authority of the first Constitutional Court. The submission for discussion by the Parliament of Georgia of the issue of the denunciation of a treaty provided for in paragraph 3 above shall suspend the running of the time-limit.

5.The introduction of a petition on the conformity with the Constitution of international treaties or agreements which have entered into force, or of particular provisions thereof, shall be possible after the Parliament refuses to denounce or abrogate them and also 30 days after the question of their denunciation or abrogation has been raised before the Parliament, if within this period the Parliament of Georgia has not decided this issue.

6.In the case specified in paragraph 2 above the body or the official concluding the treaty or the agreement shall be the respondent and in the cases listed in paragraphs 3 and 5 the Parliament of Georgia shall be the respondent.

#### **Article 39**

1.The Public Defender of Georgia and individuals of Georgia and other states shall have the right to submit a petition to the Constitutional Court on the constitutionality of normative acts or their provisions, if they consider that rights and freedoms recognised in Chapter II of the Georgian Constitution have been or are being violated.

2.In the cases provided for in paragraph 1 above, the body whose act, in the petitioner's opinion, violated rights and freedoms recognised in Chapter II of the Georgian Constitution shall be the respondent.

**Article 40**

- 1.The President of Georgia, not less than one fifth of the members of the Georgian Parliament and a citizen whose powers as of a member of the Parliament have not been recognised or have been prematurely terminated by the Parliament of Georgia shall have the right to submit a petition on the constitutionality of the decision of the Parliament on the recognition of his powers as a member of the Parliament or on the premature termination of his office.
- 2.In the cases listed in paragraph 1 above the Parliament of Georgia shall be the respondent.
- 3.The time-limit for the submission of a petition should not exceed two weeks from the entry into force of the relevant decision of the Parliament of Georgia.

**Article 41**

- 1.Not less than one third of the total number of members of the Parliament of Georgia shall have the right to introduce an application to the Constitutional Court for the adoption of a conclusion on the violation of the Constitution by the President of Georgia, the President of the Supreme Court of Georgia, officials, the Procurator General, the President of the Chamber of Control and members of the Council of the National Bank.
- 2.The Constitutional Court shall be authorised to summon appropriate officials while preparing its conclusion on this issue.
- 3.The time-limit for an application concerning the violation of the Constitution of Georgia should not exceed one month from the day when the violation of the Constitution by the above-mentioned officials became known to the Parliament of Georgia.

**Article 42**

In the cases provided for under Article 20 of the present Law, a Court considering such a case shall have the right to introduce an application to the Constitutional Court. In such a case the Constitutional Court shall examine the case in the absence of the applicant and the body that issued the Act that became the subject of the dispute.

**Article 43**

- 1.The decisions issued by the Constitutional Court shall be judgments, rulings and conclusions.
- 2.Every member of the Constitutional Court participating in the examination of a case shall sign the judgment, ruling or conclusion of the Constitutional Court.
- 3.Documents of the Constitutional Court not connected with the examination of the case shall be signed by the President and the Secretary of the Constitutional Court.
- 4.In general, judgments on a case by the Constitutional Court shall be delivered in written form.
- 5.The question of the admissibility of a petition or application shall be decided by a written ruling of the Constitutional Court.
- 6.The question of the violation of the Constitution by the President of Georgia, the President of the Supreme Court, officials, the Procurator General, the President of the Chamber of Control and members of the Council of the National Bank shall be decided by a written conclusion by the Constitutional Court.
- 7.The judgments, rulings and conclusions of the Constitutional Court shall include adequate reasons.
- 8.The judgments, rulings and conclusions of the Constitutional Court are final and shall not be subject to appeal or revision.
- 9.A ruling by the Constitutional Court that a petition or application is inadmissible shall exclude the admissibility of another petition or application with the same subject and the same motives and of another petition or application connected with the same subject and motives.

**Article 44**

- 1.The Full Court of the Constitutional Court shall be authorised to adopt a decision if its sitting is attended by not less than six members.
- 2.A petition or application shall be considered to have been allowed if it is supported by more than half of the participants in the sitting of the Full Court. The President of the Full Court shall have the right to one vote.

**Article 45**

- 1.A chamber of the Constitutional Court shall be authorised to examine the petition or application and take a decision if its sitting is attended by not less than three members.
- 2.The petition or application shall be considered to have been allowed if it is supported by more than half of the participants in the sitting of the chamber.

**Article 46**

- 1.A party shall be authorised to raise a question before the Constitutional Court challenging a member of the Constitutional Court participating in the examination of the case, if:
  - a.a member of the Constitutional Court is a close relative of a party or of its representative;
  - b.a member of the Constitutional Court has a direct or indirect interest in the result of the case or there are other circumstances which raise doubts as to the impartiality of a member of the Constitutional Court.
- 2.Where the grounds provided for by this article exist a member of the Constitutional Court shall be authorised to withdraw from participation in the examination of the case.
- 3.The statement on the exclusion of a member of the Constitutional Court shall be considered approved if it is supported by more than half of the members participating in the sitting of the Constitutional Court.

**Article 47**

- 1.A member of the Constitutional Court participating in the examination of a case shall have the right to form a dissenting opinion while reaching a decision, which should be expressed in written form.
- 2.The dissenting opinion of a member of the Constitutional Court shall be included in the record of the sitting of the Constitutional Court and upon the request of its author shall be published in the press together with the decision of the Constitutional Court.
- 3.The decision of the Constitutional Court together with the dissenting opinion shall be published in full in the official publication of the Constitutional Court.

**Article 48**

A member of the Constitutional Court shall not be authorised to reveal the details of the meeting of the Constitutional Court during the adoption of a decision nor the positions held by the members of the Constitutional Court during voting.

**Article 49**

The compensation of the expenses outlaid during legal proceedings before the Constitutional Court shall be made from the state budget.

**Article 50**

- 1.State taxes shall be imposed on:
  - a.constitutional petitions and applications;
  - b.the repeated delivery of rulings and judgments of the Constitutional Court.
- 2.The payment of state taxes shall be made in accordance with the law.
- 3.The Constitutional Court shall have no right to release any person from paying the state taxes or to increase or lower their amount.

**Article 51**

The Secretary of the Constitutional Court shall supervise the execution of the decisions of the Constitutional Court and shall report once a month to the Full Court of the Constitutional Court on the situation connected with their execution.

**Article 52**

A member of the Constitutional Court while examining a case in the Constitutional Court shall be dressed in particular attire; the style of this attire shall be established by the regulations of the Constitutional Court.

**Article 53**

- 1.The Constitutional Court shall possess a great seal which shall include the coat of arms and the name of the Court.
- 2.The seat of the Constitutional Court shall be in the town of Mtskheta.

## Law of Georgia on Constitutional Proceedings

21 March 1996

### Chapter One

#### Principles of constitutional proceedings

##### Article 1

1. Constitutional proceedings before the Court shall be conducted in conformity with the equality of the parties and the adversarial principle.
2. Individuals and bodies listed in paragraph 1 of Articles 33, 34, 35, 36, 37, 38, 39, 40 and 41 and in Article 42 of Georgia's Law on the Constitutional Court of Georgia shall have equal rights to address the Constitutional Court directly.
3. The parties shall enjoy equal rights and opportunities to prove their claims and to deny or reject the claims, arguments and evidence of the other party.

##### Article 2

1. Cases shall be considered at open sittings of the Constitutional Court.
2. A sitting of the Constitutional Court or a part of it may be closed to the public on the initiative of the Court or upon the application of the parties for the protection of state, personal, professional and commercial secrets. Witnesses, experts and interpreters may be present at a closed sitting in the case of necessity. The Constitutional Court may also grant the right to be present at a closed sitting to other persons upon the application of the parties.
3. A decision regarding the hearing of a case at a closed sitting shall be adopted by the Constitutional Court in the judges' conference room.
4. Persons under the age of 16 years shall not be admitted to a Court sitting unless they are witnesses; nor shall armed persons other than those protecting the security of the Court be admitted, and the latter shall be admitted only with the permission of the President of the Constitutional Court.

5. Radio, television, audio or video recording at a sitting of the Court shall be possible only with the permission of the Court considering a specific case.

##### Article 3

Proceedings before the Constitutional Court shall be conducted in Georgian. The Court shall be obliged to guarantee an interpreter to a participant in a case who has no possession of the official language of proceedings.

##### Article 4

1. Only the judges participating directly in the examination of the case shall be authorised to take the judgment. If any of the judges is changed the examination of the case shall start anew.
2. The removal of any judge participating in the examination of a case shall not prevent further consideration of the case, if the number of judges left forms a quorum.

##### Article 5

The Court's sitting shall be conducted orally. The Court shall be obliged to hear the explanations and submissions of the participants in the proceedings, as well as the testimony of witnesses, experts and specialists, and to publish official copies of the records of the case and of documents presented by participants in the proceedings.

##### Article 6

1. The Court's sitting, and meetings of the judges on working days shall be conducted without a break.
2. The Court shall be authorised to postpone or suspend its examination of the case, if the summoning or examination of additional witnesses and specialists is necessary, additional evidence is required or it is submitted that there are other circumstances preventing the consideration of the case. The examination of the case shall resume from the point at which it was stopped.
3. The time-limit for the consideration of any case shall be as laid down in Article 22 of Georgia's Law on the Constitutional Court of Georgia. This Article does not provide for a time-limit to be established by the present Law for the preparation of the case for consideration.
4. A judge of the Constitutional Court participating in the examination of a case shall not be authorised to take part in the examination of other cases before the



examination of a postponed or suspended case has been completed.

#### **Article 7**

1. The Court shall take its decision in the judges' conference room in an open vote. During the deliberations and the taking of the decision only those judges who have participated in the examination of the case may be present in the conference room.
2. A judge participating in the case shall have no right to abstain from voting.
3. A member of the Constitutional Court participating in the examination of a case shall have the right to form a dissenting opinion while reaching a decision, which should be expressed in written form.
4. The dissenting opinion of a member of the Constitutional Court shall be included in the record of the sitting of the Constitutional Court and upon the request of its author shall be published in the press together with the decision of the Constitutional Court.
5. The decision of the Constitutional Court together with the dissenting opinion shall be published in full in the official publication of the Constitutional Court.

#### **Article 8**

1. No one shall have the right to require an account or explanation of a specific case from a member of the Constitutional Court.
2. A member of the Constitutional Court shall not be authorised:
  - a. to express his opinion or provide consultation to anyone on the conformity with the Constitution of those laws or other normative acts which have been submitted to the Court for examination, before the review of a case begins or outside the Court's sitting;
  - b. to reveal details of the discussions held while the Constitutional Court was deliberating or the position held by a member of the Constitutional Court during voting.

#### **Article 9**

The right of the Constitutional Court to consider and decide the case jointly shall be determined by Articles 44 and 45 of Georgia's Law on the Constitutional Court of Georgia.

### **Chapter Two**

#### **Judgments and participants in constitutional proceedings**

#### **Article 10**

1. The matters listed in Article 19 paragraph 1 and Article 20 paragraph 1 of Georgia's Law on the Constitutional Court of Georgia shall be judged by the Constitutional Court of Georgia.
2. The matters to be judged respectively by the Full Court and the chambers of the Constitutional Court shall be as laid down in Article 21 paragraphs 1 and 2 of Georgia's Law on the Constitutional Court of Georgia.

#### **Article 11**

1. The Constitutional Court shall not be competent to judge the conformity of the whole law or other normative act with the Constitution if the petitioner or applicant requests recognition of only a certain provision or provisions of the law or other normative act as unconstitutional.
2. If the petitioner or applicant requires a decision on several issues, part of which should be judged in the Constitutional Court and the other part of which is within the competence of another body, the Constitutional Court shall consider only those issues which are within its competence according to the Law on the Constitutional Court of Georgia.

#### **Article 12**

1. The participants in constitutional proceedings shall be:
  - a. parties, individuals and bodies which are considered either as petitioners or as respondents according to Articles 33, 34, 35, 36, 37, 38, 39 and 40 of the Law on the Constitutional Court of Georgia;
  - b. representatives of the parties who are authorised to act on behalf of the parties in accordance with the procedure laid down in the law on civil procedure;
  - c. defenders of the parties' interests, lawyers or other persons having a high level of legal education who participate in the legal proceedings together with the parties or their representatives.
2. The Constitutional Court shall consider the issues provided for by Article 19 point h and by Article 20 of Georgia's

Law on the Constitutional Court of Georgia without the participation of the parties and their representatives. The Constitutional Court shall be authorised to summon the appropriate officials and hear their explanations, but shall not recognise them as parties, while preparing their conclusion on the issues listed in Article 19 point h.

#### Article 13

1. The participants in constitutional proceedings shall have equal rights to familiarise themselves with the materials of the case, make transcripts and copies, participate in the investigation of evidence, provide evidence, put questions to one another, witnesses, experts and specialists, appeal to the Constitutional Court, give oral or written explanations, file their own submissions and express opinions on all the issues raised during the Court's consideration of the matter, submit arguments against the interventions, appeals and submissions of the other party, and submit concluding statements.
2. The petitioner shall be authorised to change the subject and grounds of the initial request and withdraw his claim. The withdrawal of a claim, the abrogation of the disputed act or its recognition as invalid during the examination of the case shall cause the suspension of the case before the Constitutional Court.
3. The applicant may withdraw the application and request the suspension of the case before the Constitutional Court at any stage of constitutional proceedings on questions specified in Article 19 point h of Georgia's Law on the Constitutional Court of Georgia. For this purpose he/she should address the Constitutional Court, which shall be obliged to satisfy the request.
4. A court submitting a case to the Constitutional Court shall not be authorised to withdraw the application and request the suspension of the case before the Constitutional Court.
5. A respondent shall be authorised to recognise a petition as fully or partly valid at any stage of the constitutional proceedings. The recognition of the petition as valid by a defendant shall not cause the suspension of the case before the Constitutional Court.

#### Article 14

The participants in constitutional proceedings shall be obliged to exercise their rights in good faith. Deliberate supplying of the Constitutional Court with forged documents shall expose participants to liability as provided for by law.

### Chapter Three

#### Initiation of constitutional proceedings and admissibility of cases

#### Article 15

1. The submission of a petition or application to the Constitutional Court shall be considered as the basis for initiating a case before the Constitutional Court.
2. An application shall be introduced only on the issues provided for in Article 19 point h and Article 20 of the Law on the Constitutional Court of Georgia and a petition shall be introduced on all other issues.

#### Article 16

1. A petition or application should include an indication of:
  - a. the name of the Constitutional Court;
  - b. the name and address of the petitioner or applicant as well as that of the respondent;
  - c. the name of any disputed act and the body which issued it, as well as other details of the disputed act;
  - d. the evidence which, in the opinion of the petitioner or applicant, proves the importance of the petition or application;
  - e. the provisions of the Constitution of Georgia which in the opinion of the petitioner or applicant are violated by, or with which the disputed act is not in conformity;
  - f. the essence of the claim;
  - g. the provisions of the Constitution of Georgia, the Law on the Constitutional Court of Georgia, and the present Law, which give the petitioner or the applicant the right to introduce the petition or application before the Constitutional Court;
  - h. a list of the documents attached to the petition or application and a list of the persons who should be summoned before the Constitutional Court in the opinion of the petitioner or applicant and the addresses of these persons.
2. The petition or application shall necessarily include:

- a.the text of the disputed normative act;
  - b.a document proving the authority to act of representatives of the petitioner or applicant;
  - c.the certificate of a banking institution for the payment of the state tax.
- 3.The petition or application as well as the attached documents should be drafted in the official language of the proceedings.

#### **Article 17**

- 1.The petition or application introduced in the Constitutional Court shall be referred to one of the chambers for a ruling on the issue of the admissibility of the case in accordance with the procedure established by the regulations of the Constitutional Court.
- 2.The chamber shall be obliged to consider and decide on the issue of the admissibility of the petition or application at a procedural sitting within a time-limit of 7 days after receiving the petition or application.
- 3.One of the members of the chamber shall act as rapporteur on the case to the chamber.

#### **Article 18**

The petition or application shall be deemed inadmissible if:

- a.either by its form or by its contents it does not conform with the requirements set down in Article 16 of the present Law;
- b.it is not submitted by an authorised individual or body (subject);
- c.the disputed issue indicated in it is not within the jurisdiction of the Constitutional Court;
- d.the disputed issue indicated in it has already been decided by the Constitutional Court;
- e.the disputed issue indicated in it is not governed by the Constitution of Georgia.

#### **Article 19**

A ruling that a petition or application is inadmissible for the reasons indicated in clauses c, d and e of Article 18 above shall exclude the acceptance in the future of a petition or application on the same subject and the same grounds.

#### **Article 20**

The Constitutional Court shall be obliged to summon the petitioner, his/her representative and lawyer to the procedural sitting and hear their explanations of the issues provided for by Article 18 of the present Law, if they address the Constitutional Court in writing.

#### **Article 21**

A ruling on the admissibility of a petition or application shall include an indication of:

- a.the time and place at which the ruling was made;
- b.the name of the Constitutional Court, its composition and the secretary of the sitting;
- c.the participants in the case and the subject of the dispute;
- d.the issue on which a decision should be taken;
- e.the motives and provisions of the Constitution of Georgia, the Law on the Constitutional Court of Georgia and the present Law on the basis of which the Court deemed the petition or application admissible or inadmissible;
- f.the ruling of the Constitutional Court on the admissibility or inadmissibility of the petition or application;
- g.the date of the consideration of the substance of the case.  
The consideration of the substance of the case should start not later than the fifteenth day from the day of taking the ruling;
- h.the name of the Constitutional Court considering the substance of the case.

#### **Article 22**

The Constitutional Court shall make its ruling in the judges' conference room in an open vote. The President of the sitting shall announce the ruling in the courtroom.

#### **Article 23**

A record of the sitting of the Constitutional Court on procedural matters shall be drawn up in accordance with the rules set down in Article 34 of the present Law.

## Chapter Four

### Examination of the substance of and decision on the case

#### Article 24

1. The Full Court of the Constitutional Court shall examine the substance of the case at a sitting of the Full Court, which shall be presided over by the President or the acting President of the Constitutional Court.
2. The Full Court shall be authorised to consider the substance of the case and make a decision if its sitting is attended by at least 6 members.
3. The chamber of the Constitutional Court shall examine the substance of the case at a sitting of the chamber, which shall be presided over by the President or the acting President of the chamber.
4. The chamber shall be authorised to consider the substance of the case and make a decision if its sitting is attended by at least 3 members.

#### Article 25

1. Before starting its examination of the substance of the case the President of the sitting shall:
  - a. open the sitting of the Constitutional Court of Georgia and announce the case which is to be examined substantively;
  - b. verify that a quorum of judges is present and announce the secretary of the sitting responsible for holding the sitting;
  - c. verify the authority of the parties to act;
  - d. determine the reasons for the presence and absence of participants, witnesses, experts and specialists involved in the proceedings;
  - e. announce the composition of the Constitutional Court examining the case and the secretary of the sitting;
  - f. explain to the participants in the proceedings their rights and duties as set down by Georgia's Law on the Constitutional Court of Georgia and the present Law;
  - g. determine whether the participants in the proceedings desire additional witnesses, experts and specialists

to be summoned or whether additional evidence is required. The Court shall decide upon the submissions received on these issues in the courtroom by a majority of votes;

- h. announce the opening of the examination of the substance of the case.
2. Parties may challenge the participation of a member, expert, specialist or interpreter of the Court participating in the examination of the case before the Constitutional Court if:
  - a. the member, expert, specialist or interpreter is a close relative either of a party or of its representative;
  - b. a member, expert, specialist or interpreter has a direct or indirect interest in the results of the case, or if there are other circumstances which raise doubts as to the impartiality of a member of the Constitutional Court.

A member, expert, specialist or interpreter of the Constitutional Court shall be authorised to withdraw from participation in the examination of a case where the grounds provided for by this paragraph exist.

The Constitutional Court shall decide the issue of a challenge in accordance with the procedure established by procedural legislation.

#### Article 26

1. The consideration of the substance of a case shall begin with the delivery of a report on the case by the rapporteur judge, who shall be a member of the Constitutional Court; the rapporteur shall be obliged to:
  - report on the grounds for the initiation of the Constitutional Court's examination of the case as well as the grounds for beginning the examination of the substance of the case in the Constitutional Court, and the contents of the materials existing on the case;
  - answer questions of the members of the Constitutional Court participating in the examination of the case.
2. After hearing the report on the case, the Constitutional Court shall hear the petitioner's arguments first and then those of the respondent. A member of the Constitutional Court participating in the consideration of the case shall be authorised to put questions to the parties and their representatives.

3. After hearing the parties the Constitutional Court shall hear the testimony of the witnesses, experts and specialists, publish affidavits either existing within the case or presented by the participants in the examination of the case. The President of the sitting shall ascertain the qualifications and competence of experts and specialists before they testify and shall advise them in writing on the liability provided for by law for the refusal to testify and for deliberate false statements or forged conclusions. The President shall also warn an interpreter of the liability which may be incurred for a deliberate wrong translation.

4. A member of the Constitutional Court participating in the examination of the case shall be authorised to put questions to witnesses, experts and specialists.

5. The President of the sitting shall be authorised to withdraw questions put to the parties, witnesses, experts and specialists upon the appeal of the parties and with the consent of the majority of members of the Court participating in the examination of the case.

#### **Article 27**

Measures shall be taken against persons violating orders made during the Court's sitting; liabilities shall also be incurred for deliberately supplying forged documents and for the refusal to testify or the deliberate giving of false testimony in accordance with the rules established by the criminal code of Georgia and procedural legislation.

#### **Article 28**

The Constitutional Court shall hear the concluding remarks of the participants in the examination of the case after considering all the evidence provided with the case. The petitioner or his/her representative and lawyer shall make their concluding statements first. After hearing the concluding statements the judges shall retire to the conference room. The President of the sitting shall announce to those present in the courtroom that the judges are going to retire to make their deliberations.

#### **Article 29**

1. The President of the sitting shall announce the judgment or conclusion in the courtroom after the judgment or conclusion of the Constitutional Court has been signed by the members of the Court participating in the examination of the case.

2. The judgment or conclusion of the Constitutional Court shall be delivered in the name of Georgia.

#### **Article 30**

The judgment or conclusion of the Constitutional Court should include adequate reasons. The Constitutional Court shall use as grounds for its judgment or conclusion only the evidence which was considered at the sitting of the Constitutional Court.

#### **Article 31**

The judgments and conclusions of the Constitutional Court shall be composed of the following parts: introduction, description, reasoning and result.

#### **Article 32**

1. The introductory part of the judgment or conclusion of the Constitutional Court should indicate:

- a. the name of the Constitutional Court;
- b. the date and place on which the judgment or conclusion was reached;
- c. the composition of the Court and the secretary of the sitting;
- d. the participants in the examination of the case and the subject of the dispute.

2. The description part should include an indication of:

- the claim made by the author of the petition or application;
- the position taken by the respondent.

3. The reasoning part should indicate:

- a. the facts found by the Constitutional Court;
- b. the evidence on which the findings of the Constitutional Court are based;
- c. the grounds on which the Constitutional Court rejected opposing arguments and evidence;
- d. the provisions of the Constitution of Georgia with which the disputed act is or is not in conformity;
- e. the provisions of the Constitution of Georgia, the Law on the Constitutional Court of Georgia and the present

Law, on which the Constitutional Court relied in reaching its judgment or conclusion.

4. The result part should include:

- the decision of the Constitutional Court allowing or dismissing the petition or application in full or in part;
- the legal effects of the judgment or conclusion.

#### **Article 33**

1. The judgment of the Constitutional Court of Georgia shall take effect from the moment of its public announcement at the sitting.

The judgment of the Constitutional Court shall be published in the official publication within a time-limit of 7 days.

2. Originals of the judgment shall be sent to the parties and copies of the conclusion shall be sent to the applicants and the appropriate officials indicated in Article 19 clause h of the Law on the Constitutional Court of Georgia.
3. Originals of judgments and conclusions must be sent to the President, the Parliament and the Supreme Court of Georgia.

#### **Article 34**

1. A record of the sitting of the Constitutional Court shall be drawn up by the secretary of the sitting in which the case is examined.
2. The record of the Court's sitting should include an indication of:
  - the date and place of the Court's sitting;
  - the date of the opening and closing of the Court's sitting;
  - the name of the Constitutional Court, the judges participating in the examination of the case as well as the judges not participating in the examination of the case for some reason;
  - the secretary of the sitting;
  - the name of the case;

-information on the participants, witnesses, experts, specialists and interpreters of the case and also on the advice given to them of their rights and duties;

-the orders of the President and other orders made by the Constitutional Court in the courtroom;

-the statements and explanations of the participants in the examination of the case;

-the testimony of witnesses, experts and specialists and affidavits published by the Constitutional Court.

3. The record of the Constitutional Court shall be signed by the President and the secretary of the sitting.

#### **Article 35**

1. Other rules governing the preparation of cases for examination and the organisation of the Constitutional Court shall be determined by the regulations of the Constitutional Court.
2. The President of the Constitutional Court shall be obliged to submit the regulations of the Constitutional Court to the Full Court for confirmation within a time-limit of 15 days after his/her election.
3. The regulations shall be considered confirmed if at least 6 members of the Constitutional Court supported them in an open vote.

### **Law of Georgia on social guarantees to the members of the Constitutional Court**

25 June 1996

#### **Article 1**

The State shall be obliged to guarantee to the members of the Constitutional Court working and living conditions which are sufficient to ensure their independence in accordance with Article 4 paragraph 3 of Georgia's Law of 31 January 1996 on the Constitutional Court of Georgia.

The expenses incurred in the activities of the Constitutional Court of Georgia shall be provided for in the state budget by a separate article on the basis of the submission of the President of the Constitutional Court.

**Article 2**

While determining the salary fund of the Constitutional Court of Georgia it should be taken into consideration that the remuneration and raises awarded to the President of the Constitutional Court of Georgia should not be less than awarded to the Speaker of the Parliament of Georgia.

The remuneration for the positions of the Vice-Presidents and members of the Constitutional Court of Georgia shall be respectively 90 and 85 percent of the remuneration of the President of the Constitutional Court.

**Article 3**

The President of the Constitutional Court of Georgia and the Vice-Presidents and members of the Constitutional Court shall also enjoy increases in remuneration for their qualifications and for years of service in accordance with the rules and procedures laid down by law.

The procedure for awarding qualification ranks to the members of the Constitutional Court shall be determined by law.

**Article 4**

An additional sum shall be assigned to the Constitutional Court of Georgia for additional expenses in accordance with the procedure established by law.

**Article 5**

The members of the Constitutional Court of Georgia shall enjoy an annual remunerated vacation the duration of which shall be 45 calendar days; while on vacation a member of the Constitutional Court shall be given material assistance in the amount of two months' worth of his/her monetary remuneration.

**Article 6**

The members of the Constitutional Court shall enjoy all the privileges of a member of the Parliament of Georgia except as specified by the present Law and the President and the Vice-Presidents of the Constitutional Court of Georgia shall enjoy the same conditions as the Speaker and the Deputy Speakers of the Parliament of Georgia respectively.

**Article 7**

During the missions abroad of the President, the Vice-Presidents and the members of the Constitutional Court their salaries shall be increased respectively by 50, 40 and 35 percent of their daily remuneration.

**Article 8**

Any decrease in the monetary remuneration or other material privileges accorded to the members of the Constitutional Court within the whole period of their term of office shall not be permissible.

**Article 9**

Members of the Constitutional Court of Georgia shall be provided with a life pension in the full amount of their monetary remuneration upon the termination of their term of office or upon reaching retirement age.

# Italy

## Constitutional Court

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### Constitution of the Italian Republic

approved by the Constituent Assembly 22 December 1947;  
entered into force 1 January 1948.

- extracts -

#### Part II

#### Organisation of the Republic

##### Title I

##### Parliament

##### Section I

##### The Chambers

...

#### Article 68

Members of Parliament may not be required to account for any opinions expressed or votes cast in the exercise of their functions.

Without authorisation from the Chamber to which they belong, no Member of Parliament may be subjected to a personal search or have their domicile searched, nor may they be arrested or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory.

Similar authorisation is also required before Members of Parliament may have their conversations or communications intercepted, or their mail impounded.

...

##### Section II

##### The Drafting of Laws

...

#### Article 75

A popular referendum shall be held to abrogate, totally or partially, a law or an act having the force of law, when requested by five hundred thousand electors or five regional councils.

A referendum is not permitted in the case of tax, budget, amnesty and pardon laws, or for the authorisation or ratification of international treaties.

All citizens eligible to vote for the Chamber of Deputies shall have the right to participate in referenda.

The proposal subjected to referendum shall be approved if the majority of those with voting rights have voted and a majority of votes validly cast has been attained.

The procedures for conducting a referendum shall be established by law.

...

##### Title II

##### The President of the Republic

...

#### Article 90

The President of the Republic shall not be held liable for the acts performed in the exercise of his duties, except for high treason or plots against the Constitution.

In such cases he shall be impeached by Parliament sitting in joint session, with an absolute majority of its members.

...

##### Title V

##### Regions, Provinces, Municipalities

...

#### Article 127

Every law approved by the Regional Council shall be communicated to the commissioner who, except in cases of opposition by the government, must sign it within thirty days of its communication.

The law shall be promulgated within ten days of its signing and shall come into effect not earlier than fifteen days after its publication. If a law is declared urgent by the Regional Council, and the government of the Republic so permits, the promulgation and date of effect shall not be subject to the above provisions.



The Government of the Republic, when it holds that a law approved by the Regional Council exceeds the jurisdiction of the region and conflicts with the national interests or with those of other regions, shall return it to the Regional Council within the time-limit allowed for its signing.

If the Regional Council again approves it by an absolute majority, the Government of the Republic may, within fifteen days of its communication, raise the question of its legitimacy before the Constitutional Court, or of its merits due to a conflict of interests before the Chambers. In cases of doubt, the Court shall decide who has jurisdiction.

...

## **Title VI**

### **Constitutional Guarantees**

#### **Section I**

#### **The Constitutional Court**

##### **Article 134\***

The Constitutional Court shall pass judgment on:

Disputes concerning the constitutionality of laws and enactments having the force of law issued by the State and the Regions;

Conflicts arising from the distribution of powers of the State and between the State and Regions, and between Regions;

Accusations made against the President of the Republic, according to the provisions of the Constitution.

*[\* So amended by Article 2 of Constitutional Law No. 1, 16 January 1989.]*

##### **Article 135\***

The Constitutional Court shall be composed of fifteen judges, one third nominated by the President of the Republic, one third by Parliament in joint sitting and one third by the Supreme Civil, Criminal and Administrative Courts.

The judges of the Constitutional Courts shall be chosen from among judges, including those retired, of the Civil, Criminal and Administrative Courts of Appeal, from full university professors of law and lawyers with at least twenty year' experience.

Judges of the Constitutional Court shall be nominated for nine years, beginning in each case from the day of their swearing in, and they may not be reappointed.

At the expiry of his term of office the constitutional judge shall vacate this office and cease to exercise the functions pertaining to it.

The Court shall elect from among its members, in accordance with the rules established by law, a President who shall remain in office for three years and may be reelected, respecting in all cases the term of office of constitutional judges.

The office of constitutional judge shall be incompatible with that of a Member of Parliament or of a Regional Council, with the exercise of the profession of a lawyer and with every appointment and office indicated by law.

In cases concerning the impeachment of the President of the Republic, apart from the ordinary judges of the Court, there shall also be sixteen members (*giudici aggregati*) chosen by lot from among a list of citizens having the qualifications necessary for election to the Senate, which the Parliament shall prepare every nine years through election using the same procedures as those used in appointing ordinary judges.

*[\* So amended by Article 1 of Constitutional Law No. 2, 22 November 1967; and by Article 2 of Constitutional Law No. 1, 16 January 1989.]*

##### **Article 136**

When the Court declares a law or enactment having the force of law to be unconstitutional, the law shall cease to have effect from the day following the publication of the decision.

The decision of the Court shall be published and communicated to the Chambers and to the Regional Councils concerned, in order that, wherever they deem it necessary, they shall act in conformity with constitutional procedures.

##### **Article 137**

A constitutional law shall establish the conditions, forms and time-limits in which judgments on constitutionality may be proposed, as well as the guarantees of the independence of the constitutional judges.

The other necessary provisions necessary for the establishment and the functioning of the Court shall be established by ordinary law.

No appeals shall be allowed against the decisions of the Constitutional Court.

**Constitutional Law No. 1 of 9 February 1948**  
**Provisions governing the review of constitutionality and guaranteeing the independence of the Constitutional Court**

(Official Gazette, No. 43, 20 February 1948)

**Section 1**

Questions of constitutionality regarding an Act of Parliament or a central government statutory measure having the force of law raised by a court or by a party to judicial proceedings or not deemed by a court of law to be manifestly groundless, shall be referred to the Constitutional Court for a decision.

**Section 2**

When a Region considers that an Act of Parliament or any national statutory measure having the force of law encroaches on its powers under the Constitution, it may, acting on a resolution of the Regional government, initiate an action for constitutional review before the Constitutional Court within 30 days of the publication of the Act or national statutory measure having the force of law.

A Regional Act may also be challenged on constitutional grounds not only in the cases and following the procedures indicated in Section 1 above and in Article 127 of the Constitution, but also by another Region which considers that the legislation in question constitutes an infringement of its powers. Proceedings are initiated by resolution of the Regional government within 60 days of the publication of the impugned Act.

**Section 3**

Judges of the Constitutional Court may only be removed or suspended from office by a decision of the same Court on the grounds of physical or civil incapacity or gross misconduct in the exercise of their office.

While in office, judges of the Constitutional Court shall enjoy the same immunities as members of both Houses of Parliament provided by Article 68(2) of the Constitution. The authorisation referred to in that Article shall be issued by the Constitutional Court.

**Section 4**

This Constitutional Law shall come into effect on the day following its publication in the Official Gazette.

This law bearing the Seal of State shall be entered into the Statute Book of the Italian Republic. Everyone is required to comply with it and to enforce it as the law of the land.

**Constitutional Law No. 1 of 11 March 1953**  
**Supplementary Constitutional Provisions regarding the Constitutional Court**

(Official Gazette No. 62, 14 March 1953)

**Section 1**

The Constitutional Court shall perform its functions in the manner, within the scope and under the conditions set forth in the Constitution, Constitutional Law No. 1 of 9 February 1948 and the Act of Parliament enacted for the initial implementation of the aforementioned constitutional rules.

**Section 2**

The Constitutional Court shall rule on whether requests for repealing referenda submitted pursuant to Article 75 of the Constitution are admissible pursuant to paragraph 2 of that article.

The procedures for the judgment shall be laid down in the Act that will establish the formalities for holding repealing referenda.

**Section 3**

*Repealed by Section 7 of Constitutional Law No. 2 of 22 November 1967*

**Section 4**

*Repealed by Section 7 of Constitutional Law No. 2 of 22 November 1967*

**Section 5**

The judges of the Constitutional Court are not subject to censure, and may not be held liable for any opinions expressed or for any vote cast in the exercise of their office.

## Section 6

The judges of the Constitutional Court shall be paid a monthly salary which shall not be less than that of the most senior magistrate of an ordinary court of law, and shall be laid down by Act of Parliament.

## Section 7

The judges of the Constitutional Court may be removed or suspended from office under Section 3 of Constitutional Law No. 1 of 9 February 1948 but only after a resolution to this effect has been adopted by the Constitutional Court with a two-thirds majority vote of the judges present.

## Section 8

Any judge of the Constitutional Court who fails to perform his functions for six consecutive months shall cease to hold office.

## Section 9

The President of the Constitutional Court may, whenever he deems it necessary, reduce the duration of proceedings by one half by issuing a decision with reasoning to this effect.

## Section 10

*Repealed by Section 7 of Constitutional Law No. 2 of 22 November 1967*

## Section 11

The provisions of Sections 5 and 6 also apply to the citizens elected by Parliament pursuant to the final paragraph of Article 135 of the Constitution, but only for the period during which they exercise their functions at the Court.

## Section 12

1. The resolution to impeach the President of the Republic for high treason and for breach of the Constitution shall be adopted by Parliament with both Houses in joint session acting on the basis of a report tabled by a committee made up of members of the Committee (*Giunta*) of the Senate and of the Chamber of Deputies which is empowered to grant authorisation to institute criminal proceedings, under their respective rules of procedure.
2. The committee referred to in subsection (1) shall be chaired by the President of the Senate *Giunta* or the

Chamber of Deputies *Giunta*, alternating with each change in legislature.

3. The provisions of subsection (1) shall also apply in the event that the Prime Minister, Ministers or any other individual is an accessory to the criminal offences created under Article 90 of the Constitution.

4. When a resolution is adopted to impeach the President of the Republic, the Constitutional Court may order his suspension from office.

## Section 13

Both Houses convened in joint session to impeach the President of the Republic shall elect one or more commissioners from their members to act as prosecutors.

The commissioners shall act as prosecutors before the Constitutional Court, and may attend all the preliminary investigations and inquiries.

## Section 14

*Repealed by Section 12 of Constitutional Law No. 1 of 16 January 1989*

## Section 15

In the event that the Constitutional Court convicts the President of the Republic of crimes of breach of the Constitution and high treason it shall also sentence him to up to the maximum criminal penalties provided for by the law in force at the time the offence was committed, and any constitutional, administrative and civil penalties appropriate to the case.

## Transitional Provision

...

This law bearing the Seal of State shall be entered into the Statute Book of the Italian Republic. Everyone is required to comply with it and to enforce it as the law of the land.

## **Constitutional Law No. 2 of 22 November 1967 Amendment to Article 135 of the Constitution and provisions relating to the Constitutional Court**

(Official Gazette No. 294 of 25 November 1967)

## Section 1

*Substituting Article 135 of the Constitution*

## Section 2

The Constitutional Court shall have jurisdiction to ascertain whether its own members and the citizens elected by Parliament under the provisions of the final paragraph of Article 135 of the Constitution meet the requirements making them eligible for office, voting by an absolute majority of its members.

## Section 3

The judges of the Constitutional Court appointed by Parliament are elected at a joint sitting of both Houses, by secret ballot, with a majority consisting of two thirds of the members of the Assembly. After the third ballot a majority consisting of three fifths of the members of the Assembly is sufficient.

## Section 4

The judges of the Constitutional Court appointed by the highest ordinary and administrative courts following the procedures laid down by statute shall be elected by majority vote, on condition that they obtain a number of votes in excess of one half of the number of the members of the panel.

If this majority is not obtained on the first ballot, on the following day a second ballot shall be held between the candidates obtaining the largest number of votes in the previous day's ballot, with twice as many candidates as there are positions to be filled. The candidates obtaining the highest number of votes are elected.

In the event of a tie, the oldest candidate shall be elected or entered for a tie-breaking ballot.

## Section 5

The President of the Constitutional Court shall immediately notify the competent institution whenever a judge ceases to hold office for reasons other than the expiry of his term, so that a replacement may be appointed.

Whenever a vacancy occurs for any reason whatsoever it must be filled within one month.

## Section 6

The judges of the Constitutional Court appointed before the entry into force of this law shall remain in office for 12 years, in each case as from the date of the oath, and may not be re-appointed.

The provisions of Article 135(4) of the Constitution shall apply.

## Section 7

The final paragraph of Transitional Provision VII of the Constitution, Section 3(1) of Constitutional Law No. 1 of 9 February 1948, Sections 3, 4 and 10 of Constitutional Law No. 1 of 11 March 1953, Section 3(1) and (2) and Section 6(4) of Law No. 87 of 11 March 1953 are hereby repealed.

Any other provision which is contrary to or incompatible with the provisions of this Act is also repealed.

This law bearing the Seal of State shall be entered into the Statute Book of the Italian Republic. Everyone is required to comply with it and to enforce it as the law of the land.

## Law No. 87 of 11 March 1953

### The composition and procedures of the Constitutional Court

(Official Gazette No. 62, 14 March 1953)

## Title I

### The Composition of the Court

## Section 1

The Constitutional Court shall comprise fifteen judges appointed in succession as follows: five by the Supreme Civil, Criminal and Administrative Courts, five by both Houses of Parliament in joint session, and five by the President of the Republic.

## Section 2

The judges of the Court appointed by the Supreme Civil, Criminal and Administrative Courts shall be elected as follows:

- a. three by a panel composed of the President of the Court of Cassation, who shall chair the panel, the *Procuratore Generale*, the Division Presidents, the *Avvocati Generali*,

*Consiglieri* and Assistant *Procuratori Generali* of the Court of Cassation;

b. one by a panel composed of the President of the *Consiglio di Stato*, who shall chair the panel, the Division Presidents and the *Consiglieri* of the *Consiglio di Stato*;

c. one by a panel composed of the President of the Court of Audit, who shall chair the panel, the Division Presidents, *Consiglieri*, the *Procuratore Generale* and the Deputy *Procuratori Generali* of the Court of Audit.

The members of each panel may vote for one candidate for each judge which each panel is required to elect. Any names in excess of that number shall be not be considered to be entered.

The President of the Constitutional Court, the Speakers of both Houses of Parliament and the President of the Republic shall be immediately informed by the chairman of each panel of the names of the candidates elected.

### Section 3

After each ballot the names of the candidates obtaining the required majority as indicated in the subsections above shall be announced as they are elected.

The Speaker of the Chamber of Deputies shall immediately inform the President of the Republic and the President of the Constitutional Court of the names of the judges elected by Parliament.

### Section 4

The judges of the Constitutional Court appointed by the President of the Republic, are nominated by presidential decree.

The decree shall be counter-signed by the Prime Minister.

### Section 5

Before taking office, the judges of the Constitutional Court shall swear to comply with the Constitution and the laws of the land before the President of the Republic, in the presence of the Speakers of both Houses of Parliament.

### Section 6

The Court shall elect one of its members to serve as President by a majority vote. In the event that no one judge obtains a majority vote, a second ballot shall be held, and if necessary a final runoff ballot between the candidates obtaining the largest number of votes, at which the candidate with the largest number of votes shall be elected.

In the event of a tie, the longest serving judge or if inapplicable the oldest candidate shall be elected.

The newly-elected President shall immediately notify the President of the Republic, the Speakers of both Houses of Parliament and the Prime Minister of his election.

Immediately after taking office, the President shall appoint a judge to act for him as long as may be necessary when the President is unable to act or prevented from acting.

### Section 7

The judges of the Constitutional Court may not accept or hold any other public or private posts or employment, practise a profession or work in trade or industry, or serve as directors or statutory auditors in companies operating for profit.

Serving members of the judiciary and university professors shall suspend the exercise of these functions during their period of office as judges of the Constitutional Court.

They shall be given leave from their posts for the whole period of office, and until they reach retirement age.

Upon leaving office as judges of the Constitutional Court, full university professors shall be re-admitted to their former university as supernumeraries. Within three months of resuming employment at their former university, they may be appointed to another Faculty at the same university or at another university as supernumeraries. In every instance, the Faculties may request the professors, subject to their consent, to teach a different subject pursuant to Section 93(3) and (4) of the Higher Education (Consolidation) Act adopted by Royal Decree No. 1592 of 31 August 1933. In this case, the Ministry of Education is first required to seek the opinion of the first section of the Higher Education Council.

Judges of the Constitutional Court may not sit on examining boards for public competitive examinations, or hold university posts, or stand as candidates at local or general elections.

**Section 8**

Judges of the Constitutional Court may not engage in the activities of political parties or associations.

**Section 9**

Requests by the competent authorities to prosecute or arrest a judge of the Constitutional Court shall be forwarded to the Court through the Ministry of Justice.

**Section 10**

The Court shall declare the removal of any individuals from the list of lay candidates (*giudici aggregati*) elected by Parliament pursuant to the last paragraph of Article 135 of the Constitution whenever, after their election, they cease to fulfil the requirements or lose the necessary status for eligibility. This ruling is issued by the ordinary judges of the Court alone.

The decision of the Court is communicated to the Speakers of both Houses of Parliament so that they may proceed to make the necessary replacements.

**Section 11**

Any measures taken by the Court against ordinary judges or judges with the status of *giudice aggregato* shall be decided in camera, by majority vote of the members. Decisions must include reasons, and be published as provided by Section 19.

**Section 12**

All the judges of the Constitutional Court shall receive the same aggregate salary as a member of the ordinary judiciary exercising the most senior functions. The President shall also receive an additional allowance equivalent to one fifth of his remuneration.

This salary replaces and absorbs any other remuneration otherwise due to each judge as a civil servant or employee of any public agency, whether in service or retired, before his appointment to the Constitutional Court.

Judges elected pursuant to the last paragraph of Article 135 of the Constitution shall also receive a daily attendance allowance equal to one thirtieth of the monthly salary of ordinary judges.

**Section 13**

The Court may summon witnesses to give testimony, and may waive prohibitions laid down in other legislation by requiring the submission of documentary evidence.

**Section 14**

The Court may adopt its own internal rules and regulations by a majority vote of its members. The rules shall be published in the Official Gazette.

The Court shall be allocated funds by Act of Parliament, within the limits of which it shall manage its expenditure, services and offices, and decide upon the number of employees, their status and remuneration, and the powers, rights and duties of each official.

The Court has exclusive powers to rule on complaints filed by its own employees.

Within the scope of its internal rules the Court, bearing in mind the rules governing the civil service in general, shall determine the composition of the staff of the President and the judges' secretariats, in which civil servants may also be employed.

**Title II****The Procedure of the Court****Chapter I****General Rules of Procedure****Section 15**

Hearings of the Constitutional Court shall be held in public, but the President may order a hearing behind closed doors when a public hearing might threaten the security of the State, public order or morality, or when the conduct of the members of the public present in court is likely to interfere with the due process of law.

**Section 16**

The members of the Court are under an obligation to attend hearings unless lawfully prevented from so doing.

The quorum for Court hearings is eleven judges.

Decisions are taken, in camera, by the judges who have attended every hearing for a particular case, by an absolute majority of the votes cast. In the event of a tie the President

shall have the casting vote, save where otherwise provided by Section 49(2).

### Section 17

The Registrar (*Cancelliere*) shall attend the sittings of the Court and draft the transcript under the direction of the President. The transcript shall be signed by the President of the hearing and by the Registrar. It is not read unless a party expressly so requests.

### Section 18

The Court issues its final and binding judicial decision in the form of a judgment (*sentenza*). All other determinations falling within its jurisdiction are made in the form of an order (*ordinanza*).

Measures adopted by the President take the form of a decree (*decreto*).

Judgments shall be issued in the name of the Italian people, and set out the reasons for the decision both in fact and in law, the order made, the date of the decision and the signatures of the judges and the Registrar. \*

Orders must contain concise reasons.

[\* See now Section 18 of the Supplementary Provisions Governing Constitutional Proceedings, 16 March 1956.]

### Section 19

Decisions of the Constitutional Court shall be deposited with the Registry and be available for public consultation; copies thereof may be issued to anyone requesting them.

### Section 20

At all hearings before the Constitutional Court the parties may only be represented by lawyers authorised to appear before the Court of Cassation.

Central and Regional government authorities may also intervene in cases before the Court.

Even when the government intervenes in the person of the Prime Minister or another Minister appointed for this purpose, it must be represented by the Attorney General or his Deputy.

### Section 21

No fees of any kind shall be due in respect of actions instituted before the Constitutional Court.

### Section 22

In all proceedings before the Constitutional Court, except the cases provided by Sections 43 et seq. where applicable the laws of procedure for the *Consiglio di Stato* sitting as a Court also apply.

The Court may also lay down supplementary regulations.

## Chapter II Questions of Constitutionality

### Section 23

In the course of a judicial proceeding, any party to the case or the Public Prosecutor (*Pubblico Ministero*) may raise the issue of unconstitutionality in the appropriate form, indicating:

- a. the provisions of the central or regional government Act or statutory measure deemed to be unconstitutional;
- b. the provisions of the Constitution or the constitutional laws allegedly infringed thereby.

If the case cannot be tried without first resolving the question of constitutionality, or if the trial court does not consider that the question of constitutionality raised is groundless, it shall issue an order referring the matter immediately to the Constitutional Court, setting out the terms and the reasons for raising the question of constitutionality, and shall suspend trial proceedings.

A court before which a case is being tried may also refer a question of constitutionality *ex officio* by means of a court order setting out the information required under a) and b) above, and the measures referred to in the subsection above.

The court shall order the Registry to serve the order referring the case to the Constitutional Court on the parties to the case, save where it has already been read out at a public hearing, and on the Public Prosecutor whenever the latter is under a statutory obligation to intervene in the case, and on the Prime Minister in the case of a central government Act or statutory measure, and on the President of the regional government in the case of regional

legislation. The order is also served by the Registrar on the Speakers of both Houses of Parliament and on the President of the Regional Council concerned.

#### **Section 24**

A court order rejecting the claim of unconstitutionality as being manifestly irrelevant or groundless must include adequate reasons.

The same claim may be filed again at the beginning of proceedings at each subsequent instance.

#### **Section 25**

As soon as the court order referring a question of constitutionality to the Court is received, the President of the Constitutional Court shall order that it be published in the Official Gazette, and where necessary, in the Official Bulletin of the relevant Regions.

The parties may examine the case file deposited in the Registry, and make their submissions within 20 days of service of the order pursuant to Section 23.

The Prime Minister and the President of the Regional government may also intervene in the case and make their own submissions within the same time-limit.

#### **Section 26**

After the time-limit indicated in Section 25 has expired, the President of the Constitutional Court shall appoint a judge to prepare the case and within 20 days shall convene the Court to hear the case.

If all parties fail to appear, or if the Court deems the claim to be manifestly groundless, it may decide in camera.

Judgments shall be deposited with the Registry within 20 days of the decision being taken.

#### **Section 27**

When the Court upholds a claim for the constitutional review of an Act or statutory measure it shall indicate, within the terms of the original claim, which provisions of law are unconstitutional. It shall also issue a declaration stating which if any other statutory provisions will become unconstitutional as a result of the Court's decision.

#### **Section 28**

The judgment of the Constitutional Court regarding an Act or statutory measure may not be based on any political reasoning or on any assessment regarding the use by the Parliament of its discretionary powers.

#### **Section 29**

Within two days of the date of their deposit with the Registry, the Registrar shall notify the referring court of the Constitutional Court's judgment on an application for the constitutional review of an Act or statutory measure, or the Court's order declaring a claim of unconstitutionality to be manifestly groundless.

#### **Section 30**

The judgment declaring a central or regional government Act or statutory measure to be unconstitutional shall be automatically served on the Minister of Justice or the President of the regional government, as appropriate, within two days of its being deposited with the Registry, so that the order made in the Court's decision can be published immediately, and at all events no later than ten days thereafter, with the same formalities as those provided for the publication of the act declared to be unconstitutional.\*

Within two days of the date of deposit, the judgment shall also be served on both Houses of Parliament and on the Regional Councils concerned so that they may adopt whatever measures they deem necessary.

Any provisions declared unconstitutional become inoperative from the day following the date on which the Court judgment is published.

Whenever a final conviction has been handed down in implementation of a statutory provision subsequently declared to be unconstitutional, its enforcement shall cease, together with any criminal law effects.

*[\* See now Section 3 of Law No. 839 of 11 December 1984 and Article 21 of Presidential Decree No. 1092 of 28 December 1985 requiring all the judgments of the Constitutional Court to be published in full in the Official Gazette.]*



**Section 31**

The question of the constitutionality of a regional Act may, pursuant to the last paragraph of Article 127 of the Constitution, be raised within fifteen days of the date on which the Prime Minister is notified by the President of the Region that the law has been passed for the second time by the Regional Council.

The question shall be raised by means of an application lodged directly with the Constitutional Court by the Prime Minister, following the adoption of a Cabinet resolution to this effect. Notice thereof shall be served on the President of the Region within the time-limit specified above.

The application shall be deposited with the Registry of the Constitutional Court within ten days of its service.

**Section 32**

The question of the constitutionality of an Act of Parliament or statutory measure adopted by the central government may be raised by any regional government on the grounds that it constitutes an infringement of the powers vested in the Region by the Constitution and by constitutional laws.

The question of constitutionality shall be raised by means of an application lodged directly with the Constitutional Court by the President of the regional government, following the adoption of a regional government resolution to this effect, serving notice thereof on the Prime Minister within thirty days of the date of publication of the Act or measure in question.

The application shall be deposited with the Registry of the Constitutional Court within ten days of its service.

**Section 33**

The question of the constitutionality of a regional government Act or statutory measure may, pursuant to Section 2(2) of Constitutional Law No. 1 of 9 February 1948, be raised by another regional government on the grounds that it infringes its powers.

The question shall be raised by means of an application lodged directly with the Constitutional Court by the President of the regional government, following the adoption of a regional government resolution to this effect. Notice thereof shall be served on the President of the regional government whose law is being contested and on the Prime Minister within sixty days of the date of publication of the law.

The application shall be deposited at the Registry of the Constitutional Court within ten days of the last notice of service.

**Section 34**

The application pursuant to Sections 31, 32 and 33 must provide all the information required pursuant to the first subsection of Section 23.

Where appropriate, the provisions of Sections 23, 25 and 26 shall apply.

**Section 35**

When the Executive raises before Parliament the question of a conflict between a law enacted by a Regional Council and the national interest or the interests of other Regions, the Region concerned may, under Article 127 of the Constitution, lodge an application directly with the Constitutional Court for a ruling on jurisdiction, after serving notice to this effect on the Prime Minister and the Speakers of both Houses of Parliament within 15 days of the date on which the government placed the matter before Parliament.

The provisions of Section 32 shall apply where appropriate.

**Section 36**

The provisions of this Chapter, and of Section 20, shall also apply, where appropriate, to actions provided for by Sections 82 and 83 of Constitutional Law No. 5 of 28 February 1948 governing the Special Statute for the Trentino-Alto Adige Region.\*

All the provisions applying to the Region and its agencies shall also apply to the Province and its agencies whenever either of the two Provinces of the Region is involved.

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[\* This reference has now been changed to Articles 97-98 in Title X of Presidential Decree No. 670 of 31 August 1972.]

## **Chapter III**

### **Conflict of Powers**

#### **Part I**

#### **Conflict of powers between branches of Central government**

##### **Section 37**

Cases of conflict between different branches of Central government shall be resolved by the Constitutional Court where the conflict is between organs empowered to express the will of the branch of government to which they belong, and for the purpose of establishing the scope of the powers vested in each of the branches of government by the Constitution.

The provisions in force concerning the jurisdiction of the courts shall remain unaffected.

The admissibility of applications shall be decided by the Court sitting in camera and by means of an order.

If the Court deems that a conflict of powers has arisen the settlement of which falls within its jurisdiction, it shall declare the application to be admissible and order notice to be served on the organs concerned.

Where relevant, the provisions of Sections 23, 25 and 26 shall apply.

Except for the case provided by the final subsection of Section 20 above, if the organ concerned is not represented by the person holding office, it may be defended and represented by lawyers authorised to appear before the higher courts.

##### **Section 38**

The Constitutional Court shall settle the conflict placed before it by declaring which branch of government is vested with the powers at issue, and if an act has been issued ultra vires the Court shall declare it to be null and void.

## **Part II**

### **Conflict of Powers between the Central and Regional Governments, and between Regional Governments.**

#### **Section 39**

If a regional government infringes the powers vested by the Constitution in the organs of central government or of another regional government, the central government or the regional government concerned may request the Constitutional Court to rule on the matter. Likewise, a regional government may apply to the Court to rule on a dispute in which the central government has infringed its constitutional powers.

The time-limit for lodging an application shall be sixty days from the date of service or publication of the impugned act or the date on which the existence of the act became known.

The application shall be lodged for the central government by the Prime Minister or a minister delegated by him for this purpose, and for the regional government by the President of the regional government acting on a resolution adopted by the regional government.

Applications in respect of conflicts of powers must indicate where the conflict arises, specifying the act by which the powers are allegedly infringed, as well as the provisions of the Constitution and the constitutional laws deemed to have been breached.

#### **Section 40**

While awaiting judgment, the Court may issue an order, including reasons, suspending the enforcement or implementation of the acts which have given rise to the conflict of powers between the Central and Regional government, or between Regional governments, if grave reasons for so doing exist.

#### **Section 41**

In cases of applications concerning conflicts of powers as indicated above, the provisions of Sections 23, 25, 26 and 38 shall apply, as appropriate.

#### **Section 42**

The provisions in this Part relating to the Regional governments and their organs also apply, as appropriate, to the two Provinces of the Trentino-Alto Adige Region.\*

[\* See Article 98 of Presidential Decree No. 670 of 31 August 1972.]

#### Chapter IV

#### Impeachment of the President of the Republic, the Prime Minister and Ministers

#### Sections 43-53

*Repealed*

#### Transitional Provisions

...

#### II

In order to initiate an action before the Constitutional Court for the constitutional review of Acts and statutory measures, and of legislation enacted prior to the institution of the Constitutional Court, the time allowed for action to be taken shall start running from the date of the decree of the President of the Republic convening the Court for the first time.

#### III

Until the staffing arrangements referred to in Section 14 are adopted, civil servants shall be provided by Central government departments.

#### IV

The Treasury shall hereby be authorised to issue a decree to make any necessary adjustments to the budget in order to implement this Act.

This law, bearing the Seal of State shall be entered into the Statute Book of the Italian Republic. Everyone is required to comply with it and to enforce it as the law of the land.

#### Law No. 352 of 25 May 1970

#### Provisions Governing the Referenda provided for by the Constitution and Legislation Sponsored by Public Referenda

...

#### Title II

#### Referenda under Article 75 of the Constitution

...

#### Section 33

Upon receiving communication of the order of the Central Office of the Court of Cassation stating that one or more requests for a referendum are legitimate, the President of the Constitutional Court shall set the date for the discussion in camera, which shall not be later than 20 January of the year following the one in which the order is issued, and appoint the rapporteur judge.

The date set for the discussion shall be notified officially to the delegates of the Regional Council or the promoters of the referenda and to the Prime Minister.

The delegates and the sponsors and the government may make written submissions regarding the constitutionality of the requests for the referendum up to three days before the date set for the discussion.

The Constitutional Court, pursuant to Article 2 of Constitutional Law No. 1 of 11 March 1953, shall decide which requests shall be accepted and which shall be rejected as being in breach of Article 75(2) of the Constitution in a judgment to be issued by 10 February.

The judgment shall be formally served on the President of the Republic, the Speakers of both Houses of Parliament, the Prime Minister, the Central Office for the Referendum at the Court of Cassation, and on the delegates or sponsors within five days of its being rendered public. Within five days of being rendered public the orders made shall be published in the Official Gazette.\*

[\* See now Section 3 of Law No. 839 of 11 December 1984 and Article 21 of Presidential Decree No. 1092 of 28 December 1985 requiring all the judgments of the Constitutional Court to be published in full in the Official Gazette.]

## Section 34

Upon being served notice of the judgment issued by the Constitutional Court the President of the Republic shall, acting on a resolution of the Council of Ministers, shall issue a decree calling the referendum, which shall be held on a Sunday between 15 April and 15 June.

In the event that one or both Houses of Parliament have been dissolved, any referendum that has already been called shall automatically be suspended as from the moment of publication in the Official Gazette of the Presidential Decree calling the election of a new House or Houses of Parliament.

The time-limit for the referendum shall start running again on the 365th day following the date of the election.

...

## Supplementary Provisions Governing Constitutional Court Proceedings

16 March 1956 as subsequently amended  
(Official Gazette No. 71 of 24 March 1956, Special Edition)

### Chapter One

#### Questions of Constitutionality Arising During A Trial

##### Section 1

###### Filing of a court referral order

The order with which a judge sitting alone or jointly refers a matter to the Constitutional Court for a ruling shall be filed with the Court together with all the documents from the case-file and evidence of service as provided by Section 23 of Law No. 87 of 11 March 1953.

##### Section 2

###### Publication and registration of the referral order

Having ascertained that the referral order and notices of service of papers have been properly issued, the President of the Court shall require the court order to be published in the Official Gazette and, where applicable, in the Official Bulletin of the Region concerned.

The President shall also ascertain that the Speakers of both Houses of Parliament have been duly notified pursuant to Section 23 of Law No. 87 of 11 March 1953.

The court orders pursuant to Section 23 of the above-mentioned Law shall be recorded by the Registrar of the Constitutional Court in the general case register upon reception thereof, with an indication in the column provided for this purpose of the dates of service and the date of publication in the Official Gazette and in the Official Bulletin of the Region concerned.

## Section 3

### Appearance by the parties

The parties to the case before the Court shall enter an appearance within the deadline given in Section 25(2) of Law No. 87 of 11 March 1953 by depositing with the Registry the special power of attorney, with address for service in Rome, together with their submissions. The power of attorney may be appended at the bottom or in the margin of the original submissions, signed by the party concerned, and witnessed by Counsel. Within the same deadline new documents of relevance to the review of constitutionality may also be submitted.

In calculating this deadline the days elapsing between the date of the last service and the date of publication of the court order in the Official Gazette shall not be taken into account.

## Section 4

### Intervention by the Prime Minister and the President of the Regional Government

The Prime Minister may intervene in the proceedings by depositing submissions, signed by the Attorney General or his deputy.

The President of a regional government may intervene by depositing, in addition to his submissions, the special power of attorney required pursuant to Section 3 above, indicating the address for service in Rome.

The Registrar shall notify the parties to the case of any such intervention.

## Section 5

### Service of documents

Any documents requiring service by the Registrar shall be served by an employee of the Court authorised specifically by the President.

Service shall be effected by the Registrar by delivering a notice to the addressee, who shall issue a receipt therefor, or by registered post with recorded delivery to the address for service in Rome.

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**Section 6****Deposit of documents for the case-file**

All the documents for the case-file of both parties to the proceedings on constitutional review must be deposited with the Registry, with one copy for each member of the Court and for the parties to the case. No stamp-duty shall apply to this deposit.

The Registrar may not accept any documents and papers relating to the constitutional review proceedings unless the required number of copies are provided, and are written clearly and legibly.

**Section 7****Appointment of the Investigating Judge and the Rapporteur**

After the time-limit indicated in Section 25(2) of Law No. 87 of 11 March 1953 has expired the President shall appoint a judge to prepare the case and to act as rapporteur, to whom the Registrar shall immediately forward the documents from the case-file.

**Section 8****Convening the Court in public session**

Within twenty days of the expiry of the time-limit referred to in Section 25 of Law No. 87 of 11 March 1953, the President shall issue a decree setting the date for the hearing, taking into account the existing case list, and shall convene the Court for that date.

At least twenty days before the date set for the hearing the Registrar shall serve a copy of the President's decree on the parties which have entered an appearance for the case.

**Section 9****Court sessions in camera**

If none of the parties enters an appearance the President may convene the Court in camera.

Having heard the submissions of the investigating judge, the President may also convene the Court in camera whenever he considers that the grounds for the referral are manifestly without foundation.

The decree of the President shall be served by the Registrar on the parties that have entered an appearance twenty days before the date set for the hearing of the Court in camera.

The Court shall try the case at a public hearing if it deems that the condition referred to in subsection (2) above does not apply.

**Section 10****Submissions**

Submissions may be deposited with the Registrar in a sufficient number of copies for each of the judges and the parties to the case, until the twelfth working day before the hearing or the meeting in camera provided in Section 9(2) above.

**Section 11****Forwarding of documents from the case-file to the bench**

The Registrar shall forward to each judge, at least ten days before the date of the public hearing or the meeting in camera, a file containing copies of the originating application submitted to the Court and all documents subsequently added to the case-file.

**Section 12****Evidence**

The Court shall order the taking of any evidence it deems appropriate and lay down the terms and the procedures to be observed in the taking of evidence.

**Section 13****Taking of evidence**

Evidence shall be taken by the investigating judge with the assistance of the Registrar, who shall prepare the transcript.

The parties shall be notified by the Registrar ten days before the date on which oral evidence is to be taken.

All costs incurred for the taking of evidence shall be paid from the budget of the Court.

**Section 14****Completion of investigatory phase and reconvening of the Court**

When all the evidence has been taken, all the documents from the case-file shall be deposited with the Registry.

The Registrar shall notify the parties to the case that the documents from the case-file have been deposited.

Within twenty days of this communication, the President shall set the date for the next hearing. The provisions of Section 8 or Section 9(1) shall apply.

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## **Section 15**

### **Joinder of cases**

The President may, at his own initiative or at the request of the parties, order the joinder of two or more cases for the same hearing in order that they may be debated jointly.

After the debate, the Court shall decide whether and which cases shall be joined for a single judgment.

## **Section 16**

### **Abstention by judges and challenges to the bench**

The provisions governing the abstention of judges and challenges to judges shall only apply in the cases specifically provided for by Section 47 of Law No. 87 of 11 March 1953.\*

*[\* Section 47 was repealed by Section 35 of Law No. 20 of 25 January 1962. See now Section 25 of the same Law No. 20/1962 containing provisions relating to impeachment within the jurisdiction of the Constitutional Court sitting with the bench composed as provided by the final paragraph of Article 135 of the Constitution, as amended by Constitutional Law No. 1 of 16 January 1989.]*

## **Section 17**

### **Public hearings**

At the public hearing, the rapporteur judge shall set out the issues of the case.

After this report, Counsel for the parties shall briefly summarise the grounds for their submissions.

The President shall chair the hearing and may decide upon the most important issues around which the hearing is to take place.

The provisions of Sections 15, 16 and 17 of Law No. 87 of 11 March 1953, and Articles 128 (2) and 129 of the Code of Civil Procedure shall apply.

## **Section 18**

### **Deliberations on orders and judgments**

Orders and judgments shall be deliberated upon in camera. All the judges who were present at every hearing until the final hearing on the case is concluded may take part in the deliberations in camera.

The rapporteur judge shall vote first; then the other judges shall vote, beginning with the youngest; the President shall have the final vote.

After the vote, the Court shall appoint a judge to draft the order or judgment, the text of which shall be adopted by the Court in camera.

The date of the decision shall be the date on which the order or judgment referred to in the previous subsection is adopted.

Orders and judgments must be signed by the President and the judge appointed pursuant to the provisions of subsection (3).

## **Section 19**

### **Court costs**

Costs shall not be awarded in cases heard by the Constitutional Court.

## **Section 20**

### **Publication of judgments and orders rejecting applications**

The President shall order the publication of summary notices of judgments and orders rejecting applications for constitutional review in the Official Gazette and the Official Bulletin of the Regions concerned within ten days of their being deposited with the Registrar, giving details of the publication of the order issued by the referring courts pursuant to Section 25 of Law No. 87 of 11 March 1953.\*

*[\* See now Section 3 of Law No. 839 of 11 December 1984, Article 21 of Presidential Decree No. 1092 of 28 December 1985 and Article 12 of Presidential Decree No. 217 of 14 March 1986 requiring the publication in full in the Official Gazette of all the Constitutional Court judgments, orders declaring the application for constitutional review to be manifestly groundless and any other Court orders settling the issues.]*

## **Section 21**

### **Corrections of omissions or material errors in judgments and orders**

The Court shall correct any omissions or material errors in judgments and orders in camera, acting on its own authority if necessary, in the form of an order and notifying the parties that have entered an appearance.

The order making the correction shall be entered as an annotation to the original judgment or order thus corrected.

In the case of judgments declaring an Act of Parliament or an act having the force of law to be unconstitutional, the correction order shall be governed by subsections 30(1) and 30(2) of Law No. 87 of 11 March 1953.

## **Section 22**

### **Suspension, interruption and termination of proceedings**

The provisions governing the suspension, interruption and termination of proceedings do not apply to cases before the Constitutional Court, even when, for any reason whatsoever, the case suspended by the court referring a question of unconstitutionality to the Constitutional Court is dismissed.

## **Chapter Two**

### **Questions of Constitutionality Raised Directly**

## **Section 23**

### **Applications for constitutional review**

In the cases provided for by Sections 31, 32 and 33 of Law No. 87 of 11 March 1953, applications for constitutional review must be deposited with the Registry together with documents from the case-file, after the notices required by statute have been served. In the event that a regional government is a party to the case, a special power of attorney must be deposited containing the address for service in Rome.

The above provision shall also apply to cases concerning jurisdiction provided for by Sections 35 and 36 of the aforementioned law.

The respondent party may file submissions and enter an appearance within twenty days of the date on which the application is lodged.

## **Section 24**

### **Publication**

Having ascertained that the case-file is in order and that notice has been duly served, the President shall order the publication of the application in the Official Gazette in the cases provided by Sections 32, 33 and 36 of Law No. 87 of 11 March 1953, after the Registrar has recorded the application, in chronological order, in the case register.

For cases under Sections 31 and 35 of the aforementioned law, the President shall order that the notice of the entry of the application be published in the Official Gazette and the Official Bulletin of the Region.\*

[\* See now Article 12 of Presidential Decree No. 217 of 14 March 1986, which now requires all applications to be published in full in the Official Gazette.]

## **Section 25**

## **Rules of procedure for lodging applications**

In the cases governed by the provisions of this Chapter, Sections 5, 6, 7, 8, 9(2),(3) and (4) and 10 to 21 shall apply. Only the withdrawal of the application, if accepted by all the parties to the case, can terminate the proceedings.

## **Chapter Three**

### **Conflict of Powers**

## **Section 26**

### **Applications regarding conflicts of powers between branches of State government**

The application referred to in Section 37 of Law No. 87 of 11 March 1953 must contain a concise statement of the reasons for the conflict, indicating the provisions of the Constitution governing the subject matter. It must be signed and deposited with the Registry.

After it has been filed, the President convenes the Court in camera under Section 37(3) of Law No. 87 of 11 March 1953.

The application, containing evidence of service pursuant to Section 37(4) of Law No. 87/1953, shall be deposited with the Registry within twenty days of the last service.

Within this same time-limit the parties shall enter an appearance, while Sections 3(1), 5, 6, 7, 8, 10 to 19 and 21 shall apply for subsequent stages in the proceedings.

The provisions of the last subsection of Section 37 of Law No. 87 of 11 March 1953 shall apply to legal representation and court advocacy.

Only the withdrawal of the application, if accepted by all the parties to the case, can terminate the proceedings.

## **Section 27**

### **Applications regarding conflicts of powers between the Central and Regional Governments, and between Regional Governments**

Applications pursuant to Sections 39 and 42 of Law No. 87 of 11 March 1953 must be served on the Prime Minister, save where the Prime Minister is the applicant.

The application shall be deposited with the Registry within twenty days of the last service of notice, together with the special power of attorney where applicable.

Within this time-limit, the parties must enter an appearance. With regard to subsequent phases in the proceedings, Articles 3(1), 5, 6, 7, 8, 10 to 19 and 21 shall apply.

After hearing the submissions of the investigating judge, the President may convene the Court in camera whenever he considers that the application is manifestly inadmissible, or when the powers claimed are manifestly not vested in the applicant.

The Registrar shall communicate the decree issued by the President to the parties which entered an appearance at least twenty days prior to the date set down for the hearing of the Court sitting in camera.

If the Court believes that subsection (4) above does not apply to the case, the case shall be set down for a public hearing.

Only the withdrawal of the application, if accepted by all the parties to the case, can terminate the proceedings.

## **Section 28**

### **Suspension order**

At any time, the parties may request the suspension of the acts referred to in Section 40 of Law No. 87 of 11 March 1953.

The Court shall make this provision in camera by issuing an order including reasons after hearing the representatives of the parties and after conducting any investigations deemed appropriate.

The parties may submit documents and make other representations.

The request may also be submitted at the hearing set for the debate.

## **Chapter Four**

### **Final and Transitional Provisions**

## **Section 29**

### **Official collection of judgments and orders of the Constitutional Court**

All the judgments and orders of the Constitutional Court shall be given an annual serial number and be regularly published in full in the Official Collection of Judgments and Orders of the Constitutional Court (*Raccolta Ufficiale delle*

*Sentenze e delle Ordinanze della Corte Costituzionale*) under the supervision of a judge appointed by the Court.

## **Section 30**

### **Court costs and fees**

Proceedings before the Court shall not be subject to taxes.

The Court shall determine the fees due to the Registry in respect of special services rendered.



**Section 31****Transitional provision**

The parties to proceedings before the Constitutional Court on the date on which these supplementary regulations come into force may enter an appearance up to the tenth day following the date of their entry into force if the time-limit does not end after this date.

**Section 32****Entry into effect of these supplementary provisions**

These supplementary provisions shall come into effect on the day following their publication in the Official Gazette.

## Luxembourg Constitutional Court

**Law of 12 July 1996 revising Article 95 of the Constitution****Article I**

The following articles shall be added to Article 95 of the Constitution:

**“Article 95bis**

1. Administrative proceedings shall lie within the jurisdiction of the Administrative Court and the Administrative Appeals Court. The courts shall hear fiscal litigation where and in the manner to be prescribed by law.
2. Other administrative tribunals may be established by law.
3. The Administrative Appeals Court is the highest administrative court.
4. The powers and the organisation of the administrative courts shall be governed by law.
5. The judges of the Administrative Court and the Administrative Appeals Court shall be appointed by the Grand Duke. Members of the Administrative Appeals Court and the President and Vice-Presidents of the Administrative Court shall be appointed, except where initial appointments are concerned, on the advice of the Administrative Appeals Court.
6. The provisions of Articles 91, 92 and 93 shall apply to members of the Administrative Appeals Court and the Administrative Court.”

**“Article 95ter**

1. The judgments of the Constitutional Court shall rule on the compliance of laws with the Constitution.
2. The Constitutional Court may be asked by any court, in the manner to be prescribed by law, for a preliminary ruling on the conformity of laws with the Constitution, with the exception of laws approving treaties.
3. The Constitutional Court shall consist of the President of the Superior Court of Justice, the President of the Administrative Appeals Court, two judges of the Court

of Cassation and five judges appointed by the Grand Duke on the joint advice of the Superior Court of Justice and the Administrative Appeals Court. The provisions of Articles 91, 92 and 93 shall apply to the members of the Constitutional Court. The Constitutional Court shall consist of a single chamber with a bench of five judges.

4. The organisation of the Constitutional Court and the way in which it exercises its powers shall be prescribed by law."

## Article II

The present law shall enter into force on 1 January 1997.

Doc. parl. 4153; sess. ord. 1995-1996

## Law of 27 July 1997 on the organisation of the Constitutional Court

### Chapter 1

#### Establishment and seat

#### Article 1

The present law shall govern the organisation of the Constitutional Court.

The Court shall sit in the city of Luxembourg.

### Chapter 2

#### Powers

#### Article 2

The Constitutional Court shall rule, in the manner laid down by the present law, on the conformity of laws with the Constitution, with the exception of laws approving treaties.

### Chapter 3

#### Composition

#### Article 3

1. The Constitutional Court shall consist of nine members: a President, a Vice-President and seven judges.

2. The Grand Duke shall appoint the President, the Vice-President and the seven judges.

3. The President of the Superior Court of Justice, the President of the Administrative Court and the two judges of the Court of Cassation shall be members of the Constitutional Court *ex officio*.

4. The other five members of the Constitutional Court, who must be qualified judges, shall be appointed by the Grand Duke on the joint advice of the Superior Court of Justice and the Administrative Appeals Court.

In order to deliver this advice, the Superior Court of Justice and the Administrative Appeals Court shall meet in a joint general assembly convened by the President of the Superior Court of Justice.

For each vacant post, the joint general assembly shall propose three candidates; each candidate shall be proposed separately.

5. The President of the Superior Court of Justice shall be the President of the Constitutional Court. He or she shall be responsible for the smooth conduct of business and the Court's proper functioning.

The President of the Administrative Appeals Court shall act as the Vice-President of the Constitutional Court.

6. The members of the Constitutional Court shall continue to carry out their duties as judges of the courts in which they sat before. *Ex officio* members of the Constitutional Court who cease to hold the office concerned and members who temporarily or permanently cease to be judges automatically relinquish their posts in the Constitutional Court.

#### Article 4

The Court shall sit, deliberate and deliver judgments as a bench of five judges.

#### Article 5

The members of the Court shall not hear, deliberate on or decide any case in which they themselves or any of their direct relatives or relatives by marriage up to the fourth degree inclusive have a personal interest.

The members of the Court shall not hear, decide or take part in cases with which they have already dealt in a capacity other than that of member of the Constitutional Court.

Members of the Court may be challenged for the reasons and in the manner laid down in the relevant provisions of the Code of Civil Procedure.

#### **Chapter 4**

##### **Referral and procedure**

#### **Article 6**

When a party raises a question concerning a law's conformity with the Constitution before an ordinary court or an administrative court, that court shall refer the matter to the Constitutional Court.

The court shall not be required to refer the matter to the Constitutional Court if, in its view:

- a. a decision on the matter raised is not necessary for it to deliver its judgment;
- b. the constitutionality issue is without foundation;
- c. the Constitutional Court has already ruled on a question submitted to it concerning the same matter.

If a court considers that an issue concerning a law's conformity with the Constitution arises and that a ruling on the matter is necessary for it to deliver its judgment, it must raise the matter of its own motion after asking the parties to submit any observations.

#### **Article 7**

The decision to put a preliminary question to the Constitutional Court suspends the proceedings and all procedural time limits or limitation periods from the date of the decision up to the date on which the referring court receives the Constitutional Court's ruling on the preliminary question.

That ruling, against which there is no appeal, shall be communicated to the parties by the registry of the Constitutional Court by registered letter.

#### **Article 8**

The preliminary question, which shall be set out in the final wording of the judgment, need not comply with any particular formal requirements. It shall state precisely to what legislative and constitutional rules it relates.

The registry of the court asking the preliminary question shall send the decision to the registry of the Constitutional Court.

#### **Article 9**

The President of the Constitutional Court shall decide the composition of the Court for each case and appoint a reporting judge.

The President and the Vice-President may sit as members of the chamber for any case.

When appointing judges and the reporting judge for successive cases, the President shall proceed according to the ranking specified in Article 19 so that there is a regular rotation of members of the Court.

#### **Article 10**

Within thirty days from the date of service of the preliminary question, the parties may file written submissions with the registry of the Court; they thereby become parties to the proceedings before the Constitutional Court.

The registry shall immediately send the parties copies of the written submissions filed. From the date of service of the said submissions, the parties shall have thirty days to file additional written submissions with the registry.

During the thirty days following the expiry of the aforementioned periods, the Court, sitting in public, shall hear the report of the reporting judge and the oral submissions of the parties. The above thirty-day period shall be suspended each year from 15 July to 16 September. The date of the hearing shall be set by the Court in the parties' absence; the registry of the Court shall inform the lawyers of the date by registered letter at least fifteen days in advance.

The time-limits laid down in this article shall not be extended to take account of greater distance.

The prescribed periods shall run from midnight on the relevant day of service. They shall expire at midnight on the

last day of the period. Public holidays shall be included in such periods. All periods ending on a Saturday, a Sunday, a public holiday or an official replacement holiday shall be extended to the next working day.

#### **Article 11**

The parties shall be allowed to make submissions to and plead before the Constitutional Court through any lawyer registered on List I of the roll of lawyers drawn up each year by the Bar Councils.

Where the Constitutional Court has a matter referred to it by an administrative court in a case in which the state is one of the parties, the state may be represented by a delegate or lawyer on List I of the roll of lawyers drawn up each year by the Bar Councils.

Where the Constitutional Court has a decision submitted to it to which the Public Prosecutor's Office is a party, the latter shall be represented by the Public Prosecutor or a member of his or her office appointed by him or her, who may act as a party in the proceedings before the Constitutional Court.

#### **Article 12**

The Constitutional Court shall deliberate on the matter in private. The deliberations of the Court shall be secret. Decisions shall be taken by majority voting.

#### **Article 13**

The Court shall deliver a judgment ruling on the law's conformity with the Constitution.

Judgments shall be delivered within two months of the conclusion of the hearing. The Court shall include reasons in its judgments.

#### **Article 14**

Judgments shall be read out at a public hearing by the President or another member of the Court appointed to do so. The other members of the Court need not be present. The judgment shall be published in the Official Gazette within thirty days of being delivered.

When the judgment is published the Constitutional Court may decide to omit personal data concerning the parties.

#### **Article 15**

A copy of the judgment shall be sent by the registry of the Court to the referring court and a certified true copy shall be sent to the parties to the case before the said jurisdiction.

The referring court and any other court called on to deal with the same case shall abide by the Constitutional Court's ruling when determining the case.

#### **Article 16**

The proceedings before the Constitutional Court shall be free of charge. Judgments of the Court shall not give rise to payment of any costs.

### **Chapter 5 Organisation**

#### **Section 1 Induction and taking oath**

##### **Article 17**

The induction of members of the Court shall take place in a public hearing of the Constitutional Court.

The members of the Court shall take oath before the Grand Duke or another person appointed by him.

##### **Article 18**

Before taking office, members of the Court shall take the following oath:

"I hereby swear loyalty to the Grand Duke and obedience to the Constitution and the laws of the State. I promise to perform my duties with integrity, scrupulousness and impartiality."

#### **Section 2 Ranking and precedence**

##### **Article 19**

A ranking list shall be kept on which members of the Court shall appear in the following order:

The President, the Vice-President and the judges of the Court of Cassation in order of their appointment.

The other judges shall be entered in the list in order of their official appointment or, in the event of simultaneous appointment, in the order in which their names appear in the decree appointing them.

The list shall determine the rank of the members during ceremonies and hearings of the Court.

### **Section 3**

#### **Unavailability and replacement**

#### **Article 20**

In the event of absence, unavailability or vacancy of the post, the President of the Constitutional Court shall be replaced by the Vice-President or, failing him or her, by the member who is highest on the ranking list provided for in Article 19 above.

### **Section 4**

#### **Discipline**

#### **Article 21**

1. The members of the Court shall not, directly or indirectly, be privately consulted by the parties or their lawyers regarding cases referred to them.
2. Members of the Court shall not absent themselves if the service will suffer as a result.
3. Members of the Court whose conduct is unworthy of their office or who neglect their duties may incur a disciplinary penalty.
4. All disciplinary proceedings shall be instigated, investigated and conducted by the President of the Constitutional Court.

#### **Article 22**

The disciplinary penalties are as follows:

1. a warning;
2. a reprimand;
3. suspension from duties for a period not exceeding six months;
4. dismissal.

#### **Article 23**

Disciplinary penalties shall be imposed by the Constitutional Court sitting in general assembly and taking its decision in private.

The President of the Court or the member of the Court who, owing to the President's unavailability, investigated the disciplinary case for hearing, shall not participate in the deliberations or decisions on the case.

#### **Article 24**

No penalty may be imposed unless the member concerned has been heard or duly summoned. If the member does not appear when the Court is sitting in chambers, he or she, if found guilty, may lodge with the registry an application to set aside the decision within five days of service of the decision.

#### **Article 25**

The Constitutional Court may decide provisionally to suspend any member charged with an administrative or ordinary offence for the entire duration of the proceedings concerned and until the final decision.

#### **Article 26**

Disciplinary proceedings shall be distinct from any legal proceedings and may be instituted in addition to them.

### **Section 5**

#### **Sundry provisions**

#### **Article 27**

The registry of the Superior Court of Justice shall act as the registry of the Constitutional Court. The registrar shall attend the public hearings of the Court and its general assemblies as well as the preparatory stages of disciplinary cases against members of the Court.

**Article 28**

The Court shall decide its own rules of procedure. These shall be published in the Official Gazette.

**Article 29**

The members of the Constitutional Court shall receive a monthly allowance equal to forty index points. The registrar of the Constitutional Court shall receive a monthly allowance equal to twenty index points. The value of the index points shall be calculated in accordance with the rules laid down by the legislation on remuneration of civil servants. The allowances of members of the Court and the registrar shall be additional to any other remuneration.

**Article 30**

The funds necessary for the Court to function shall be entered in the State budget.

**Article 31**

The present law shall come into force on 1 October 1997.

Doc. parl. 4218; sess. ord. 1996-1997.

**Rules of Procedure of the Constitutional Court,  
31 October 1997**

In accordance with Article 28 of the Law of 27 July 1997 governing the organisation of the Constitutional Court;

**Article 1**

The seat of the Constitutional Court shall be in the City of Luxembourg at 12 Côte d'Eich. Hearings of the Constitutional Court are held on Fridays at 3pm; the Court may arrange special hearings.

**Article 2**

The Chief Registrar of the Superior Court of Justice shall be the registrar of the Constitutional Court. Where the registrar is unavailable, he or she shall be replaced by a registrar of the Superior Court of Justice appointed by him or her. If it is impossible for him or her to make this appointment, the matter shall be seen to by the President of the Constitutional Court.

**Article 3**

The Constitutional Court shall keep a general register in which cases are catalogued and signed by the President of the Court and in which all cases shall be recorded in the order in which they are received.

The record in the general register shall determine the order in which cases are heard.

The Court may, in view of particular circumstances, decide to hear a case as a matter of priority.

The registrar shall record in the general register the dates on which judgments are handed down and the date of their publication in the Official Gazette.

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**Article 4**

These rules of procedure shall be published in the Official Gazette.

## **Poland**

### **Constitutional Tribunal**

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**Constitution**

The Constitution of the Republic of Poland of 2 April 1997  
(*Dziennik Ustaw* of 16 July, 1997, No. 78, item 483)

- extracts -

**Chapter II****The Freedoms, Rights and Obligations of Persons and Citizens**

...

**Personal Freedoms and Rights**

...

**Article 56**

1. Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles laid down by statute.
2. Foreigners who, in the Republic of Poland, seek protection from oppression, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.

...

**Means for the Defence of Freedoms and Rights**

...

**Article 79**

1. In accordance with principles laid down by statute, everyone whose constitutional freedoms or rights have been infringed shall have the right to appeal to the Constitutional Tribunal for a judgment on the conformity with the Constitution of a statute or another normative act upon the basis of which a court or organ of public administration has made a final decision on the person's freedoms or rights or on his obligations specified in the Constitution.
  2. The provisions of paragraph 1 above shall not relate to the rights specified in Article 56.
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### Chapter III Sources of Law

...

#### Article 89

1. Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns:

1. peace, alliances, political or military treaties;
2. freedoms, rights or obligations of citizens, as specified in the Constitution;
3. the Republic of Poland's membership in an international organisation;
4. considerable financial responsibilities imposed on the State;
5. matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

...

### Chapter VIII Courts and Tribunals

#### Article 173

The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.

#### Article 174

Courts and tribunals shall pronounce judgments in the name of the Republic of Poland.

#### Courts

...

#### Article 186

1. The National Council of the Judiciary shall safeguard the independence of courts and judges.
2. The National Council of the Judiciary may lodge an application with the Constitutional Tribunal regarding the conformity with the Constitution of normative acts

to the extent to which they relate to the independence of courts and judges.

...

#### The Constitutional Tribunal

#### Article 188

The Constitutional Tribunal shall adjudicate on the following matters:

1. the conformity of statutes and international agreements with the Constitution;
2. the conformity of a statute with ratified international agreements whose ratification required prior consent granted by statute;
3. the conformity of legal provisions issued by central State organs with the Constitution, ratified international agreements and statutes;
4. the conformity with the Constitution of the purposes or activities of political parties;
5. constitutional complaints, as specified in Article 79, paragraph 1.

#### Article 189

The Constitutional Tribunal shall settle disputes over the distribution of powers between central constitutional organs of the State.

#### Article 190

1. Judgments of the Constitutional Tribunal shall be universally binding and shall be final.
2. Judgments of the Constitutional Tribunal regarding matters specified in Article 188, shall be published immediately in the official publication in which the original normative act was promulgated. If a normative act has not been promulgated, then the judgment shall be published in the Official Gazette of the Republic of Poland, *Monitor Polski*.

3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication; however, the Constitutional Tribunal may specify another date on which a normative act shall cease to be in force. This time period may not exceed 18 months for a statute or 12 months for any other normative act. Where a



judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify a date on which the normative act concerned shall cease to have effect, after seeking the opinion of the Council of Ministers.

4. Where the Constitutional Tribunal judges a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued to be unconstitutional or not in conformity with an international agreement or statute, the judgment of the Constitutional Tribunal shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and according to principles specified in provisions applicable to the given proceedings.

5. Judgments of the Constitutional Tribunal shall be made by a majority of votes.

#### **Article 191**

1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:

1. the President of the Republic, the Marshal of the *Sejm*, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Chief Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights;

2. the National Council of the Judiciary, to the extent specified in Article 186, paragraph 2;

3. the constitutive organs of units of local self-government;

4. the national organs of trade unions as well as the national authorities of employers' organisations and occupational organisations;

5. churches and religious organisations;

6. the subjects referred to in Article 79 to the extent specified therein.

2. The subjects referred to in paragraph 1 subparagraphs 3-5, above, may make such an application if the normative act in question relates to matters relevant to the scope of their activity.

#### **Article 192**

The following persons may make application to the Constitutional Tribunal in respect of matters specified in Article 189: the President of the Republic, the Marshal of the *Sejm*, the Marshal of the Senate, the Prime Minister, the First President of the Supreme Court, the President of the Chief Administrative Court and the President of the Supreme Chamber of Control.

#### **Article 193**

Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act with the Constitution, ratified international agreements or a statute, if the answer to this question of law will determine an issue currently before the court.

#### **Article 194**

1. The Constitutional Tribunal shall be composed of 15 judges chosen individually by the *Sejm* for a term of office of 9 years from amongst persons distinguished by their knowledge of the law. No person may be chosen for more than one term of office.

2. The President and Vice-President of the Constitutional Tribunal shall be appointed by the President of the Republic from amongst candidates proposed by the General Assembly of the Judges of the Constitutional Tribunal.

#### **Article 195**

1. Judges of the Constitutional Tribunal, in the exercise of their office, shall be independent and subject only to the Constitution.

2. Judges of the Constitutional Tribunal shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of the office and the scope of their duties.

3. Judges of the Constitutional Tribunal, during their term of office, shall not belong to a political party or a trade union or perform public activities incompatible with the principles of the independence of the courts and judges.

## Article 196

A judge of the Constitutional Tribunal shall not be the subject of criminal proceedings or deprived of liberty without the prior authorisation of the Constitutional Tribunal. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The President of the Constitutional Tribunal shall be notified forthwith of any such detention and may order an immediate release of the person detained.

## Article 197

The organisation of the Constitutional Tribunal, as well as the mode of proceedings before it, shall be laid down by statute.

## Constitutional Tribunal Act

1 August 1997 (Dz.U. Nr 102, poz. 643)

### Chapter 1

#### Jurisdiction and organisation of the Constitutional Tribunal

##### Article 1

1. The Constitutional Tribunal, hereinafter referred to as the "Tribunal", shall be an organ of court authority, appointed to examine the conformity of normative acts and international agreements with the Constitution and implement other objectives specified in the Constitution.

2. The seat of the Tribunal shall be in Warsaw.

##### Article 2

1. The Tribunal shall adjudicate in the following matters:

1. the conformity of statutes and international agreements with the Constitution;
2. the conformity of statutes with ratified international agreements whose ratification requires prior consent granted by statute;
3. the conformity of legal provisions enacted by central State organs with the Constitution, ratified international agreements and statutes;

4. constitutional complaints;

5. disputes between constitutionally recognised central State organs with respect to their powers;

6. the conformity with the Constitution of the purposes and/or activities of political parties.

2. The Tribunal shall, upon the application of the President of the Republic of Poland, decide upon the conformity with the Constitution of a statute before it is signed and of an international agreement prior to its ratification.

3. The Tribunal shall, upon the application of the Marshal of the *Sejm*, adjudicate in any matter concerning an impediment to the exercise of office by the President of the Republic of Poland, where the President is not able to notify the Marshal of the *Sejm* of his inability to exercise the office. If the President is found temporarily unable to perform his office, the Tribunal shall vest the performance of the duties of the President of the Republic of Poland in the Marshal of the *Sejm*.

##### Article 3

Any court may refer a question of law to the Tribunal as to the conformity of a normative act with the Constitution, ratified international agreements or a statute if the answer to this question of law determines the matter pending before the court.

##### Article 4

1. The Tribunal shall inform the *Sejm* and the Senate about substantial problems arising from the activities and judgments of the Tribunal. This information shall not be subject to voting.

2. The Tribunal shall submit to the competent law-making bodies observations concerning inconsistencies and gaps found in the law, the removal of which is necessary to ensure the integrity of the legal system of the Republic of Poland.

##### Article 5

1. The Tribunal shall be composed of fifteen judges.

2. Judges of the Tribunal shall be appointed by the *Sejm* for a period of nine years.

3. Judges of the Tribunal shall possess the necessary qualifications to hold the office of a judge of the Supreme Court or the Chief Administrative Court.

4. Candidates for the office of a judge of the Tribunal shall be nominated by at least 50 deputies or the Presidium of the *Sejm*. A resolution of the *Sejm* concerning the election of a judge of the Tribunal shall require an absolute majority of votes in the presence of at least half of the total number of deputies.

5. A person elected to the office of judge of the Tribunal shall take the following oath in the presence of the President of the Republic of Poland:

"I do solemnly swear that in discharging the duties which have been vested in me as a judge of the Constitutional Tribunal, I shall faithfully serve the Polish Nation, safeguard the Constitution and perform all such duties impartially and with the utmost diligence."

The oath may be taken by adding the following sentence:  
"So help me God".

6. Refusal to take the oath shall be equivalent to resigning from the office of judge of the Tribunal.

#### Article 6

1. Whilst exercising their office, the judges of the Tribunal shall be independent and subject only to the Constitution.

2. The basic remuneration of a judge of the Tribunal shall be equal to the basic remuneration of the Vice-Marshall of the *Sejm*.

3. A judge of the Tribunal shall, when his/her term of office has ended, have the right to return to his/her previous office or to be offered a post equivalent to that previously held.

4. With respect to matters not provided for in this Act and concerning the rights, duties and disciplinary liability of the judges of the Tribunal, the provisions relating to the rights, duties and disciplinary liability of judges of the Supreme Court shall apply *mutatis mutandis*.

#### Article 7

1. The consent to institute criminal proceedings against a judge or to deprive him/her of liberty shall be given by the General Assembly of the Judges of the Tribunal, hereinafter referred to as the "General Assembly", with the exception of the judge being the subject of the application.

2. The President of the Tribunal shall inform the General Assembly immediately about any detention of a judge of the Tribunal and about the position taken by the President of the Tribunal with respect to that matter.

3. Before the resolution concerning the issue referred to in paragraph 1 is adopted, the Tribunal shall hear the position of the judge concerned unless this is not possible. The resolution shall be adopted by a majority of two-thirds of votes of the judges of the Tribunal participating in the General Assembly.

4. Until the Tribunal resolves to allow the judge to be the object of criminal proceedings or deprived of liberty, only measures of the utmost urgency may be undertaken against that judge.

#### Article 8

A judge of the Tribunal may be subjected to disciplinary procedures for an infringement of provisions of the law, acts inconsistent with the dignity of his/her office or unethical conduct which might undermine confidence in his/her person.

#### Article 9

1. In disciplinary proceedings, the Tribunal shall pronounce judgment:

1. at first instance level - by a bench of five judges;

2. at second instance level - by a bench composed of all the judges of the Tribunal.

2. The judges sitting on the bench and the person bringing disciplinary charges shall be determined by the General Assembly by lot.

3. There shall be no further appeal in relation to disciplinary decisions.

#### Article 10

The forms of disciplinary sanctions shall be as follows:

1. warning,

2. reprimand,

3. removal from the office of judge of the Tribunal.

#### Article 11

1.The term of office of a judge of the Tribunal shall be found by the General Assembly to have expired due to:

1.his/her resignation from the office of judge of the Tribunal;

2.an opinion of a medical board certifying his/her permanent inability to perform the duties of a judge of the Tribunal due to his/her illness, disability or weakness;

3.conviction by a final court judgment;

4.a legally valid disciplinary decision sentencing him/her to removal from the office of judge of the Tribunal.

2.The expiry of the term of office of a judge of the Tribunal due to his/her death shall be pronounced by the President of the Tribunal.

3.The General Assembly shall adopt a resolution after having conducted adequate inquiries and, in particular, having read the records of criminal or disciplinary proceedings and heard the person concerned, unless this is not possible. In the event of permanent inability of the judge of the Tribunal to perform his/her duties due to his/her state of health, the Tribunal may request an opinion on the judge's state of health from a competent health care body.

4.The President of the Tribunal shall submit the decision pronouncing the expiry of a term of office to the Marshal of the *Sejm*.

#### Article 12

1.The following shall be the organs of the Tribunal: the General Assembly and the President of the Tribunal.

2.The General Assembly shall consist of the judges of the Tribunal.

#### Article 13

1.The President of the Tribunal shall, at least once a year, convene the General Assembly, at which the activities of the Tribunal and problems resulting from its judicial decisions shall be subject to discussion.

2.The General Assembly may be attended by: the Chairpersons of relevant *Sejm* committees and Senate committees, the President of the Supreme Chamber of Control, the Minister of Justice - Public Prosecutor-General, the First President of the Supreme

Court, the President of the Supreme Administrative Court, the Commissioner for Citizens' Rights and the Commissioner for the Rights of the Child.

3.The President of the Tribunal shall notify the President of the Republic of Poland, the Marshal of the *Sejm*, the Marshal of the Senate and the Prime Minister of the convening of the General Assembly, and the said persons may participate in the General Assembly or delegate representatives.

#### Article 14

1.The General Assembly shall be competent to:

1.adopt the rules of procedure of the Tribunal;

2.elect candidates for the positions of President and Vice-President of the Tribunal;

3.adopt the rules of the Office of the Tribunal;

4.adopt the draft plan of income and expenses of the Tribunal;

5.approve information referred to in Article 4, paragraph 1;

6.perform other acts of the General Assembly provided for in the Act or the rules of procedure.

2.The General Assembly shall adopt resolutions if at least two-thirds of the total number of judges of the Tribunal, including the President or Vice-President, are present.

3.The President of the Tribunal shall notify all judges of the Tribunal as to the agenda and the date of the General Assembly at least seven days prior to the date of its being held.

4.In special cases the General Assembly may deem itself able to adopt resolutions even if it fails to observe the date specified in paragraph 3 above.

5.The President or Vice-President of the Tribunal shall chair the General Assembly.

6.The resolutions of the General Assembly shall be adopted by a simple majority of votes, unless the statute provides otherwise. Voting shall be open, unless a judge of the Tribunal requests a secret vote.

7.The rules of procedure of the Tribunal shall be published in the Official Gazette of the Republic of Poland, *Monitor Polski*.

**Article 15**

1. The President of the Republic of Poland shall appoint the President and the Vice-President of the Tribunal from the two candidates nominated for each of the offices by the General Assembly.
2. The two candidates for each office of President or Vice-President shall be elected by the General Assembly from amongst the judges of the Tribunal who, in a secret ballot, have received successively the highest number of votes. The election shall be held not later than three months prior to the expiry of the term of office of the President or Vice-President in office. If a vacancy arises in the office of the President or Vice-President of the Tribunal candidates shall be elected within a period of one month.
3. The part of the proceedings of the General Assembly dealing with the election of candidates for the office of President and Vice-President of the Tribunal shall be chaired by the oldest judge of the Tribunal participating in the General Assembly.

**Article 16**

1. The President of the Tribunal shall represent the Tribunal in external matters and perform the activities specified in this Act and the rules of procedure.
2. The Vice-President of the Tribunal shall replace the President in his/her absence and perform other duties in accordance with the distribution of duties determined by the President of the Tribunal.
3. In the event of any impediments to the performance of duties by the President and Vice-President, a judge of the Tribunal designated by the President of the Tribunal shall replace them; where the designation of a judge by the President of the Tribunal is impossible, the oldest judge shall replace the President and the Vice-President.

**Article 17**

1. The organisational and administrative conditions of the work of the Tribunal shall be secured by the President of the Tribunal and the Office of the Tribunal, which is subordinate to him.
2. The detailed scope of the objectives and structure of the Office shall be determined in its rules.

3. The relevant provisions governing State civil servants shall apply to employees of the Office of the Tribunal.

**Article 18**

1. The draft plan of income and expenses of the Tribunal as adopted by the General Assembly shall be included by the Minister of Finance in the draft budget of the State.
2. The President of the Tribunal shall have the powers of the Minister of Finance with respect to the implementation of the Tribunal's budget.

**Chapter 2****Proceedings before the Tribunal****General Provisions****Article 19**

1. The Tribunal shall, in the course of proceedings, examine all relevant circumstances in order to understand fully every aspect of the case.
2. The Tribunal shall not be bound by motions as to evidence submitted by participants in the proceedings and may, *ex officio*, admit evidence which it considers relevant to the examination of the case.

**Article 20**

In relation to cases not governed by the Act concerning the proceedings before the Tribunal, the provisions of the Code of Civil Procedure shall apply.

**Article 21**

1. Courts and other organs of public authority shall be obliged to assist the Tribunal and, at its request, present records of proceedings related to the proceedings before the Tribunal.
2. The Tribunal, having made use of the evidence from the records of proceedings, shall return them to the appropriate organ without undue delay.

**Article 22**

The Tribunal may request the Supreme Court and the Chief Administrative Court to provide information concerning the interpretation of a specified legal provision in judicial decisions.

### Article 23

1. Hearings of the Tribunal shall be public unless particular provisions provide otherwise. The presiding judge of the bench in a given case may dispense with its public nature for reasons of security of the State or protection of State secrets.
2. The judges of the Tribunal shall be authorised to have access to information constituting State secrets connected with the case being examined by the Tribunal.
3. A witness or an expert may be heard concerning circumstances protected by State secrecy if the witness or expert has been released by a competent organ from the obligation of keeping such secrets. A refusal to grant such a release may only be justified by an important interest of the State.
4. A witness or an expert shall not exercise the right to refuse to testify referred to in paragraph 3 above if the Tribunal considers such a refusal to be groundless.

### Article 24

1. The costs of proceedings before the Tribunal shall be borne by the State Treasury subject to paragraph 2.
2. When a constitutional complaint is allowed the Tribunal shall, together with its judgment, order, for the benefit of the complainant, reimbursement of the costs of the proceedings before the Tribunal by the organ which issued the normative act which was the subject of the complaint. In justified cases the Tribunal may order the reimbursement of the costs of the proceedings before the Tribunal even when it has not allowed the constitutional complaint.
3. The Tribunal may determine the costs of the complainant's representation by an advocate or legal counsel in accordance with the nature of the case and the contribution made by the legally authorised representative to the clarification and settlement of the case.

### Article 25

1. The Tribunal shall pronounce judgments:
  1. sitting as a full bench - in cases:

- a. of disputes concerning the distribution of powers between constitutionally recognised central State organs;
  - b. concerning the confirmation of impediments to the exercise of office by the President of the Republic of Poland and vesting the temporary performance of the duties of the President of the Republic of Poland in the Marshal of the *Sejm*;
  - c. on the conformity with the Constitution of the purposes and/or activity of political parties;
  - d. on the application of the President of the Republic of Poland for the confirmation of the conformity with the Constitution of a statute before it is signed or of an international agreement prior to its ratification;
  - e. of a particularly complicated nature - upon the initiative of the President of the Tribunal or where the application for the case to be heard has been submitted by a bench adjudicating in a given case or in cases in which the particularly complicated aspect is related to financial outlays not provided for in the budgetary Act, and, in particular, where the adjudicating bench intends to depart from the legal opinion expressed in an earlier decision of the Tribunal given as a full bench;
2. sitting as a bench of five judges of the Tribunal - in cases:
    - a. on the conformity with the Constitution of statutes or ratified international agreements;
    - b. on the conformity of statutes with ratified international agreements whose ratification requires prior consent granted by statute;
  3. sitting as a bench of three judges of the Tribunal - in cases:
    - a. on the conformity of other normative acts with the Constitution, ratified international agreements and statutes;
    - b. of complaints in relation to a refusal to proceed with an application for the confirmation of the conformity of other normative acts with the Constitution, ratified international agreements and statutes as well as a refusal to proceed with a constitutional complaint;
    - c. of the challenging of a judge.

2.The hearing of a case by a full bench shall require the participation of at least nine judges of the Tribunal. The President or Vice-President of the Tribunal shall preside over the hearing or, in the event that they are prevented from presiding, the oldest judge of the Tribunal shall preside.

3.The President of the Tribunal shall assign the judges to the bench of the Tribunal, including the presiding judge and the rapporteur judge.

#### Article 26

1.A judge of the Tribunal may be challenged with respect to adjudicating cases in which:

1.he/she enacted or participated in the enactment of a normative act, judgment, administrative decision or another settlement;

2.he/she was a representative, attorney or legal counsel of or advisor to one of the participants in the proceedings;

3.there are other reasons for challenging the judge as specified in Article 48 of the Code of Civil Procedure.

2.A judge of the Tribunal may be excluded from participating in the proceedings at his/her request or the request of a participant in the proceedings or *ex officio* if circumstances which are not specified in paragraph 1 and which may engender doubts as to his/her impartiality may reasonably be thought to exist.

3.The President of the Tribunal shall decide on any challenge to a judge for reasons specified in paragraph 1. The Tribunal shall decide on any challenge to a judge for reasons specified in paragraph 2.

4.Until the issue of a challenge is resolved, the judge of the Tribunal may only perform acts of the utmost urgency.

#### Article 27

The following shall be participants in the proceedings before the Tribunal:

1.a subject who submitted an application, question of law or constitutional complaint;

2.an organ which issued an Act included in the application, question of law or constitutional complaint;

3.the statutory body of a political party in cases concerning the confirmation of the conformity with the Constitution of the purposes or activities of the political party;

4.any constitutionally recognised central State organ concerned in a dispute over the distribution of powers;

5.the Public Prosecutor-General;

6.representatives of the *Sejm*, the President of the Republic of Poland and the Minister of Foreign Affairs - in cases concerning the confirmation of the conformity with the Constitution of international agreements ratified according to the procedure laid down in Article 89, paragraph 1 of the Constitution;

7.representatives of the President of the Republic of Poland and the Minister of Foreign Affairs - in cases concerning the confirmation of the conformity with the Constitution of other ratified international agreements;

8.the Commissioner for Citizens' Rights where he/she has given notice of his/her participation in the proceedings in relation to constitutional complaints.

#### Article 28

The Marshal of the *Sejm*, the Marshal of the Senate, the First President of the Supreme Court and the Public Prosecutor-General shall take part in person at the hearing for admitting a temporary inability of the President of the Republic of Poland to perform his/her office.

#### Article 29

1.A participant in the proceedings shall act before the Tribunal in person or through an authorised representative.

2.In the proceedings before the Tribunal, the Marshal of the *Sejm*, the *Sejm* or a group of deputies constituting the applicant shall act through a deputy appointed by them, who acts as their representative.

3.The provision of paragraph 2 shall apply *mutatis mutandis* with respect to the Senate.

4.The applicants specified in paragraphs 2 and 3 above may appoint, apart from the representatives above, up to three authorised representatives from amongst persons who are neither deputies nor senators.

5. The Public Prosecutor-General or his/her deputy shall participate in cases examined by the Tribunal sitting in full bench. A prosecutor of the National Public Prosecutor-General's Office shall participate in cases examined by other compositions of the bench.

#### **Article 30**

1. Applications and statements by the participants in the proceedings which are submitted to the Tribunal in the course of the proceedings outside of hearings shall be included in the case file.

2. Letters and enclosures submitted to the Tribunal shall be submitted in sufficient number to enable their delivery to all participants in the proceedings and allow two copies to be retained in the case records.

#### **Article 31**

1. Proceedings before the Tribunal shall be instituted on the basis of an application, question of law or complaint concerning breaches of the Constitution by a subject entitled to institute such proceedings.

2. An applicant may withdraw the application, question of law or complaint until such time as the hearing has commenced.

#### **Article 32**

1. The application or question of law shall comply with requirements relating to documents of the case-file and shall, in addition, include:

1. the identity of the organ which enacted the normative act in question;
2. a precise identification of the normative act or part thereof called into question;
3. the formulation of the claim alleging the non-conformity of the normative act called into question with the Constitution, ratified international agreement or statutes;
4. reasons for the claim containing an indication of supporting evidence.

2. Applications submitted by organs or organisations specified in Article 191 paragraph 1, subparagraphs 3-5 of the Constitution shall also include a reference to the legal provision concerned, indicating that the statute or

another normative act called into question concerns issues within the scope of their activities.

3. The question of law shall also indicate the scope within which an answer to the question may influence the settlement of the case in relation to which the question has been asked and, additionally, it shall indicate the organ before which the proceedings are pending as well as the identification of the case.

#### **Article 33**

The President of the Tribunal shall inform the other participants in the proceedings that the application or question of law has been lodged, shall deliver copies of the application or question of law to them and shall inform them of the right to submit explanations in writing.

#### **Article 34**

1. The participants in the proceedings shall be obliged to provide to the Tribunal any explanations concerning the case and to notify it of the evidence necessary for a thorough consideration of the case.

2. The participants in the proceedings shall have the right to review the case records and to make and/or receive copies or excerpts thereof.

#### **Article 35**

The President of the Tribunal or the presiding judge of the bench may permit other persons to review the records where this is justified by a vital legal interest of that person or the public interest. This does not apply to cases that are considered in camera.

#### **Article 36**

1. The President of the Tribunal shall direct an application specified in Article 32, paragraph 2 to a judge of the Tribunal, designated by him/her, for preliminary consideration at proceedings in camera.

2. Where an application fails to satisfy formal requirements, the judge of the Tribunal shall order the defects therein to be repaired within a period of seven days from the date of notification thereof.

3. Where the application is evidently groundless or its formal defects have not been repaired within the specified period of time, the judge of the Tribunal shall refuse to proceed with further action.



4. The person submitting the application shall, with respect to the decision concerning refusal to proceed with further action, be entitled to lodge a complaint to the Tribunal within a period of seven days from the date of delivery of the said decision.

5. The Tribunal, sitting in camera, shall decide not to proceed with the consideration of a complaint filed after the expiry of the period specified in paragraph 4.

6. The President of the Tribunal shall, having found that the complaint has been filed in due time, refer the same for consideration by the Tribunal at proceedings in camera and shall determine the date for consideration thereof.

7. The Tribunal shall, having admitted the complaint, refer the case for consideration at a hearing. A decision ruling the complaint inadmissible shall not be subject to appeal proceedings.

#### **Article 37**

The President of the Tribunal shall refer applications and questions of law with respect to which there are no formal objections for consideration at a hearing by a competent bench and shall determine the date for the said hearing.

#### **Article 38**

The presiding judge of the bench shall make arrangements to prepare the hearing in a proper manner. The presiding judge may, in particular:

1. order delivery of relevant documents filed in the course of proceedings to the participants in the proceedings;
2. summon the participants in the proceedings to submit their position in relation to the case in writing and within a fixed period of time;
3. order the participants in the proceedings to submit documents and other materials necessary for consideration of the case;
4. summon other organs or organisations to participate in the proceedings, where their participation is deemed by the presiding judge expedient for due consideration of the case.

#### **Article 39**

1. The Tribunal shall, at a sitting in camera, discontinue proceedings:

1. if the pronouncement of a judicial decision is useless or inadmissible;

2. in consequence of the withdrawal of the application, question of law or constitutional complaint;

3. if the normative act in question has ceased to have effect to the extent challenged prior to the delivery of a judicial decision by the Tribunal.

2. If the circumstances referred to in paragraph 1 above come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.

#### **Article 40**

The internal manner of dealing with applications, constitutional complaints and questions of law shall be laid down in the rules of procedure of the Tribunal.

#### **Proceedings for the Confirmation of Conformity with the Constitution of Ratified International Agreements and Normative Acts and Proceedings in Questions of Law**

#### **Article 41**

1. The organ or the representative of the organ which enacted the normative act which is the subject of the application shall participate in the hearing.
2. In hearings concerning the confirmation of the conformity with the Constitution of ratified international agreements, the participation of representatives of the President of the Republic of Poland, the Minister of Foreign Affairs and the Public Prosecutor-General shall be obligatory and in the case of international agreements ratified in the procedure of Article 89, paragraph 1 of the Constitution the participation of the representatives of the *Sejm* shall also be obligatory.

#### **Article 42**

While adjudicating on the conformity with the Constitution of a normative act or ratified international agreement, the Tribunal shall examine the contents of the said Act or agreement as well as the powers and observance of the procedure required by law for the promulgation of the Act or the conclusion and ratification of the agreement.

**Article 43**

Where the President of the Republic of Poland requests the Tribunal to pronounce judgment on the conformity with the Constitution of the budgetary Act or the Act on an interim budget before its signing, the Tribunal shall pronounce the judgment within a period of two months from the date on which the application to the Tribunal was lodged.

**Article 44**

1. In cases concerning the confirmation of the conformity of a normative act with the Constitution in which the judgment of the Tribunal may give rise to consequences connected with financial outlays which have not been provided for in the Acts specified in Article 43, the President of the Tribunal shall request the Council of Ministers to give an opinion within a period of two months.
2. The failure by the Council of Ministers to issue the opinion within the period specified in paragraph 1 above shall not prevent the examination of the case.

**Article 45**

Articles 41 to 44 shall apply *mutatis mutandis* to the consideration of a question of law.

**Adjudication in Cases with respect to Constitutional Complaints****Article 46**

1. A complaint concerning a breach of the Constitution, hereinafter referred to as the "complaint" may, after the full course of proceedings has been undergone, be initiated within two months of the delivery to the complainant of a legally valid judgment, final decision or other final ruling.
2. The Tribunal shall consider a complaint according to the principles and procedure laid down for the consideration of an application for the confirmation of conformity of statutes with the Constitution and of other normative acts with the Constitution and statutes.
3. A court registration fee shall be collected in relation to the complaint.
4. The Council of Ministers shall determine by regulation the amount of and principles governing the collection of the court registration fee.

**Article 47**

1. The complaint shall, apart from the requirements concerning the documents in the case file, include the following:
  - 1.a precise identification of the statute or another normative act on the basis of which a court or another organ of public administration has given a final decision in respect of freedoms, rights or obligations determined in the Constitution and of which the conformity with the Constitution is challenged by the complainant;
  2. an indication as to which constitutional freedoms and rights have, according to the person making the complaint, been infringed and in what manner;
  3. the grounds for the complaint, including a precise description of the facts of the case.
2. The judgment, order or other ruling, given on the basis of the challenged normative act, together with an indication of the date on which it was delivered, shall be enclosed with the complaint.

**Article 48**

1. The complaint shall be drawn up by a solicitor or legal counsel unless the person making the complaint is a judge, prosecutor, notary public, professor or habilitated doctor of legal science.
2. Where the person making the complaint cannot bear the costs of legal assistance, he/she may request the district court of his/her place of residence to appoint a lawyer or legal counsel *ex officio* on the basis of the Code of Civil Procedure. Until such time as the court has ruled on the application, the time limit specified in Article 46, paragraph 1 shall not run.

**Article 49**

The complaint shall be subject to preliminary examination; Article 36 shall apply *mutatis mutandis*.

**Article 50**

- 1.The Tribunal may issue a preliminary decision to suspend or stop the enforcement of the judgment in the case to which the complaint refers if the enforcement of the said judgment, decision or other ruling might result in irreversible consequences of great detriment to the person making the complaint or where a vital public interest or another vital interest of the complainant speaks in favour of such a decision.
- 2.The preliminary decision shall be delivered immediately to the complainant and to the appropriate court organ or enforcement organ.
- 3.The Tribunal shall reverse the preliminary decision if the reasons for which it was given cease to have effect.

**Article 51**

- 1.The Tribunal shall inform the Commissioner for Citizens' Rights of the institution of proceedings. The provisions of Article 33 shall apply *mutatis mutandis*.
- 2.The Commissioner for Citizens' Rights may, within a period of 14 days from the receipt of information, give notice of his/her participation in the proceedings.

**Article 52**

- 1.The participants in the proceedings before the Tribunal shall be the complainant, the organ which promulgated the challenged normative act and the Public Prosecutor-General; the Commissioner on Citizens' Rights shall also participate in the proceedings when he/she has given notice of his/her participation therein.
- 2.The hearing shall be held irrespective of the appearance or failure to appear of the participants in the proceedings.

**Settling of Disputes concerning Distribution of Powers****Article 53**

- 1.The Tribunal shall arbitrate disputes concerning powers where two or more constitutionally recognised central State organs have considered themselves competent to decide in the same case or have made a ruling in it (positive powers dispute) or where the said organs have considered themselves not competent to decide in a particular case (negative powers dispute).
- 2.The application shall identify the challenged action or omission as well as the provision of the Constitution or statutory provision which has been infringed.

**Article 54**

- 1.The institution of proceedings before the Tribunal shall result in the suspension of the proceedings before the organs involved in the dispute over the distribution of powers.
- 2.The Tribunal, having established the position of the participants in the proceedings, may decide to give a provisional ruling on the disputed issues, and in particular, to suspend executory actions, if this is necessary to prevent the occurrence of serious damage or prescribed by a particularly vital social interest.

**Examination of the Conformity with the Constitution of the Purposes or Activities of Political Parties****Article 55**

- 1.The Tribunal shall determine the persons appointed to represent a political party on the basis of the statute and articles of the party.
- 2.Where it is impossible to determine who is the person authorised to represent the party or it is impossible to contact such a person or where the authorised person has changed since the application was filed with the Tribunal, the Tribunal shall consider the person in fact leading the party during the time at which the party undertook the activity challenged in the application as unconstitutional to be the person authorised to represent the party.

### Article 56

The Tribunal shall examine applications concerning the non-conformity with the Constitution of the purposes of political parties specified in their articles or programme on the basis of and according to the procedure laid down for the examination of applications concerning the conformity of normative acts with the Constitution.

### Article 57

- 1.Applications concerning the conformity of the activities of political parties with the Constitution shall be examined by the Tribunal by applying the provisions of the Code of Criminal Procedure *mutatis mutandis*.
- 2.The burden of proving the non-conformity with the Constitution shall rest with the applicant, who shall present or give notice of evidence indicating such non-conformity.

### Article 58

The Tribunal may, in order to collect and record evidence, charge the Public Prosecutor-General with conducting an investigation to a specified extent concerning the conformity of the activities of the political party with the Constitution. The provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* to the said investigation. The Public Prosecutor-General shall be bound by the extent of the investigation set by the Tribunal.

## Chapter 3

### Principles and procedure of adjudication and enforcement of judicial decisions

#### Hearings and Sitzings

### Article 59

- 1.The Tribunal shall examine at a hearing applications in cases specified in Article 2.
- 2.The Tribunal may examine a constitutional complaint at a sitting in camera if, from the pleadings submitted in writing by the participants in the proceedings, it results without dispute that the normative act on the basis of which a court or another organ of public administration has made a final decision in respect of freedoms or rights or obligations of the person making the complaint is not in conformity with the Constitution. The decision given in this procedure shall be published.

### Article 60

- 1.The hearing shall not be held before the expiry of 14 days from the date of delivery of notification of the date of the hearing except in cases specified in Article 2, paragraph 3 which shall be examined by the Tribunal without delay.
- 2.The presence of the applicant at the hearing shall be obligatory. If the applicant or his/her representative fails to appear, the Tribunal shall discontinue the proceedings or adjourn the hearing.
- 3.If the participants or the representatives of the participants in the proceedings whose presence at the hearing is obligatory fail to appear, the Tribunal may adjourn the hearing and at the same time fix a new date for the hearing. The condition specified in paragraph 1 above shall not apply.
- 4.The absence from the hearing of the Public Prosecutor-General or his/her representative, where the Public Prosecutor-General has been properly notified of the hearing, shall not prevent examination of the case unless the obligation to participate in the hearing results from the provisions of this Act.
- 5.The failure to appear of other participants in the proceedings shall not prevent the examination of the case; in such a case the rapporteur judge shall, at the hearing, present the opinion of the absent participant in the proceedings.
- 6.The Tribunal shall adjourn the hearing in the case of lack of proof of delivery or irregularities in delivery of the notice of hearing to the participants in the proceedings; it may also adjourn the hearing for other important reasons.

### Article 61

The hearing shall commence with calling the case before the court, the applicant and afterwards the other participants in the proceedings presenting their opinions and evidence in support of them. To this end, the presiding judge of the bench shall enable each of the participants in the proceedings to address the court.

**Article 62**

1. The presiding judge of the bench shall conduct the hearing and give the directions necessary to keep order and shall, where necessary, apply measures prescribed in the law on the organisation of ordinary courts, for maintaining the authority of the court.
2. The participants in the proceedings shall have the right to appeal to the bench against the orders of the presiding judge given in the course of the hearing.

**Article 63**

1. The recording clerk shall, according to the directions of the presiding judge of the bench, draw up a record of the course of the hearing.
2. The record shall include:
  1. the date and place of the hearing, the names and surnames of the members of the bench, the recording clerk, the participants in the proceedings and their representatives and authorised representatives as well as the identification of the case with a note as to whether the hearing is public or closed to the public;
  2. the course of the hearing, and in particular the applications and statements of the participants in the proceedings, the results of the hearing of evidence, a list of orders and judicial decisions made at the hearing and information as to whether or not they have been publicly announced.
3. The participants in the proceedings may submit requests for corrections or supplementing the record until the judgment is announced, and with respect to the record of the hearing at which the judgment has been announced, within 14 days of the date of the hearing.
4. The record shall be signed by the presiding judge of the bench and the recording clerk. Notes concerning corrections to the record shall be signed by the presiding judge of the bench.
5. Requests referred to in paragraph 3 shall, after the recording clerk has been heard, be ruled on by the presiding judge in the form of an order. The ruling shall not be subject to appeal.
6. The hearing may, independently of drawing up the record, be recorded in shorthand form or by means of sound recording equipment. The shorthand record as

translated to regular writing or the recording shall be attached to the said record.

**Article 64**

The presiding judge of the bench shall close the hearing where the Tribunal considers the case to have been sufficiently considered.

**Article 65**

In cases whose examination at a hearing is not required by this Act, the Tribunal shall announce the decision at a sitting.

**Judicial Decisions of the Tribunal****Article 66**

The Tribunal shall, while adjudicating, be bound by the limits of the application, question of law or complaint.

**Article 67**

1. The Tribunal shall announce judicial decisions following deliberation by the judges of the bench held in camera.
2. Deliberations shall include discussion and voting on the decision and fundamental reasoning for the decision as well as drawing up the judgment.
3. Deliberations shall be conducted by the presiding judge of the bench.
4. In a particularly complicated case or for other vital reasons, the announcement of a judicial decision may be postponed for a period not exceeding 14 days.

**Article 68**

1. The judicial decision shall be made by a majority of votes.
2. The presiding judge of the bench shall ask the judges for votes according to their age, beginning with the youngest, and shall vote himself/herself last.
3. A member of the bench who does not agree with the voting majority may, before the announcement of the judicial decision, express a dissenting opinion, explained in writing; the dissenting opinion shall be mentioned in the judicial decision. The dissenting opinion may also refer to the reasoning only.

4. The judgment shall be signed by the whole bench, including the outvoted judge.

#### Article 69

The judicial decision of the Tribunal may refer to the entire normative act or to individual provisions thereof.

#### Article 70

1. The Tribunal shall pass judgments in cases concerning:

1. the conformity of statutes and international agreements with the Constitution;
2. the conformity of statutes with ratified international agreements whose ratification requires prior consent granted by statute;
3. the conformity of legal provisions enacted by central State organs with the Constitution, ratified international agreements and statutes;
4. a constitutional complaint;
5. the conformity with the Constitution of the purposes and/or activity of political parties.

2. The Tribunal shall make orders in the following cases:

1. the settlement of disputes between constitutionally recognised central State organs with respect to powers;
2. adjudication on the finding of impediments to the exercise of office by the President of the Republic of Poland;
3. the vesting in the Marshal of the *Sejm* of the temporary performance of the duties of the President of the Republic of Poland;
4. in other cases in which passing of a judgment is not required.

#### Article 71

1. The judgment of the Tribunal shall include:

1. an indication of the bench and the recording clerk;
2. the date and place of passing of the judgment;
3. an identification of the applicant and other participants in the proceedings;

4. a precise specification of the normative act which the judgment concerns;

5. a presentation of the claims alleged by the applicant or the person making the constitutional complaint;

6. the Tribunal's ruling.

2. Where the Tribunal decides that the normative act will cease to have effect at some time after the day of publication of the judicial decision confirming its non-conformity with the Constitution, ratified international agreement or statutes, it shall, in the judicial decision, determine the date on which the Act shall cease to have effect.

3. The Tribunal shall, not later than one month from the publication of its judgment, draw up its reasoning in a written form; the reasoning shall be signed by the judges of the Tribunal taking part in the voting thereon.

4. If any of the judges specified in paragraph 3 cannot sign the reasoning, the presiding judge of the bench indicates the reasons for the lack of signature; if the reasoning cannot be signed by the presiding judge of the bench, the reason for this shall be indicated in the judicial decision by the eldest, in age, of the voting judges of the Tribunal.

#### Article 72

Article 71, paragraphs 1, 3 and 4 shall apply *mutatis mutandis* to a judicial decision on the non-conformity of ratified international agreements with the Constitution, their reasoning and any dissenting opinion.

#### Article 73

1. A bench of the Tribunal may, at any time, sitting in camera, make an order to correct inaccuracies, clerical or calculation errors or any other evident mistakes in a judicial decision or its reasoning.

2. Corrections shall be indicated in a note, signed by the presiding judge of the bench on the original of the judicial decision, and at the request of the participants in the proceedings also on the copies sent to them.

#### Article 74

1. On application by a participant in the proceedings, the bench of the Tribunal, which passed the judicial decision

at a sitting in camera, shall, by an order, settle all doubts as to its contents.

- 2.If the application for explanation of doubts cannot be considered by the bench specified in paragraph 1, the application shall be considered by a bench composed of the same number of judges.

#### **Article 75**

- 1.Decisions to close proceedings shall be made at a sitting in camera. Reasons must be given with such decisions.
- 2.Decisions which do not bring proceedings to a close may be reversed or changed owing to a change in circumstances.

#### **Article 76**

In matters connected with the preparation for a hearing or sitting and in matters of order, the Tribunal shall give instructions.

#### **Article 77**

- 1.Judgments and orders drawn up in a written form shall be announced to the participants in the proceedings. While the judgment or order is pronounced, all persons present in court, except the members of the bench, shall stand.
- 2.The presiding judge of the bench or the rapporteur judge shall present the reasoning of the judicial decision orally, stating the essential reasons thereof and disclosing any dissenting opinions. Any judge who expressed a dissenting opinion shall present his/her reasons.

#### **Article 78**

Judicial decisions of the Tribunal announced in the manner specified in Article 77 shall, without delay, after drawing up of the reasoning, be delivered to the participants in the proceedings.

#### **Article 79**

- 1.Judgments of the Tribunal shall, subject to paragraph 2, be published in the *Dziennik Ustaw* of the Republic of Poland (Journal of Laws of the Republic of Poland).
- 2.Judgments of the Tribunal finding there to be non-conformity of a normative act with the Constitution, ratified international agreements or

statutes shall be published without delay in the publication in which the said Act was published, and, if the judicial decision concerns an Act which was not published in such a publication, in the Official Gazette of the Republic of Poland, *Monitor Polski*.

- 3.The publication of judgments in the publication shall be ordered by the President of the Tribunal.

#### **Article 80**

Decisions specified in Article 70, paragraph 2, subparagraphs 1 to 3, shall be published in the Official Gazette of the Republic of Poland, *Monitor Polski*.

#### **Article 81**

The Tribunal shall publish a collection of its judicial decisions.

#### **Chapter 4**

#### **Amendments to Obligatory Provisions, Transitory and Final Provisions**

#### **Article 82**

In the Act of 14 June 1960 - Code of Administrative Procedure (*Dziennik Ustaw* 1980 No. 9, item 26 and No.27, item 111, 1982 No. 7, item 55 and No. 45, item 289, 1983, No. 41, item 185, 1984 No. 34, item 183, 1986 No. 47, item 228, 1987, No.21, item 123 and No. 33, item 186, 1989 No. 20, item 107 and 1990 No. 34, item 201, 1991 No. 100, item 442 and No. 119, item 513, 1994 No. 122, item 593, 1995 No. 1, item 1, No. 74, item 368, 1996 No. 43, item 189 and No.106, item 496 and 1997 No. 75, item 471) the following amendments shall be introduced:

- 1.after Article 145, Article 145a shall be added reading as follows:

“Article 145a. §1. Reopening of the proceedings may be also requested where the Constitutional Tribunal ruled that the normative act is not in conformity with the Constitution, international agreement or statutes on the basis of which the decision was made.

§2 In the situation specified in §1, a complaint concerning a reopening shall be filed within a period of one month from the day on which the judicial decision of the Constitutional Tribunal comes into force.”;

- 2.In Article 146, §1 after the words “in Article 145 §1, subparagraphs 3-8”, the words “and in Article 145a” shall be added;

3. In Article 147, after the words “in Article 145 §1, subparagraph 4”, the words “and in Article 145a” shall be added;

4. In Article 151, §1, subparagraphs 1 and 2, the words “or Article 145a” shall be added.

#### Article 83

In the Act of 17 November 1964 - Code of Civil Procedure (*Dziennik Ustaw* No. 43, item 296, 1965 No. 15, item 113, 1974 No. 27, item 157 and No. 39, item 231, 1975, No. 45, item 234, 1982 No. 11, item 82 and No. 30, item 210, 1983, No. 5, item 33, 1984, No. 45, item 241 and 242, 1985, No. 20, item 86, 1987, No. 21, item 123, 1988, No. 41, item 324 and 1989, No. 4, item 21 and No. 33, item 175, 1990, No. 14, item 88, No. 34, item 198, No. 53, item 306, No. 55, item 318 and No. 79, item 464, 1991, No. 7, item 24, No. 22, item 92 and No. 115, item 496, 1993, No. 12, item 53, 1994, No. 105, item 509, 1995, No. 83, item 417, 1996, No. 24, item 110, No. 43, item 189, No. 73, item 350 and No. 149, item 703 and 1997, No. 43, item 270, No. 54, item 348 and No. 75, item 471), Article 401<sup>1</sup> shall be added reading as follows:

“Article 401<sup>1</sup> §1. Reopening of the proceedings may be also requested where the Constitutional Tribunal ruled that the normative act is not in conformity with the Constitution, international agreement or statutes on the basis of which the judgment was made.

§2. In the situation specified in §1, a complaint concerning a reopening shall be filed within a period of one month from the day on which the judicial decision of the Constitutional Tribunal comes into force.”;

#### Article 84

In the Act of 19 April 1969 - Code of Criminal Procedure (*Dziennik Ustaw* No. 13, item 96, 1982 No. 16, item 124, and No. 41, item 273, 1983 No. 44, item 203, 1985, No. 23, item 100, and No. 31, item 138, 1987 No. 21, item 123, 1988, No. 20, item 135, 1989, No. 29, item 154 and No. 34, item 180, 1990, No. 34, item 198, No. 43, item 251 and No. 53, item 306, and No. 72, item 422, 1991, No. 83, item 371 and No. 100, item 442, 1992, No. 24, item 101, 1994, No. 74, item 332 and No. 126, item 615, 1995, No. 89, item 443 and 444, No. 95, item 475, 1996, No. 152, item 720, and No. 155, item 756 and 1997, No. 6, item 31, No. 71, item 449, No. 75, item 471 and No. 79, item 485), the following amendments shall be introduced:

1. In Article 474, §1, subparagraph 2, the fullstop shall be replaced by a comma and subparagraph 3, reading as follows, shall be added:

“3) the legally final sentence was given on the basis of a statute which was found by the Constitutional Tribunal not to be in conformity with the Constitution.”;

2. In Article 476:

a) in §1, the words “in Article 474 §2” shall be replaced by the words “in Article 474 §1, subparagraph 3 and §2”;

b) §3 shall be added reading as follows:

“§3 Reopening of the proceedings in connection with the judicial decision of the Constitutional Tribunal may take place for the benefit of the convicted person only; the provisions of § 2 shall apply accordingly.”

#### Article 85

In the Act of 20 May 1971 - Code of Procedure in Petty Offences (*Dziennik Ustaw* No. 12, item 116, 1972 No. 49, item 312, 1975 No. 16, item 91 and No. 45, item 234, 1982, No. 16, item 125, and No. 45, item 291, 1983 No. 6, item 35 and No. 44, item 203, 1985, No. 23, item 100, 1986 No. 39, item 193, 1988, No. 20, item 135, 1989, No. 34, item 180, 1990 No. 20, item 121, No. 43, item 251 and No. 72, item 422, 1991, No. 32, item 131 and No. 94, item 419, 1992 No. 24, item 101, 1994 No. 27, item 96, 1995, No. 95, item 475 and 1997, No. 43, item 272), in Article 112 the fullstop shall be deleted and the words “or were given on the basis of the normative act, which was found by the Constitutional Tribunal to be in non-conformity to the Constitution, international agreement or the statute.”

#### Article 86

In the Fiscal Penal Act of 26 October 1971 (*Dziennik Ustaw* 1984, No. 22, item 103, 1985, No. 23, item 100, 1990 No. 14, item 84 and No. 86, item 503, 1991, No. 100, item 442, and No. 107, item 458, 1992, No. 21, item 85 and No. 68, item 341, 1994, No. 43, item 160, No. 126, item 615 and No. 136, item 703, 1995, No. 132, item 641, 1996, No. 132, item 621, No. 137, item 640 and No. 152, item 720 and 1997, No. 71, item 449 and No. 79, item 485), in Article 227, subparagraph 2, the fullstop shall be replaced by a comma and subparagraph 3 shall be added reading as follows:

“3) if a legally valid decision of the financial authority was given on the basis of a normative act which was found by the Constitutional Tribunal not to be in conformity with the Constitution, international agreement or the statute. The provision of Article 228, §1 shall not apply.”



**Article 87**

In the Act of 28 July 1990 on Political Parties (*Dziennik Ustaw* No. 54, item 312) in Article 5:

1. in paragraph 1, the words “as a result of submission of the *Voivodeship* Court in Warsaw or upon the application of the Minister of Justice” shall be replaced by the words “upon the application of the Public Prosecutor-General”;
2. in paragraph 2 the words “the Minister of Justice” shall be replaced by the words “the Public Prosecutor-General”.

**Article 88**

1. The members of the Tribunal composing the same shall, on the day on which the Act comes into force, become the judges of the Tribunal within the meaning of the Act.
2. The term of office of the judges of the Tribunal appointed on the basis of Article 15, paragraphs 2 and 4 and Article 16, paragraph 3, of the Act of 29 April 1985 on the Constitutional Tribunal shall last eight years from the day of appointment.
3. The *Sejm* shall elect the judges of the Tribunal in the number necessary to adjust the Tribunal to the requirements specified in Article 5.

**Article 89**

1. For a period of two years from the day on which the Constitution of the Republic of Poland enacted on 2 April 1997 comes into force, the judicial decisions of the Tribunal concerning the non-conformity with the Constitution of the statutes enacted prior to its coming into force shall not be final and shall be subject to examination by the *Sejm*, which may reject the judicial decision of the Tribunal by a majority of two-thirds of the votes where at least a half of the statutory number of deputies are present. This provision shall not apply to judgments given following questions of law addressed to the Tribunal.
2. The *Sejm* shall examine judicial decisions specified in paragraph 1 not later than within a period of six months from the day of submission thereof by the President of the Tribunal.
3. The *Sejm* shall, if it considers the judicial decision to be well founded, introduce appropriate amendments to

the Act being the subject of the judicial decision or repeal it, in whole or in part, within the time limit specified in paragraph 2.

4. A judicial decision of the Tribunal concerning the non-conformity of an Act with the Constitution, which has not been considered by the *Sejm* within a period of six months from the date of its submission to the *Sejm* by the President of the Tribunal or which has been subject to consideration but the *Sejm* has not introduced amendments to or repealed the provisions ~~which are not in conformity with the Constitution, shall~~ be final and shall result in the repeal of the Act or the provisions in question on the date of the publication in the Journal of Laws (*Dziennik Ustaw*) of the Republic of Poland of the announcement of the President of the Tribunal that they shall cease to have effect.

**Article 90**

The proceedings of the Tribunal in cases instituted prior to the day on which the Constitution takes effect shall be held on the basis of the provisions which were binding on the day of their institution.

**Article 91**

Whenever in the provisions of the Act there is reference to the “statute” it shall be understood as statutes or other legislative acts issued on the basis of the provisions which were binding prior to the day on which the Constitution of the Republic of Poland, enacted on 2 April 1997, takes effect.

**Article 92**

The Act of 29 April 1985 on the Constitutional Tribunal (*Dziennik Aghast* 1991, No. 109, item 470, 1993, No. 47, item 213, 1994, No. 122, item 593, 1995, No. 13, item 59, 1996 No. 77, item 367 and 1997, No. 98, item 604) shall cease to have effect.

**Article 93**

This Act shall come into force on 17 October 1997, except the provisions of Article 5, paragraph 1 and Article 88 paragraphs 2 and 3, which shall come into force after the expiry of 7 days from the date of promulgation.