

EDITORIAL

The dynamic development of constitutional justice constitutes one of the most important innovations in contemporary legal practice in Europe. As constitutional justice is intimately connected to the principle of the rule of law, the contribution of constitutional courts and courts of equivalent jurisdiction to the democratisation process in the countries of Central and Eastern Europe cannot be overestimated.

Constitutional justice is one of the main fields of activity of the European Commission for Democracy through Law ("Venice Commission"). Since its creation in 1990 it has been working in close co-operation with constitutional courts and courts of equivalent jurisdiction in Europe, as well as in other regions of the world. The Venice Commission regularly organises conferences, from which papers are published in the Science and Technology of Democracy series, and has also successfully organised a series of workshops in co-operation with recently established constitutional courts to assist them in dealing with questions relating to their new existence.

Under the auspices of the Venice Commission, a network of liaison officers of constitutional and other equivalent courts has been established. The liaison officers regularly prepare contributions on the case-law of their respective courts, which are published three times each year in the Bulletin on Constitutional Case-Law.

Considering that the case-law contained in the Bulletin can only be situated in its true perspective if one has a comprehensive knowledge of the powers and procedures of the institutions concerned, in 1994, a first special edition of the Bulletin (regularly updated in the CODICES database) containing brief descriptions of the various participating courts and their activities was prepared. The present volume of the Special Edition "Basic Texts" supplements the seven preceding volumes. This eighth publication contains laws regulating the activities and procedures of the constitutional courts, accompanied by relevant extracts of the constitutions, of Algeria, Argentina, Brazil, Chile, Mexico, Montenegro, Peru, Serbia, Sweden, the United Kingdom and Uruguay.

All contributions are based on information provided by liaison officers from the respective courts. The Venice Commission is grateful for their invaluable contribution, without which the realisation of this ambitious project in constitutional law would not have been possible.

The information contained in the special editions and the regular issues of the Bulletin on Constitutional Case-Law is available in the Venice Commission's CODICES database. The database exists in English and French and is available on CD-ROM and is also accessible via the Internet www.CODICES.coe.int. CODICES contains additional information which is not available in the paper versions, such as full texts of constitutions of countries presented in the different volumes of the Special Edition "Basic texts".

The Bulletin on Constitutional Case-Law and the Special Editions represent a unique source of information for anyone interested in the development of law and constitutional justice in greater Europe and several non-European states as well.

T. MARKERT
Secretary of the Venice Commission

THE VENICE COMMISSION

The European Commission for Democracy through Law, better known as **the Venice Commission**, has played a leading role in the adoption of constitutions in Central and Eastern Europe that conform to the standards of Europe's constitutional heritage.

Initially conceived as an instrument of emergency constitutional engineering against a background of transition towards democracy, the Commission since has gradually evolved into an internationally recognised independent legal think-tank. It acts in the constitutional field understood in a broad sense, which includes, for example, laws on constitutional courts, laws governing national minorities and electoral law.

Established in 1990 as a partial agreement of 18 member states of the Council of Europe, the Commission in February 2002 became an enlarged agreement, comprising all 47 member States of the organisation and working with some other 14 countries from Africa, America, Asia and Europe.

Secretariat of the Venice Commission
Council of Europe
F-67075 STRASBOURG CEDEX
Tel: (33) 3 88413908 – Fax: (33) 3 88413738
Venice@coe.int

CONTENTS OF THIS ISSUE

Algeria.....	5, 13	Peru	132, 136
Argentina	20	Serbia	139, 143
Brazil.....	22, 32	Sweden	160, 167
Chile.....	59, 63	United Kingdom.....	169, 170
Mexico	77, 89	Uruguay.....	218
Montenegro.....	114, 120		

CONTENTS OF THE PREVIOUS ISSUES

Albania.....	no. 1, p. 5; no. 6, p. 5	Kazakhstan	no. 7, p. 22
Andorra	no. 6, p. 20	Korea.....	no. 7, p. 34
Argentina	no.7, p. 5	Kyrgyzstan	no. 7, p. 48
Armenia	no. 5, p. 5	Latvia.....	no. 3, p. 82
Austria.....	no. 3, p. 5	Liechtenstein.....	no. 3, p. 92
Azerbaijan.....	no. 5, p. 21	Lithuania.....	no. 2, p. 65
Belarus.....	no. 3, p. 32	Luxembourg	no. 5, p. 97
Belgium.....	no. 2, p. 5	Malta.....	no. 3, p. 104
Bosnia and Herzegovina.....	no. 6, p. 40	Moldova.....	no. 6, p. 56
Bulgaria.....	no. 1, p. 7	Netherlands.....	no. 3, p. 118
Canada	no. 1, p. 13	Norway	no. 4, p. 38
Croatia	no. 1, p. 27	Poland.....	no. 2, p. 87; no. 5, p. 102
Cyprus	no. 2, p. 24	Portugal.....	no. 1, p. 62
Czech Republic	no. 3, p. 47	Romania.....	no. 1, p. 85
Denmark.....	no. 5, p. 47	Russia	no. 1, p. 95
Estonia.....	no. 3, p. 73	Slovakia.....	no. 4, p. 55
Finland.....	no. 2, p. 35	Slovenia	no. 1, p. 123
France.....	no. 1, p. 35	South Africa	no. 7, p. 56
Georgia.....	no. 5, p. 61	Switzerland	no. 3, p. 122
Germany.....	no. 1, p. 42	Spain	no. 4, p. 70
Greece.....	no. 4, p. 5	“The former Yugoslav Republic of Macedonia”	no. 6, p. 65
Hungary	no. 2, p. 41	Turkey	no. 4, p. 89
Iceland	no. 4, p. 11	Ukraine.....	no. 4, p.104
Ireland.....	no. 2, p. 50	United States of America.....	no. 7, p. 61
Israel	no. 7, p. 13	European Court of Human Rights.....	no. 6, p.81
Italy	no. 5, p. 81	Court of Justice of the European	
Japan.....	no. 4, p. 33	Communities	no. 2, p. 95

Editors:

Sc. R. Dürr, T. Gerwien
A. Úbeda de Torres
A. Gorey, M.-L. Wigishoff

Liaison officers:

Albania	N. Ruco	Republic of Korea	M. Shin / J.S. Ha
Algeria	H. Bengrine	Latvia	L. Jurcena
Andorra	M. Tomàs-Baldrich	Liechtenstein	I. Elkuch
Argentina	R. E. Gialdino	Lithuania	J. Urbonaite
Armenia	G. Vahanian	Luxembourg	J. Jentgen
Austria	C. Grabenwarter	Malta	A. Ellul
.....	/ B. Adamovich-Wagner	Mexico	J. Flores / F. Tortolero Cervantes
Azerbaijan	R. Guliyev	Moldova	V. Sterbet
Belarus	S. Chigrinov / O. Sergeeva	Monaco	C. Sosso
.....	/ V. Seledovsky	Montenegro	N. Dobardzic
Belgium	A. Rasson Roland / R. Ryckeboer	Morocco	A. Hassouni
Bosnia and Herzegovina	Z. Djuricic	Netherlands	M. Chebti / M. van Roosmalen
Brazil	J.-B. Magalhaes	Norway	K. Buun Nygaard
Bulgaria	E. Enikova	Peru	K. Benvenuto
Canada	D. Power / S. Giguère	Poland	M. Nowak
Chile	C. Garcia Mechsner	Portugal	M. Baptista Lopes
Croatia	M. Stresec	Romania	T. Toader / R. Sabareanu
Cyprus	N. Papanicolaou / M. Kyriacou	Russia	E. Pyrikov
Czech Republic	S. Matochová / T. Langasek	Serbia	V. Jakovljevic
.....	/ I. Pospisil	Slovakia	G. Fet'kova / J. Stivnicky / Z. Gajdosova
Denmark	N. Winther	Slovenia	U. Umek
Estonia	K. Aule / U. Eesmaa	South Africa	E. Cameron / C. Ferreira
Finland	F. Haggblom / G. Bygglin / T. Vuorialho	S.-J. Frith / S. Luthuli
France	C. Petillon / L. Brau / V. Gourrier	Spain	L. Pomed Sanchez
Georgia	I. Khakhutaishvili	Sweden	L. Molander / K. Norman
Germany	G. Lübbe-Wolff / M. Böckel	Switzerland	P. Tschümperlin / J. Alberini-Boillat
Greece	T. Ziamou / O. Papadopoulou	"The former Yugoslav Republic of Macedonia"
Hungary	P. Paczolay / K. Kovács	T. Janjic Todorova
Iceland	H. Torfason	Turkey	A. Coban
Ireland	C. Kelly	Ukraine	O. Kravchenko
Israel	Y. Mersel	United Kingdom	J. Sorabji
Italy	G. Cattarino	United States of America	P. Krug / C. Vasil
Japan	H. Gunji	/ J. Minear
Kazakhstan	B. Nurmukhanov		

European Court of Human Rights

Court of Justice of the European Union

Inter-American Court of Human Rights

Strasbourg, November 2011

ALGERIA

Constitution

11 December 1960

– extracts –

Part Two – Organisation of Powers

...

Chapter II – The Legislative Power

Article 98

Legislative power shall be exercised by a parliament, consisting of two chambers, the People's National Assembly and the Council of the Nation. Parliament shall be sovereign to elaborate and vote the law.

Article 99

Parliament shall control the actions of the Government within the conditions defined by Articles 80, 84, 133 and 134 of the Constitution.

The control, provided for in Articles 135 to 137 of the Constitution, shall be carried out by the People's National Assembly.

Article 100

Parliament should, within its constitutional attributions, remain faithful to the trust of the people and be permanently aware of their aspirations.

Article 101

The members of the People's National Assembly shall be elected by means of a direct and secret universal suffrage.

Two-thirds of the members of the Council of the Nation shall be elected by means of indirect and secret suffrage among and by the members of the People's Communal Assemblies and the People's *Wilaya* Assemblies.

One third of the members of the Council of the Nation is designated by the President of the Republic from among national personalities and qualified persons in

the scientific, cultural, professional, economic and social fields.

The number of members of the Council of the Nation shall be equal to half, at the most, of the members of the People's National Assembly.

The modes of implementing Paragraph 2 above-mentioned are defined by law.

Article 102

The People's National Assembly shall be elected for a period of five years.

The mandate of the Council of the Nation shall be limited to six (6) years.

Half the members of the Council of the Nation shall be renewed every three years.

The mandate of Parliament shall not be extended unless there are very exceptional circumstances which hinder the normal progress of elections.

This situation shall be ascertained by a decision of Parliament, sitting in both chambers, convened together, following a proposal of the President of the Republic and consultation of the Constitutional Council.

Article 103

The modes for the election of deputies and those concerning the election or the appointment of members of the Council of the Nation, the conditions of eligibility, the rules of ineligibility and incompatibility are defined by organic law.

Article 104

The validation of the mandate of the deputies and that of the members of the Council of the Nation comes within the respective competence of each of the two chambers.

Article 105

The mandate of the deputy and the member of the Council of the Nation is national. It can be renewed and may not be concurrent with another mandate or function.

Article 106

The deputy or the member of the Council of the Nation who does not fulfil or no longer fulfils the

conditions of his/her eligibility shall forfeit his/her mandate.

This forfeiture shall be decided on a case by case basis by the People's National Assembly or the Council of the Nation by a majority of their members.

Article 107

Deputies or members of the Council of the Nation shall commit themselves before their peers who can revoke their mandate if they commit a shameful action during their mission.

The internal rules of each of the two chambers define the conditions of excluding a deputy or a member of the Council of the Nation. The exclusion is decided on a case by case basis by the People's National Assembly or the Council of the Nation, by a majority of its members, without prejudice to other common law pursuits.

Article 108

The conditions by which Parliament shall accept the resignation of one of its members shall be defined by organic law.

Article 109

Parliamentary immunity shall be recognised for deputies and members of the Council of the Nation during the period of their mandate.

They shall not be subject to lawsuits, arrest, or in general, to any civil or penal action or pressure because of opinions they expressed, utterances they made or votes they gave during the exercise of their mandate.

Article 110

Lawsuits shall not be instituted against a deputy or a member of the Council of the Nation for crimes or infringements unless there is an explicit renunciation of the concerned or an authorisation from the People's National Assembly or the Council of the Nation which may decide on a case by case basis, by a majority of its members, to lift the immunity.

Article 111

In case of flagrant infringement or flagrant crime, the deputy or the member of the Council of the Nation may be arrested. The bureau of the People's National Assembly or of the Council of the Nation, depending on the case, shall be informed immediately.

The informed bureau may ask the suspension of lawsuits and the liberation of the deputy or the member of the Council of the Nation; it shall then proceed according to the provisions of above-mentioned Article 110.

Article 112

Organic law shall define the conditions for the replacement of a deputy or a member of the Council of the Nation in case there is a vacancy of his/her seat.

Article 113

The term of the legislative body shall begin, *de jure*, the tenth day following the date of the election of the People's National Assembly, under the chairmanship of the oldest member assisted by the two youngest deputies.

The People's National Assembly shall elect its bureau and forms its committees.

The above-mentioned provisions shall apply to the Council of the Nation.

Article 114

The President of the People's National Assembly shall be elected for the term of the legislative body.

The President of the Council of the Nation shall be elected after each partial renewal of the members of the Council.

Article 115

The organisation and the functioning of the People's National Assembly and the Council of the Nation, as well as the functional relations between the chambers of Parliament and the Government shall be defined by organic law.

The budget of the chambers, as well as the salaries of the deputies and the members of the Council of the Nation shall be defined by law.

The People's National Assembly and the Council of the Nation shall elaborate and adopt their internal rules.

Article 116

The sittings of Parliament shall be public.

The proceedings shall be recorded in a book and published in accordance with the conditions defined by organic law.

The People's National Assembly and the Council of the Nation may sit *in camera* upon a request made by their presidents, by the majority of their members present or by the Head of Government.

Article 117

The People's National Assembly and the Council of the Nation set up permanent committees in the framework of their internal rules.

Article 118

Parliament shall meet for two ordinary sessions a year, each lasting a minimum period of four months.

Parliament may hold a meeting in an extraordinary session on the initiative of the President of the Republic.

The President of the Republic may hold a meeting of Parliament on the request of the Head of Government or by a two-thirds vote of the members of the People's National Assembly.

The closure of the extraordinary session shall come after Parliament has exhausted the agenda for which it was convened.

Article 119

The Head of Government and the deputies shall have the right to initiate laws.

To be admissible, proposed laws shall be introduced by twenty deputies.

Draft laws shall be presented in the Cabinet following the opinion of the Council of State, then submitted to the bureau of the People's National Assembly by the Head of Government.

Article 120

To be adopted, any draft law or law proposal should be debated successively by the People's National Assembly and the Council of the Nation.

The discussion of draft laws or law proposals by the People's National Assembly shall concern the text with which it is presented.

The Council of the Nation shall deliberate the text voted by the People's National Assembly and adopt it by a majority of three quarters of its members.

In case there is a disagreement between the two chambers, a committee of equal representation of the two chambers shall meet on the request of the Head of Government to propose a text on the provisions, which are the subject of disagreement.

This text shall be submitted by the Head of Government to be adopted by the two chambers and cannot be amended except with the agreement of the Government.

In case the disagreement persists, the text shall be withdrawn.

Parliament shall adopt the financial law within a period of seventy five days from the date it was submitted, in accordance with the preceding paragraphs.

In case it was not adopted within the time-limit, the President of the Republic shall enact a draft text of the Government by ordinance.

Other procedures shall be defined by organic law, as mentioned in Article 115 of the Constitution.

Article 121

Any law proposal which leads to or the subject of which is to reduce public resources or increase public expenses shall be inadmissible unless it is accompanied by measures aiming at increasing State income or, at least, saving correspondingly on other items of public expenses.

Article 122

Parliament shall legislate in the domains it has been assigned by the Constitution, as well as the following domains:

1 – fundamental rights and duties of the individuals, in particular, the rules of public liberties, the safeguard of individual liberties and the obligations of the citizens;

2 – general rules concerning personal status and the family status and, in particular, marriage, divorce, affiliation, capacity and inheritance;

3 – conditions of individual's establishment;

4 – basic legislation concerning nationality;

5 – general rules related to the condition of foreigners;

6 – rules related to the organisation of the judiciary and to the setting up of jurisdictions;

7 – general rules of penal law and penal procedures; and in particular, the determination of crimes and infringements, the institution of corresponding punishments of any nature, amnesty, extradition and the penitentiary system;

8 – general rules of civil procedure and means of execution;

9 – rules of civil, trade and property obligations;

10 – territorial allotment of the country;

11 – adopting a national plan;

12 – voting of the State budget;

13 – setting up tax base and rate, contributions and duties of any nature;

14 – customs regulations;

15 – money issuing regulations and bank, credit and insurance rules;

16 – general rules related to teaching and scientific research;

17 – general rules related to public health and population;

18 – general rules related to labour laws, social security and to the exercise of trade union rights;

19 – general rules related to the environment, living space and land management;

20 – general rules related to the protection of the fauna and flora;

21 – protection and safeguard of the cultural and historical heritage;

22 – general regulation for forests and grazing lands;

23 – general regulation for water;

24 – general regulation for mines and hydrocarbons;

25 – land regulation;

26 – the fundamental guaranties granted to civil servants and the general statute of the civil service;

27 – general rules related to the National Defence and the use of armed forces by civil authorities;

28 – rules of property transfer from the public sector to the private sector;

29 – the creation of types of establishments;

30 – instituting State medals, distinctions and honorific titles.

Article 123

In addition to the domains intended for organic laws by the Constitution, Parliament shall legislate through organic laws in the following fields:

- organisation and functioning of public powers;
- electoral regulation;
- the law pertaining to political parties;
- the law related to information;
- the statute of magistrates and judiciary organisation;
- law in the framework of financial laws;
- the law pertaining to national security.

Organic law shall be adopted by an absolute majority of the deputies and a majority of three quarters of the members of the Council of the Nation.

It shall be submitted to the Constitutional Council for a conformity control before its enactment.

Article 124

The President of the Republic may legislate by ordinance, in case there is a vacancy of the People's National Assembly or in between sessions of Parliament.

The President of the Republic shall submit the texts he/she enacted for approval by each of the two chambers of Parliament in its next session.

Ordinances not adopted by Parliament shall be void.

The President of the Republic may legislate, by ordinance, in case of a state of exception defined by Article 93 of the Constitution.

Ordinances shall be submitted in a meeting of the Council of Ministers.

Article 125

The President of the Republic shall exercise the powers pertaining to regulations for matters other than those intended by law.

The implementation of laws is the domain of the Head of Government.

Article 126

The law shall be enacted by the President of the Republic within thirty days from the date it is submitted.

However, when the Constitutional Council is called upon by one of the authorities mentioned in Article 166 below, before the enactment of the law, this time-limit shall be suspended until the Constitutional Council expresses its opinion in accordance with the conditions defined by Article 167 below.

Article 127

The President of the Republic may request a second reading of the voted law within thirty days following its adoption.

In this case, a majority of two-thirds of the deputies of the People's National Assembly shall be required for the law to be adopted.

Article 128

The President of the Republic may address a message to Parliament.

Article 129

The President of the People's National Assembly, the President of the Council of the Nation and the Head of Government being consulted, the President of the Republic may decide to dissolve of the People's National Assembly or the organisation of anticipated general elections.

In both cases, general elections shall be held within a maximum time-limit of three months.

Article 130

Parliament may open a debate on foreign policy upon a request made by the President of the Republic or one of the presidents of the two chambers.

The debate may end up, in such a case, with a resolution of both chambers of Parliament, convened together, which will be sent to the President of the Republic.

Article 131

Armistice agreements, peace, alliance and union treaties, treaties related to State borders as well as treaties involving expenses not provided for in the State budget shall be ratified by the President of the Republic following an explicit approval by each of the chambers of Parliament.

Article 132

Treaties ratified by the President of the Republic in accordance with the conditions provided for by the Constitution are superior to the law.

Article 133

Members of Parliament may call upon the Government on a topical issue.

The committees of Parliament may hear the members of Government.

Article 134

Members of Parliament may address orally or in written form any question to any member of the Government.

Answers to written questions should be in written form within a maximum time-limit of thirty days.

Answers to oral questions shall be given in session.

If one of the two chambers considers that oral or written answers of a member of the Government justifies a debate, this latter is opened in accordance with the conditions provided for by the rules of procedure of the People's National Assembly and the Council of the Nation.

The questions and answers shall be published in accordance with the same conditions as those of the minutes of the proceedings of Parliament's debates.

Article 135

In debating the general policy declaration, the People's National Assembly may sue the Government's responsibility through voting a motion of censure.

Such a motion shall be admissible only if it was signed by at least one-seventh of the number of deputies.

Article 136

The motion of censure should be approved by the majority of two-thirds of the deputies.

The vote shall take place only three days after the motion of censure is brought in.

Article 137

If the motion of censure is adopted by the People's National Assembly, the Head of Government shall submit the resignation of the Government to the President of the Republic.

Chapter III – Judicial Power

Article 138

Judicial power shall be independent. It shall be exercised within the framework of the law.

Article 139

Judicial power shall protect society and freedoms. It shall guarantee, to all and to everyone, the safeguard of their fundamental rights.

Article 140

Justice shall be founded on the principles of lawfulness and equality.

It shall be the same for all, accessible for all and expressed by the respect of the law.

Article 141

Justice shall be dispensed on behalf of the people.

Article 142

Punishments should comply with the principles of lawfulness and individuality.

Article 143

The Court shall deal with appeals against the decision of administrative authorities.

Article 144

The decisions of the Court shall be justified and pronounced in public hearings.

Article 145

All the qualified State bodies should ensure, at any time, in any place and in any circumstances, the execution of Court decisions.

Article 146

Justice shall be pronounced by magistrates. They may be assisted by People's assessors in accordance with the conditions defined by law.

Article 147

The judge shall obey only the law.

Article 148

Judges shall be protected against any form of pressure, intervention or manures which prejudice their mission or the respect of their free will.

Article 149

Magistrates shall be answerable to the High Council of the Judiciary and within the forms prescribed by law in the manner in which their tasks are carried out.

Article 150

The law shall protect the individual against any abuse or deviation of the judge.

Article 151

The right to defence shall be recognised.

In penal matters, it shall be guaranteed.

Article 152

The High Court shall be the regulating body of the activities of the courts and tribunals.

A Council of State shall be instituted as the regulating body of activities of the administrative courts.

The High Court and the Council of State are responsible for the unification of jurisprudence throughout the country and shall see to the respect of the law.

A Tribunal of Conflicts shall be instituted to settle conflicts of competency between the High Court and the Council of State.

Article 153

The organisation, functioning and other attributions of the High Court, the Council of State and the Tribunals of Conflicts shall be defined by organic law.

Article 154

The High Council of the Judiciary shall be presided by the President of the Republic.

Article 155

The High Council of the Judiciary shall decide, within the conditions defined by law, the appointment, transfer and the progress of the magistrates' careers.

It sees to the respect of the provisions provided for in the statute of magistrates and of the control of discipline under the chairmanship of the First President of the High Court.

Article 156

The High Council of the Judiciary shall provide a prior consultative opinion for the exercise of the right of free pardon by the President of the Republic.

Article 157

The composition, the functioning and other prerogatives of the High Council of the Judiciary shall be defined by organic law.

Article 158

A High Court of State shall be established to deal with cases committed by the President of the Republic that may be qualified as high treason and with crimes and infringements committed by the Head of Government during the exercise of their office.

The composition, the organisation and functioning of the High Court of State as well as the procedures of implementation shall be defined by organic law.

Part Three – Control and Consultative Institutions

Chapter I – Control

Article 159

The elected assemblies shall assume the function of control within its popular dimension.

Article 160

The Government shall present to each chamber of Parliament a report on the use of budgetary credits for which it voted each financial year.

The financial year shall be closed, as far as it concerns Parliament, by a vote by each of the chambers of the financial year in question.

Article 161

Each of the two chambers of Parliament may, within the framework of its prerogatives, set up, at any time, committees to investigate affairs of general interest.

Article 162

The control institutions and bodies shall be in charge of checking the conformity of the legislative and executive action with the Constitution and to verify the conditions of use and management of material means and public funds.

Article 163

A Constitutional Council shall be established to ensure the respect of the Constitution.

The Constitutional Council shall also ensure the due form of referendum operations, the election of the President of the Republic and the general elections. It shall proclaim the results of these operations.

Article 164

The Constitutional Council shall be composed of nine members: three appointed by the President of the Republic among whom the President is included, two elected by the People's National Assembly, two elected by the Council of the Nation, one elected by the Supreme Court, and one (01) elected by the Council of State.

Once elected or appointed, the members of the Constitutional Council shall cease any other mandate, function, responsibility or mission.

The President of the Republic shall appoint the President of the Constitutional Council for a single mandate of six years.

...

The other members of the Constitutional Council shall fill a unique mandate of six years and shall be renewed by half every three years.



Article 165

In addition to the prerogatives explicitly bestowed upon it by other provisions of the Constitution, the Constitutional Council shall pronounce the constitutionality of treaties, laws and regulations, either through an opinion if these are not enforced or, otherwise, through a decision.

The Constitutional Council, called upon by the President of the Republic, shall give a compulsory opinion on the constitutionality of the organic laws following their adoption by Parliament.

The Constitutional Council shall also decide the conformity of the rules of procedure of each of the two chambers of Parliament with the Constitution in accordance with the provisions of the above-mentioned paragraph.

Article 166

The Constitutional Council may be called upon by the President of the Republic, the President of the People's National Assembly or by the President of the Council of Nation.

Article 167

The Constitutional Council shall deliberate *in camera*; its opinion or its decisions shall be given within twenty days following the date of referral.

The Constitutional Council shall define the rules of its functioning.

Article 168

When the Constitutional Council considers that a treaty, an agreement or a convention is not constitutional, its ratification cannot take place.

Article 169

When the Constitutional Council considers that a legislative or regulatory provision is not constitutional, this latter loses its effect from the date the decision is taken by the Council.

ALGERIA

Regulation of the Constitutional Council

28 June 2000

– extracts –

Title I – Rules of Procedure of the Constitutional Council concerning the Control of Compatibility and Control of Constitutionality

Chapter I – Control of the Compatibility with the Constitution of Organic Laws and the Rules of Procedure of both Chambers of Parliament

Article 1

The Constitutional Council, when called upon by the President of the Republic on the basis of Article 165.2 of the Constitution, and in application of Article 123 in fine, shall, by delivering its mandatory opinion, determine, before their enactment, the compatibility of organic laws with the Constitution, within the period prescribed in Article 167.1.

Article 2

Where the Constitutional Council declares that a provision of the law referred to is not compatible with the Constitution and where that provision cannot be separated from the other provisions, the law in question cannot be enacted.

Article 3

Where the Constitutional Council, when called upon to determine the compatibility of a law with the Constitution, declares that a particular provision is not compatible with the Constitution, without at the same time stating that it is inseparable from the law as a whole, the President of the Republic may either enact the law without that provision or have it sent back to Parliament for a fresh reading. The provision as thus amended shall be submitted to the Constitutional Council, which shall examine its compatibility with the Constitution.

Article 4

The Constitutional Council shall determine the compatibility with the Constitution of the rules of procedure of either Chamber of Parliament before they are applied, by delivering a mandatory opinion in accordance with Article 165.3 of the Constitution, within the period prescribed in Article 167.1.

Article 5

Where the Constitutional Council declares that the rules of procedure of either Chamber of Parliament contain a provision which is not compatible with the Constitution, that provision cannot be applied by the Chamber concerned until it has been declared compatible with the Constitution.

Any amendment to the rules of procedure of either Chamber of Parliament shall be submitted to the Constitutional Council, which shall examine its compatibility with the Constitution.

Chapter II – Control of the Constitutionality of Treaties, Laws and Regulations

Article 6

In accordance with Article 165.1 of the Constitution, the Constitutional Council shall determine the constitutionality of treaties, laws and regulations, either by issuing an opinion where they have not become enforceable, or otherwise by decision.

Article 7

Where the Constitutional Council declares that the provision referred to is unconstitutional and at the same time states that it is inseparable from the other provisions of the text referring to it, the text containing the provision in question shall be sent back to the referring authority.

Article 8

Where the declaration on the constitutionality of a provision entails the examination of other provisions which have not been referred to the Constitutional Council and which are connected with the provisions referring to it, and where the declaration of unconstitutionality of the provisions referring to it or which it has examined and their separation from the remainder of the text affects its structure as a whole, the text shall be sent back to the referring authority.

Chapter III – Procedures

Article 9

In the context of the provisions of Articles 165 and 166 of the Constitution, the reference to the Constitutional Council shall be made by letter addressed to the President of the Constitutional Council.

The letter making the reference shall be accompanied by the text on which the Constitutional Council is required to deliver an opinion or a decision.

Article 10

The letter making the reference shall be registered at the General Secretariat of the Constitutional Council in the register of matters referred and a receipt shall be issued.

The date on the receipt shall constitute the starting point of the period laid down in Article 167 of the Constitution.

Article 11

Once the matter has been referred to it, the Constitutional Council shall carry out its control of the compatibility with the Constitution of the text submitted to it and shall continue the procedure until its completion.

Article 12

Upon registration of the letter making the reference, the President of the Constitutional Council shall designate, from among the members of the Council, a rapporteur who shall be responsible for examining the matter and for preparing the draft opinion or decision.

Article 13

The rapporteur shall be authorised to obtain all information and documents relating to the matter and, in addition, may consult any expert of his/her choice.

Article 14

Upon completion of his/her work, the rapporteur shall provide the President of the Constitutional Council and each member of the Council with a copy of the matter referred to it, together with his/her report and a draft opinion or decision.

Article 15

The Constitutional Council shall meet upon being convened by its President.

In the event of an impediment, the President of the Constitutional Council may be replaced by a member of his/her choice.

Article 16

The proceedings of the Constitutional Council shall be valid only when at least seven of its members are present.

Article 17

The Constitutional Council shall deliberate in private.

It shall issue its opinions and decisions by a majority of its members, without prejudice to the provisions of Article 88 of the Constitution.

In the event of a split vote, the President of the Constitutional Council or the President of the session shall have a casting vote.

Article 18

The secretariat of the sessions of the Constitutional Council shall be provided by the General Secretariat.

Article 19

The minutes of the sessions of the Constitutional Council shall be signed by the members present and by the Secretary of the session.

They may be consulted only by the members of the Constitutional Council.

Article 20

The opinions and decisions of the Constitutional Council shall be signed by the President and the members present.

They shall be recorded by the Secretary General of the Constitutional Council, who shall ensure that they are archived and kept in accordance with the applicable legislation.

Article 21

The opinions and decisions of the Constitutional Council shall state the reasons on which they are based and be delivered in the national language within the period prescribed by Article 167 of the Constitution.

Article 22

The opinion or decision shall be notified to the President of the Republic. The opinion or decision shall also be notified, depending on the person making the reference, to the President of the People's National Assembly or to the President of the Council of the Nation.

Article 23

The opinions and decisions of the Constitutional Council shall be forwarded to the Secretary General of the Government for publication in the Official Gazette of the People's Democratic Republic of Algeria.

Title II – Verification of the Regularity of Elections and of the Referendum**Chapter 1 – Election of the President of the Republic****Article 24**

Declarations of candidature for the Presidency of the Republic shall be lodged in the conditions and forms and within the periods provided for in the Order establishing the organic law on the electoral system, at the General Secretariat of the Constitutional Council. A receipt shall be issued.

Article 25

In the event of the death or legal impediment of a candidate, the provisions of Article 161 of the Order establishing the organic law on the electoral system shall be applied.

Article 26

The President of the Constitutional Council shall designate from among the members of the Council one or more rapporteurs who shall be responsible for examining the candidates' files, in application of the relevant constitutional and legislative provisions.

Article 27

The Constitutional Council shall examine the reports in private and shall determine the validity of the candidatures.

Article 28

The Constitutional Council shall adopt and officially announce the decision on the ranking of candidates

for the election of the President of the Republic in accordance with the Arabic alphabetical order of their last names within the period prescribed in the Order establishing the organic law on the electoral system.

The decision shall be notified to the authorities concerned and published in the Official Gazette of the People's Democratic Republic of Algeria.

Decisions on the acceptance or rejection of candidates shall be notified to each candidate and are published in the Secretary General of the Government for publication in the Official Gazette of the People's Democratic Republic of Algeria.

Article 29

The Constitutional Council shall announce the results of the ballot in accordance with the Order establishing the organic law on the electoral system.

Where appropriate, it shall designate the two candidates required to participate in the second ballot.

In the event of the death, withdrawal or impediment of one of the two candidates in the second ballot, the provisions of Article 164.3 and 164.4 of the Order establishing the organic law on the electoral system shall be applied.

The Constitutional Council shall announce the final results of the ballot.

The announcement by the Constitutional Council of the final election results is forwarded to the Secretary General of the Government for publication in the Official Gazette of the People's Democratic Republic of Algeria.

Article 30

Each candidate for the election of the President of the Republic shall be required to submit his/her election campaign account to the Constitutional Council within no more than three months of publication of the final results of the ballot and according to the conditions and procedures provided for in Article 191 of the Order establishing the organic law on the electoral system.

The campaign account shall include, in particular:

- the nature and origin of the duly proved receipts;
- the expenditure, supported by documentary evidence.

The chartered accountant or certified accountant shall submit a report to the Constitutional Council on the account, appending his/her seal and his/her signature. The election campaign account may be deposited by anyone who has been given legal capacity to do so by the party or the candidate concerned.

The Constitutional Council shall examine the election campaign accounts and notify its decision to the candidate and to the authorities concerned.

Article 31

Appeals relating to election operations shall be examined by the Constitutional Council in accordance with the provisions of the Order establishing the organic law on the electoral system.

Article 32

Complaints, duly signed by the complainants, shall include the complainant's name, forename(s), address and capacity, and also a statement of the facts and arguments forming the basis of the complaint.

Complaints shall be registered at the General Secretariat of the Constitutional Council.

Article 33

The President of the Constitutional Council shall designate one or more rapporteurs from among the members of the Council, who shall be responsible for examining the complaints and for submitting a report and also a draft decision to the Council within the period prescribed in the Order establishing the organic law on the electoral system for resolving disputes.

Article 34

The rapporteur may hear any person and order that any document relating to the electoral operations be transmitted to the Constitutional Council.

Upon completion of the examination of the appeals, the President shall convene the Constitutional Council, which shall determine, in private and within the period prescribed in the Order establishing the organic law on the electoral system, the admissibility and the merits of those appeals.

Article 35

The decision of the Constitutional Council on an election appeal shall be notified to the persons concerned.

Chapter II – Election of Members of Parliament

Article 36

The Constitutional Council shall receive the reports centralising the results of the Elections of the People's National Assembly drawn up by the *Wilaya* (Provincial) Commissions and also those drawn up by the commissions for residents abroad for the election of the People's National Assembly. It shall also receive the reports of the results of the elections of members of the Council of the Nation.

The Constitutional Council shall examine the content of the above-mentioned reports and shall adopt the final results of the ballot, in application of the provisions of Articles 117, 118, 146 and 147 of the Order establishing the organic law on the electoral system.

Article 37

The allocation of seats between lists for the election of members of the People's National Assembly shall be made in accordance with the provisions laid down in Articles 101 to 105 of the Order establishing the organic law on the electoral system.

For the election of members of the Council of the Nation, the allocation of seats shall be made between the candidates who obtained the greatest number of votes by reference to the number of seats to be filled, in accordance with Article 147 of the Order establishing the organic law on the electoral system.

Article 38

Any candidate or political party participating in the elections to the People's National Assembly as well as any candidate for the election of members of the Council of the Nation shall be entitled to challenge the regularity of the voting operations by initiating an appeal by application lodged at the Registry of the Constitutional Council within the period prescribed in Article 118 or Article 148 of the Order establishing the organic law on the electoral system, as the case may be.

Article 39

The application must include:

1. The name, forename(s), occupation, residence and signature of the applicant, as well as the Municipal or *Wilaya* (Provincial) People's Assembly to which the applicant belongs in the case of the election to the Council of the Nation.

2. In the case of a political party, its name, the address of its headquarters, the capacity of the person lodging the application and the mandate authorising him/her to do so.

3. A statement of the subject-matter and the arguments of the appeal and also the supporting documents enclosed.

The application must be drawn up in as many copies as there are parties involved.

Article 40

The President of the Constitutional Council shall allocate the appeals among the various members designated as rapporteurs.

Notification of the appeal shall be given by all available means to the deputy whose election is challenged, in accordance with the provisions of Article 118.2 of the Order establishing the organic law on the electoral system.

Article 41

The Constitutional Council shall determine in private the merits of the appeals in the conditions and within the period prescribed in Article 118 of the Order establishing the organic law on the electoral system in the case of the election of members of the People's National Assembly and in accordance with the provisions of Article 149 of that law in the case of members of the Council of the Nation.

Where the Constitutional Council deems that the appeal is well founded, it may by reasoned decision either annul the contested election or redraft the record of the results established and announce the candidate who is duly and finally elected, in accordance with the Order establishing the organic law on the electoral system.

The decision delivered by the Constitutional Council shall be notified to the President of the People's National Assembly or the President of the Council of the Nation, as the case may be, and also to the Minister for the Interior and the parties concerned.

The decision to cancel the election and the announcement of the Constitutional Council regarding the election of the elected candidate shall be published in the Official Gazette of the People's Democratic Republic of Algeria.

Article 42

The Constitutional Council shall establish the results of the voting operations of the legislative elections and determine the appeals relating thereto according to the procedures and within the periods prescribed in the Order establishing the organic law on the electoral system and the provisions referred to above.

Article 42bis

In case of a vacancy of a deputy's seat, the President of the Constitutional Council shall receive a letter from the President of the People's National Assembly, accompanied by a declaration of vacancy to be issued by the latter's office.

The President of the Constitutional Council shall designate one member of the Council, a rapporteur to verify the purpose of replacement.

Article 42ter

The Constitutional Council makes a decision on the replacement of the member whose seat became vacant, in accordance with Article 119.1 of the Ordinance bearing the organic law relating to the electoral system and, to this effect, renders a decision to be notified to the President of the People's National Assembly and the Minister for the Interior which will be published in the Official Gazette of the People's Democratic Republic of Algeria.

Article 43

Campaign accounts must be submitted within two months of publication of the final results of the election of the People's National Assembly.

The campaign accounts must contain, in particular:

- the nature and origin of duly proved receipts;
- expenditure supported by documentary evidence.

The chartered accountant or certified accountant shall submit a report on the accounts, appending his/her seal and his/her signature.

The Constitutional Council shall examine the campaign accounts of candidates for the elections to the People's National Assembly in the conditions and according to the procedures provided for in Article 191 of the Order establishing the organic law on the electoral system.

The campaign accounts of candidates elected to the People's National Assembly shall be forwarded to the Bureau of that Chamber.

Chapter III – Control of the Lawfulness of Referendums

Article 44

The Constitutional Council shall ensure the lawfulness of referendums and shall examine complaints in accordance with the provisions of the Order establishing the organic law on the electoral system.

Article 45

Complaints, duly signed by the complainants, shall include the complainant's name, forename(s), address and capacity and also a statement of the facts and arguments forming the basis of the complaint.

Complaints shall be registered at the General Secretariat of the Constitutional Council.

Article 46

Upon receipt of the records according to the procedures and within the periods provided for in Article 171 of the Order establishing the organic law on the electoral system, the President of the Constitutional Council shall designate one or more rapporteurs.

Article 47

The Constitutional Council shall determine the lawfulness of the electoral operations and the complaints relating thereto within the periods prescribed in Article 171 of the Order establishing the organic law on the electoral system.

Article 48

The Constitutional Council shall officially announce the final results of the referendum within the period prescribed in Article 171 of the Order establishing the organic law on the electoral system.

Chapter IV – Common Provisions

Article 48bis

The Constitutional Council may be assisted by judges or experts when it verifies the proper conduct of a referendum, the election of the President of the Republic and parliamentary elections.

Article 48ter

The Constitutional Council may request the competent authorities to transmit the files of the elected candidate in order to ensure that they meet the legal requirements and take the necessary decision to this effect.

Article 48quater

The Constitutional Council may, if necessary, request that the protocols of the results of the referendum and of the elections be accompanied, at the time of their filing, by all documents related to the election.

These include the following documents:

- the protocols of the municipal census of votes;
- the protocols of the counting of votes in polling stations;
- the voting list;
- the spoilt and contested ballots.

Title III – Authority of the Opinions and Decisions of the Constitutional Council

Article 49

Opinions and decisions of the Constitutional Council shall be binding on all public, judicial and administrative authorities. No appeal shall lie against them.

Titre IV – Special Cases in which the Constitutional Council is consulted

Article 50

In the cases provided for in Article 88 of the Constitution, the Constitutional Council shall meet *de jure*. It may, in that context, undertake any verifications and hear any qualified person and any authority concerned.

Article 51

Where it is consulted in the context of Article 90 of the Constitution, the Constitutional Council shall deliver its opinion without delay.

Article 52

Where it is consulted in the context of the provisions of Articles 93 and 97 of the Constitution, the Constitutional Council shall meet and deliver its opinion without delay.

Article 53

Where it is consulted in the context of Article 102 of the Constitution, the Constitutional Council shall meet and deliver its opinion without delay.

Title V – Rules relating to Members of the Constitutional Council**Article 54**

Members of the Constitutional Council shall be bound by a duty of discretion and must not adopt any public position on matters relating to the deliberations of the Constitutional Council.

Article 54bis

The President of the Constitutional Council may authorise a member of the Constitutional Council to participate in scientific and intellectual activities where such participation is related to the missions of the Constitutional Council and has no influence on its independence and impartiality.

The member concerned shall give a presentation on his/her participation at the first meeting of the Constitutional Council.

Article 55

Where a member of the Constitutional Council no longer satisfies the conditions necessary for the exercise of his/her functions or has committed a grave breach of his/her obligations, the Council shall meet in the presence of all its members.

Article 56

Upon completion of the deliberations, the Constitutional Council shall deliver its decision unanimously in the absence of the member concerned.

Where the member concerned is found to have committed a grave breach, the Constitutional Council shall invite him/her to submit his/her resignation and shall advise the authority concerned so that a replacement can be appointed in application of the provisions of Article 57 below.

Article 57

The death, resignation or long-term impediment of a member of the Constitutional Council shall be the occasion of a deliberation of the Constitutional Council, notification whereof shall be made to the

President of the Republic and, as the case may be, to the President of the People's National Assembly, the President of the Council of the Nation, the President of the Supreme Court or the President of the Council of State.

Article 58

The term of the member of the Constitutional Council set out in Article 164 of the Constitution ended, as a result of its expiry, at the date on which the new member takes up office.

Title VI – Activities of the Constitutional Council and External Relations**Article 58bis**

The Constitutional Council may seek membership in institutions and international and regional organisations if their activities are not incompatible with the work of the Constitutional Council and do not affect its independence and impartiality.

Article 58ter

The Constitutional Council may organise symposia, seminars or other scientific or intellectual activities related to its missions.

Article 58quarter

The Constitutional Council may issue a press release at the end of its work.

Article 59

This Regulation will be published in the Official Gazette of the People's Democratic Republic of Algeria.

...



ARGENTINA

Constitution

22 August 1994

– extracts –

...

Third Division – Judicial Power

Chapter I – Its Nature and Duration

Section 108

The Judicial Power of the Nation shall be vested in a Supreme Court and in such lower courts as Congress may constitute in the territory of the Nation.

Section 109

In no case may the President of the Nation exercise judicial functions, assume jurisdiction over pending cases, or reopen those already judged.

Section 110

The Justices of the Supreme Court and the judges of the lower courts of the Nation shall hold their offices during good behaviour, and shall receive a remuneration for their services which shall be determined by law and which shall not be reduced in any way while holding office.

Section 111

In order to be a member of the Supreme Court, one must be a lawyer of the Nation, with eight years of practice and having the same qualifications that are required to become a senator.

Section 112

On the occasion of the first composition of the Supreme Court, the persons designated shall take an oath before the President of the Nation, to perform their duties, to administer justice in a proper and faithful manner, and in accordance with the provisions of the Constitution. In the future, they shall take the oath before the Chief Justice of the Court.

Section 113

The Supreme Court shall issue its own internal regulations, and appoint its subordinate employees.

Section 114

The Council of the Judiciary, ruled by a special law enacted by the absolute majority of all the members of each House, shall be in charge of the selection of the judges and of the administration of judicial power.

The Council shall be periodically constituted so as to achieve a balance among the representation of the political bodies arising from popular election, of the judges of all instances, and of the lawyers with federal registration. It shall likewise be composed of such other scholars and scientists as indicated by law in number and form.

It is empowered:

1 – to select the candidates to the lower courts by public competition;

2 – to issue proposals in binding lists of three candidates for the appointment of the judges of the lower courts;

3 – to be in charge of the resources and to administer the budget assigned by law to the administration of justice;

4 – to apply disciplinary measures to judges;

5 – to decide the opening of proceedings for the removal of judges, when appropriate to order their suspension, and to make the relevant accusation;

6 – to issue the rules about the judicial organisation and all those necessary to ensure the independence of judges and the efficient administration of justice.

Section 115

The judges of the lower courts of the Nation shall be removed on the grounds stated in Section 53, by a special jury composed of legislators, judges, and lawyers with federal registration.

The decision, which cannot be appealed, shall have no other effect than to remove the accused. However, the condemned party shall nevertheless be subject to accusation, trial, and punishment according to law before the ordinary courts.

If no decision was made after the term of one hundred and eighty days from the opening of the proceedings for removal, said proceedings shall be filed and, in that event, the suspended judge shall be reinstated.

The composition and procedure of this jury shall be stated in the special law mentioned in Section 114.

Chapter II – Powers of the Judiciary

Section 116

The Supreme Court and the lower courts of the Nation shall be empowered to hear and decide all cases arising under the Constitution and the laws of the Nation, with the exception set out in Section 75.12, and under the treaties made with foreign nations; all cases concerning ambassadors, public ministers and foreign consuls; cases related to admiralty and maritime jurisdiction; matters in which the Nation shall be a party; actions arising between two or more provinces, between one province and the inhabitants of another province, between the inhabitants of different provinces, and between one province or the inhabitants thereof against a foreign state or citizen.

Section 117

In the aforementioned cases, the Supreme Court shall have appellate jurisdiction, with such regulations and exceptions as Congress may prescribe; however, in all matters concerning foreign ambassadors, ministers and consuls, and in those in which a province shall be a party, the Court shall have original and exclusive jurisdiction.

Section 118

The trial of all ordinary criminal cases not arising from the right to impeach granted to the House of Deputies, shall be decided by jury once this institution is established in the Nation. The trial shall be held in the province where the crime has been committed; however, when committed outside the territory of the Nation against public international law, the trial shall be held at such place as Congress may determine by a special law.

Section 119

Treason against the Nation shall only consist in rising in arms against it, or in joining its enemies, supplying them with aid and assistance. Congress shall, by a special law, determine the punishment for this crime; however, the penalty shall not extend beyond the convicted person, nor shall this dishonour be transmitted to relatives of any degree.

...



BRAZIL

Constitution

5 October 1988

– extracts –

...

Title IV – The Organisation of the Powers

Chapter III – The Judiciary

Section I – General Provisions

Article 92

The following shall be the bodies of the Judiciary:

I – the Supreme Federal Court;

I-A – the National Council of Justice;

II – the Superior Court of Justice;

III – the Federal Regional Courts and Federal Judges;

IV – the Labour Courts and Judges;

V – the Electoral Courts and Judges;

VI – the Military Courts and Judges;

VII – the Courts and Judges of the States, of the Federal District and of the territories.

Paragraph 1

The Supreme Federal Court, the National Council of Justice and the Superior Courts have their seat in the Federal Capital.

Paragraph 2

The Supreme Federal Court and the Superior Courts have jurisdiction over the entire Brazilian territory.

Article 93

A supplemental law, proposed by the Supreme Federal Court, shall provide for the Statute of the Judicature, observing the following principles:

I – admission into the career, with the initial post of substitute judge, by means of a civil service entrance examination of tests and presentation of academic and professional credentials, with the participation of the Brazilian Bar Association in all phases; requirements include a BA in law and a minimum three years' legal activity, respecting the order of classification for appointments;

II – promotion from one level to the next, based on seniority and merit alternately, observing the following rules:

a) the promotion of a judge who has appeared in a merit list three consecutive times or five alternate times is mandatory;

b) merit promotion requires two years in office in the respective level and that the judge should appear in the top fifth part of the seniority list of such level, unless no one satisfying such requirements is willing to accept the vacant post;

c) appraisal of merit according to the criteria of promptness and reliability in the exercise of the judicial function and according to attendance and achievement in official or recognised further training courses;

d) in determining seniority, the court may only reject the judge with the longest service by the reasoned votes of two-thirds of its members, according to a specific procedure, proper defence being assured and the voting being repeated until the selection is determined;

e) the following shall not be promoted: any judge who, without cause, retains records longer than the time determined by law, it being forbidden to return them to the court without the proper sentence or other applicable action;

III – access to the courts of second instance shall comply with seniority and merit, alternately, as determined at the last or only level;

IV – provision of official courses for preparation, further training and promotion of judges, whereby the participation in official courses or in courses recognised by a national initial and further training college for judges is a mandatory Stage in obtaining life tenure;

V – the remuneration of the Justices of the Superior Courts shall be equal to ninety-five percent of the monthly remuneration established for the Justices of the Supreme Federal Court, and the remuneration of the other judges shall be fixed by law and scaled, at federal and State levels, in accordance with the respective categories of the national judiciary structure, whereby the difference between any two categories cannot be greater than ten percent or less than five percent, or be of an amount exceeding ninety-five percent of the monthly remuneration of the Justices of the Superior Courts, complying, in all cases, with the provisions of Articles 37, XI, and 39.4;

VI – the retirement compensation of Judges and the pensions of his/her dependents shall comply with the provisions of Article 40;

VII – a permanent judge shall reside in the corresponding judicial district, unless the court authorises otherwise;

VIII – acts of removal, suspension from office and retirement of a judge, for public interest, shall be based on a decision adopted by the vote of the absolute majority of the respective court or of the National Council of Justice, proper defence being ensured;

VIII – A removal on request or replacement of district judges of equal grade shall comply with the provisions of indents a, b, c and e of Paragraph II;

IX – all judgments given by bodies of the Judiciary shall be public, all decisions must be substantiated if they are to be valid, and the law may, in given acts, limit attendance to the interested parties and their lawyers, or only to the latter, provided that the preservation of the right to intimacy of the party interested in secrecy do not prejudice the public interest in the information;

X – the administrative decisions of the courts shall be supported by reasons and given in public session, and disciplinary decisions shall be taken by the vote of the absolute majority of their members;

XI – in courts with more than twenty-five judges, a special body may be constituted, with a minimum of eleven and a maximum of twenty-five members, to exercise the administrative and judicial duties delegated by the full court, one half of the members being chosen by seniority, and the other half by voting of the full court;

XII – the judicial activity shall be uninterrupted, collective vacations of judges and courts being forbidden, whereby, on days when the court does not

operate normally, judges must be available on permanent duty;

XIII – the number of judges in the judicial unit shall be proportional to the effective judicial demand and to the respective population;

XIV – court staff shall receive delegation for the practice of acts of administration and acts of a non-decision-making nature;

XV – the distribution of proceedings shall be immediate, in all levels of jurisdiction.

Article 94

One-fifth of the seats of the Federal Regional Courts, of the Courts of the States, and of the Federal District and the Territories shall be occupied by members of the Public Prosecutor's Office with over ten years of service, and by lawyers of outstanding legal learning and unblemished reputation, with over ten years of actual professional activity, included in a list of six names by the entities representing the respective groups.

Sole Paragraph

On receipt of the nominations, the court shall draw up a list of three names and send it to the Executive, which must then select one of the listed names for appointment within twenty days.

Article 95

Judges shall enjoy the following guarantees:

I – life tenure, which, at first instance, shall only be acquired after two years in office and, during this period, loss of office shall be determined by the court to which they belong and, in other cases, by a final and unappealable court decision;

II – irremovability, except by reason of public interest, under the terms of Article 93, VIII;

III – irreducibility of earnings, with due regard to the provisions of Articles 37, X and XI, 39.4, 150, II, 153, III, and 153.2, I.

Sole Paragraph

Judges are forbidden to:

I – hold, even when suspended from office, another office or position;

II – receive, on any account or for any reason, court costs or participation in a lawsuit;

III – engage in party-political activities;

IV – receive, on any account or for any reason, payments or contributions from persons, public or private entities, except in cases provided for by law;

V – exercise the legal profession in a court in which they previously worked within three years of leaving office by retirement or dismissal.

Article 96

It is exclusively incumbent on:

I – the courts:

a) to elect their governing bodies and to draw up their rules of procedures, in accordance with procedural standards and the procedural guarantees of the parties, establishing the jurisdiction and operation of the respective judicial and administrative bodies;

b) to organise their secretariats and auxiliary services and those of the courts connected with them, guaranteeing the exercise of the respective correctional activities;

c) to fill, in the manner set out in this Constitution, offices of career judges in their respective jurisdictions;

d) to propose the creation of new courts of first instance;

e) to fill, by means of a civil service entrance examination, or of tests and credentials according to the provisions of Article 169, Sole Paragraph, the offices required for the administration of justice, except for the positions of trust as defined in law;

f) to grant leave, vacations and other absences to their members and to the judges and employees who are immediately subordinate to them;

II – the Supreme Federal Court, the Superior Courts and the Courts of Justice, to propose to the respective Legislature, with due regard to the provisions of Article 169:

a) changes to the number of members of the lower courts;

b) creation and extinction of offices and establishment of remuneration for the auxiliary services and for the courts connected with them, as well as establishment

of allowances for their members and the judges, including those of the lower courts, where appropriate;

c) creation or extinction of lower courts;

d) changes to the organisation and distribution of the judiciary;

III – the Courts of Justice, to try judges of the 4 Body not provided for in CF/88. States, of the Federal District and of the Territories, as well as members of the Public Prosecutor's Office, for common offences and offences of misconduct, except in cases coming under the jurisdiction of the Electoral Court.

Article 97

The courts may declare a law or normative act of the Government unconstitutional only by an absolute majority of their members or of the members of the respective special body.

Article 98

The Union, in the Federal District and in the territories, and the States shall create:

I – special courts, employing qualified judges or both qualified and lay judges, with jurisdiction for conciliation, judgment and execution of civil suits of lesser complexity and criminal offences of lesser offensive potential, under oral and summary proceedings, allowing, in the cases established in law, the settlement and adjudication of appeals by panels of judges of first instance;

II – remunerated justices of peace, consisting of citizens elected by direct, universal and secret vote, with a term of office of four years and jurisdiction to, under the terms of the law, perform marriages, examine qualification proceedings, *ex officio* or by reason of a challenge, and exercise conciliatory functions of a non-judicial nature, in addition to others established by law.

Paragraph 1

Federal law shall provide for the creation of special courts in the field of Federal Justice.

Paragraph 2

Costs and fees shall be used exclusively for funding services related to the specific activities of Justice.

Article 99

The Judiciary is assured of administrative and financial autonomy.

Paragraph 1

The courts shall prepare their budget proposals, within the limits stipulated jointly with the other Powers in the budgetary directives law.

Paragraph 2

The proposal shall, after hearing the other interested courts, be forwarded:

I – at the Federal level, by the Presidents of the Supreme Federal Court and of the Superior Courts, with the approval of the courts in question;

II – at the level of the States, the Federal District and the Territories, by the Presidents of the Courts of Justice, with the approval of the courts in question.

Paragraph 3

If the bodies mentioned in Paragraph 2 fail to forward the respective budgetary proposals within the time established by the budgetary directives law, the Executive shall consider, for the consolidation of the annual budgetary law, the amounts authorised for the current budgetary law, adjusted in accordance with the limits stipulated in Paragraph 1 of this Article.

Paragraph 4

If the budgetary proposals forwarded are at variance with the limits stipulated by Paragraph 1, the Executive shall perform the necessary adjustments in order to consolidate the annual budgetary law.

Paragraph 5

During the execution of the budget, no expenditure shall be made or commitments entered into which exceed the limits established by the law of budgetary directives, unless previously authorised by means of creation of special or supplementary credits.

Article 100

Payments owed by the Federal, State or municipal treasuries under a court decision, shall be made exclusively in chronological order of presentation of judicial requests and charged to the respective credits, it being forbidden to designate cases or persons in the budgetary appropriations and in the additional credits opened for such purpose.

Paragraph 1

Alimony payments include those deriving from wages, salaries, revenues, pensions and supplementary payments, welfare benefits and allowances for bereavement or invalidity, based on civil responsibility, by virtue of unappealable court judgments, and will be paid on a priority basis before any other payments, apart from those mentioned in Paragraph 2 of this Article.

Paragraph 2

Alimony payments whose beneficiaries are sixty years of age or more at the date of the forwarding of the judicial request, or who are seriously ill, as defined by law, will be paid on a priority basis before any other sums, up to the equivalent of three times the sum established by law for the purposes of the provisions of Paragraph 3 of this Article, part-payments being permitted, with the rest paid in chronological order of presentation of the judicial request.

Paragraph 3

The initial provisions of this Article on the issuing of judicial requests does not apply to payments of values defined in law as being of low amounts, which the aforementioned Treasuries must pay in accordance with unappealable court judgments.

Paragraph 4

For the purposes of the provisions of Article 3, specific laws may be enacted establishing different values from those of the public entities, depending on different financial capacities, whereby the minimum must be equal to the highest benefit under the general social welfare system.

Paragraph 5

It is compulsory for the budgets of public entities to include the funds required for the payment of debts arising from unappealable court judgments shown on the judicial requests presented before or on July 1, and the payment shall be made before the end of the following fiscal year, with the amounts being adjusted until the date of payment.

Paragraph 6

The budgetary allocations and credits opened shall be assigned directly to the Judiciary, it being incumbent on the President of the Court which rendered the decision of execution to determine full payment and to authorise, at the creditor's request

and exclusively in the event that his/her right of precedence is not respected, seizure of the amount required to satisfy the debt.

Paragraph 7

The President of the competent court who, by action or omission, delays or tries to block the regular liquidation of judicial requests shall incur liability and shall be brought before the National Council of Justice.

Paragraph 8

The issuing of complementary judicial requests or of supplementary judicial requests of a paid value, as well as the fractioning, apportionment or division of the due amounts, in order to have payments made on account of the provisions of Paragraph 3 of this Article, are forbidden.

Paragraph 9

When judicial requests are issued, a compensatory amount must be deducted from them corresponding to the verified cash debts, whether or not registered as active debts, constituted against the original creditor by the Public Treasury owing the debts, including portions falling due, except for those whose execution has been suspended under an administrative or judicial appeal.

Paragraph 10

Before issuing judicial requests, the Court must ask the Public Treasury owing the debts for information on debts fulfilling the conditions set out in Paragraph 9 for the corresponding purposes; the Treasury must reply within thirty days, otherwise they will forfeit entitlement to a reduction.

Paragraph 11

The creditor may, in accordance with the provisions of the law on the federal debtor entity, earmark credits in the judicial requests for purchasing public property from the respective Federal body.

Paragraph 12

When this Constitutional Amendment is published, the value of requests, after they have been issued and regardless of their nature, will be updated on the basis of the official index of basic remuneration for savings accounts, and for the purposes of offsetting delays, simple interest will be included in the percentage interests for the savings account, precluding compensatory interests.

Paragraph 13

The creditor may fully or partly assign his/her credits to third persons by means of judicial requests, without the debtor's consent, whereby the provisions of Paragraphs 2 and 3 do not apply to the assigner.

Paragraph 14

Assignment of judicial requests only take effect after their communication by means of an official request to the initial court and the debtor entity.

Paragraph 15

Without prejudice to the provisions of this Article, a supplemental law to this Federal Constitution may establish a special regime for the payment of requested credits for States, the Federal District and the municipalities, with links to the standard cash income and the modes and timescales for settlement.

Paragraph 16

On an exclusive basis and in accordance with a specific law, the Union may take over debts arising from judicial requests, from the States, the Federal District and the Municipalities, refunding them directly.

Section II – The Supreme Federal Court

Article 101

The Supreme Federal Court shall comprise eleven Justices, chosen from among citizens over thirty-five and under sixty-five years of age, of outstanding legal learning and unblemished reputation.

Sole Paragraph

The Justices of the Supreme Federal Court shall be appointed by the President of the Republic, after their nomination has been approved by the absolute majority of the Federal Senate.

Article 102

The Supreme Federal Court is responsible, primarily, for safeguarding the Constitution; it is incumbent on it:

I – to process and adjudicate, in the first instance:

a) direct actions of unconstitutionality of a Federal or State law or normative act, and declaratory actions of constitutionality of a Federal law or normative act;

b) in common criminal offences, the President of the Republic, the Vice-President, the members of the National Congress, its own Justices and the Attorney-General of the Republic;

c) in common criminal offences and crimes of misconduct, the Ministers of State I, the Commanders of Navy, Army and Air Force, except as provided in Article 52, and the members of the Superior Courts, those of the Federal Court of Accounts and the Heads of permanent diplomatic missions;

d) *habeas corpus*, when the petitioner is any one of the persons referred to in the preceding sub-sections; the writ of mandamus and habeas data against acts of the President of the Republic, of the Directing Boards of the Chamber of Deputies and of the Federal Senate, of the Federal Court of Accounts, of the Attorney-General of the Republic and of the Supreme Federal Court itself;

e) litigation between a foreign State or an international organisation and the Union, a state, the Federal District or a territory;

f) disputes and conflicts between the Union and the states, the Union and the Federal District, or between one another, including their respective indirect administration entities;

g) extradition requested by a foreign state;

h) (*repealed under EC (Emenda constitucional – constitutional amendment] no. 45 of 2004)*)

i) *habeas corpus*, when the constraining party is a Superior Court or the constraining party or petitioner is an authority or employee whose acts are directly subject to the jurisdiction of the Supreme Federal Court, or in the case of a crime, subject to the same jurisdiction in one sole instance;

j) criminal review of and rescissory action against its decisions;

(no “k” in the official text of the Constitution)

l) claims for the preservation of its powers and guarantee of the authority of its decisions;

m) enforcement of court decisions in the cases where it has original jurisdiction, the delegation of duties to perform procedural acts being allowed;

n) suits in which all members of the judiciary are directly or indirectly involved, and suits in which more

than half the members of the originating court are disqualified or have a direct or indirect interest;

o) conflicts of powers between the Superior Court of Justice and any other courts, among Superior Courts, or between the latter and any other court;

p) applications for precautionary measures in direct actions of unconstitutionality;

q) writs of injunction, where preparation of the regulation is the responsibility of the President of the Republic, the National Congress, the Chamber of Deputies, the Federal Senate, the Directing Boards of one of these legislative houses, the Federal Court of Accounts, one of the Superior Courts, or the Supreme Federal Court itself;

r) suits filed against the National Council of Justice or against the National Public Prosecutors Council.

II – to adjudicate, at ordinary appeal level:

a) *habeas corpus*, writs of mandamus, habeas data and writs of injunction decided in a sole instance by the Superior Courts, in the event of a negative decision;

b) political crimes;

III – to adjudicate, at extraordinary appeal level, cases decided in a sole or last instance, when the decision appealed:

a) is contrary to a provision of this Constitution;

b) declares a treaty or a Federal law unconstitutional;

c) considers valid a law or act of a local government contested in the light of this Constitution;

d) considers valid a local law contested under Federal law.

Paragraph 1

A contention of non-compliance with a fundamental precept deriving from this Constitution shall be examined by the Supreme Federal Court, under the terms of the law.

Paragraph 2

Final decisions on the merits, pronounced by the Supreme Federal Court, in direct actions of unconstitutionality and in declaratory actions of constitutionality, shall have force against all, as well

as a binding effect, as regards the other bodies of the Judiciary, as well as direct and indirect public administration, at Federal, State and municipal levels.

Paragraph 3

In the extraordinary appeal the appellant shall prove the general impact of the constitutional issues discussed in the case, as prescribed by law, in order for the Court to examine the admission of the appeal, refusal being permitted only by a two-thirds majority of the members of the Court.

Article 103

The following may file actions of unconstitutionality and declaratory actions of constitutionality:

- I – the President of the Republic;
- II – the Bureau of the Federal Senate;
- III – the Bureau of the Chamber of Deputies;
- IV – the Bureau of a State Legislative Assembly or of the Legislative Chamber of a Federal District;
- V – a State Governor or the Governor of a Federal District;
- VI – the Attorney-General of the Republic;
- VII – the Federal Council of the Brazilian Bar Association;
- VIII – a political party represented in the National Congress;
- IX – a confederation of labour unions or a professional association of nationwide scope.

Paragraph 1

The Attorney-General of the Republic shall be heard in advance in actions of unconstitutionality and in all suits coming under the jurisdiction of the Supreme Federal Court.

Paragraph 2

When unconstitutionality is declared on account of the lack of procedures to render a constitutional provision effective, the appropriate Power shall be notified for the adoption of the necessary action and, in the case of an administrative body, to do so within thirty days.

Paragraph 3

When the Supreme Federal Court examines the theoretical unconstitutionality of a legal provision or normative act, it shall first of all summon the Advocate-General of the Union to defend the impugned act or text.

Paragraph 4

(repealed under EC no. 45 of 2004)

Article 103-A

The Supreme Federal Court shall have the power, *ex officio* or by request, under a decision taken by two-thirds of its membership, after reiterated decisions on constitutional matters, to adopt summaries which, after publication in official gazette, shall have binding effect vis-à-vis the other bodies of the Judiciary and the direct and indirect public administration, at Federal, State and municipal levels, as well as to revise or revoke them, as provided for in law.

Paragraph 1

The summary shall deal with the validity, interpretation and efficacy of specific norms, about which there are ongoing controversies between judiciary bodies or between these and the public administration which cause serious juridical instability and repeated legal actions regarding identical matters.

Paragraph 2

Without prejudice to the provisions of law, the approval, revision or revocation of summaries may be initiated by the parties empowered to file direct actions of unconstitutionality.

Paragraph 3

Any administrative act or judicial decision which is contrary to an applicable summary, or which applies the latter improperly, shall be challenged before the Supreme Federal Court which, if it deems the challenge duly established, shall nullify the administrative act or revoke the judicial decision and order its replacement, with or without application of the summary, as appropriate.

Article 103-B

The National Council of Justice shall comprise fifteen members of over thirty-five and under sixty-six years of age, with a two-year term, once renewable, including:

- I – the President of the Supreme Federal Court;

II – one Justice from the Superior Court of Justice, appointed by the Court in question;

III – one Justice from the Superior Labour Court, appointed by the Court in question;

IV – one Judge from a Court of Justice, appointed by the Supreme Federal Court;

V – a State Judge, appointed by the Supreme Federal Court;

VI – a judge from a Regional Federal Court, appointed by the Superior Court of Justice;

VII – a Federal judge, appointed by the Superior Court of Justice;

VIII – a judge from a Regional Labour Court, appointed by the Superior Labour Court;

IX – a labour judge, appointed by the Superior Labour Court;

X – a member of the Federal Public Prosecutor's Office, appointed by the Attorney-General of the Republic;

XI – a member of the State Public Prosecutor's Office, chosen by the Attorney-General of the Republic from among the persons nominated by the competent body of each State institution;

XII – two lawyers appointed by the Federal Council of the Brazilian Bar Association;

XIII – two citizens of outstanding legal learning and unblemished reputation, one appointed by the Chamber of Deputies and other by the Federal Senate.

Paragraph 1

The Council shall be chaired by the President of the Supreme Federal Court, and in the latter's absence, by the Vice-President of the Supreme Federal Court.

Paragraph 2

The other members of the Council shall be appointed by the President of the Republic, the nominations having been approved by an absolute majority of the Federal Senate.

Paragraph 3

If the appointments mentioned in this Article are not effected in the legally specified time, the

appointments shall be made by the Supreme Federal Court.

Paragraph 4

The Council shall be responsible for supervising the administrative and financial acts of the Judiciary and the fulfilment of Judges' duties, and also, in addition to other attributions set out in the Judiciary Regulations, for:

I – ensuring the autonomy of the Judiciary and the observance of the Judicial Regulations, with powers to issue regulatory acts, within its jurisdiction, or recommend specific provisions;

II – ensuring the observance of Article 37 and examining, *ex officio* or by request, the legality of administrative acts adopted by members or bodies of the Judiciary, with powers to set them aside them, alter them or set a deadline for the adoption of the measures needed to bring them into line with the law, without prejudice to the jurisdiction of the Court of Accounts of the Union;

III – examining and adjudicating complaints against members or bodies of the Judiciary, including against their auxiliary services, annexes, and notary and registry bodies operating under the public authority or on an officialised basis, without prejudice to the correctional and disciplinary jurisdiction of the courts, with powers to conduct current disciplinary proceedings and to decide on removal, suspension from office and retirement, with remuneration proportional to time in office, and to impose other administrative sanctions, proper defence being provided;

IV – reporting cases of crimes against the public administration or abuse of authority to the Public Prosecutor's Office;

V – reviewing, *ex officio* or on request, disciplinary cases involving judges and members of courts adjudicated less than one year previously;

VI – preparing six-monthly statistical reports on proceedings conducted and judgments delivered, by unit of the Federation, in the different bodies of the Judiciary;

VII – preparing annual reports, proposing any new measures deemed necessary, on the situation of the Judiciary in the country and the activities of the Council; this report will be incorporated into the message from the President of the Supreme Federal Court to be forwarded to the National Congress on the occasion of the opening of Parliament.

Paragraph 5

The Justice of the Superior Court of Justice shall exercise the duty of chief of internal affairs and be excluded from the distribution of cases in the Court, and shall, in addition to the attributions assigned under the Judicial Regulations:

I – deal with complaints from any interested party about judges and judicial services;

II – exercise executive functions in the Council, as well as general duties relating to inspection and correction;

III – second and appoint judges, delegating duties to them, and second staff from other judicial areas or courts, including the States, the Federal District and the Territories.

Paragraph 6

The Attorney General of the Republic and the President of the Brazilian Bar Association shall cooperate with the Council.

Paragraph 7

The Union shall set up, including in the Federal District and the Territories, branch offices to hear complaints from any interested parties against members or bodies of the Judiciary, or against their auxiliary services, reporting directly to the National Council of Justice.

Section III – Superior Court of Justice**Article 104**

The Superior Court of Justice shall comprise a minimum of thirty-three Justices.

Sole Paragraph

The Justices of the Superior Court of Justice shall be appointed by the President of the Republic, chosen from among Brazilians over thirty-five and under sixty-five years of age, of outstanding legal learning and unblemished reputation, the nominations having been approved by an absolute majority of the Federal Senate, as follows:

I – one-third shall be chosen from among judges of the Federal Regional Courts and one-third from among judges of the Courts of Justice, included in a list of three names prepared by the Court itself;

II – one-third, in equal parts, shall be chosen from among lawyers and members of the Federal Public Prosecutor's Office, the Public Prosecutor's Office of the States, and the Public Prosecutor's Office of the Federal District and the Territories, alternately, nominated in accordance with Article 94.

Article 105

It is incumbent on the Superior Court of Justice to:

I – institute legal proceedings and trials, in the first instance, in respect of:

a) in cases of conventional crime, the Governors of the States and of the Federal District, and, in such crimes and in crimes of misconduct, the judges of the Courts of Justice of the states and of the Federal District, the members of the Courts of Accounts of the States and of the Federal District, those of the Federal Regional Courts, of the Regional Electoral and Labour Courts, the members of Councils or Courts of Accounts of the municipalities and the members of the Public Prosecutor's Office of the Union pleading in court;

b) writs of mandamus and habeas data against an act of a Minister of State, or Commander of the Navy, the Army or the Air Force, or of the Court itself;

c) *habeas corpus*, when the constraining party or the petitioner is any of the persons mentioned in indent a, or when the constraining party is a Minister of State, or Commander of the Navy, the Army or the Air Force, excepting the jurisdiction of the Electoral Courts;

d) disputes as to jurisdiction between any courts, except as provided in Article 102, I, o, as well as between a court and any judges not subject to it and between judges subject to different courts;

e) criminal review of and rescissory actions against its decisions;

f) claims for maintenance of its jurisdiction and guarantee of the authority of its decisions;

g) conflicts of attributions between administrative and judicial authorities of the Union, or between the judicial authorities of one State and the administrative authorities of another or of the Federal District, or between those of the latter and those of the Union;

h) writs of injunction, where the preparation of a regulation is the responsibility of a Federal body, entity, or authority, of the direct or indirect administration, except for cases falling within the

jurisdiction of the Supreme Federal Court and the Military, Electoral, Labour and Federal Justice bodies;

...

i) confirmation of foreign sentences and the granting of *exequatur* for letters rogatory.



II – adjudicate, at ordinary appeal level:

a) *habeas corpus* decided at sole or last instance by the Federal Regional Courts or by the courts of the States, of the Federal District and the Territories, in the event of rejection of the application;

b) writs of mandamus decided in a sole instance by the Federal Regional Courts or by the courts of the States, of the Federal District and the Territories, in the event rejection of the application;

c) cases in which the parties are a foreign state or international organisation, on the one hand, and a municipality or a person residing or domiciled in the country, on the other.

III – adjudicate, at special appeal level, cases decided, at sole or last instance, by the Federal Regional Courts or by the courts of the States, the Federal District and the Territories, where the decision appealed:

a) is contrary to a treaty or a Federal law, or negates its effectiveness;

b) considers valid a local government act challenged under a Federal law;

c) confers on a Federal law an interpretation different from that which has been conferred on it by another court.

Sole Paragraph

The following shall operate with the Superior Court of Justice:

I – the National Judicial Training College, which is responsible, *inter alia*, for regulating the official courses for entering the career and securing promotion;

II – the Federal Council of Justice, which is responsible, by law, for the administrative and budgetary supervision of the Federal Courts of first and second instance, as the central body of the system with investigative powers, whose decisions have binding effect.

BRAZIL

Internal Regulation of the Federal Supreme Court

2009

Initial Provision

Article 1

These Rules of Procedure lay down the composition and competence of the organs of the Federal Supreme Court (*STF –Supremo Tribunal Federal*) and regulate the proceedings assigned to it in the Constitution and the rules governing its departments.

CF/88 [1988 Federal Constitution]: Articles 101 to 103 – Article 96, I, a, b, e and f.

RISTF [Regimento Interno do Supremo Tribunal Federal – Internal Rules of Procedure of the Supreme Federal Court]: Article 7, III (competence of the Plenary Court) – Article 31, I (RISTF update).

Organisation and Competence of the Court

Composition of the Court

Article 2

The Court shall consist of 11 Judges, be based in the capital of the Republic and have jurisdiction throughout the national territory.

CF/88: Article 12, I and § 3, IV (native Brazilian citizens only) – Article 52, III, a (prior approval by Federal Senate) – Article 84, XIV (appointed by President of the Republic) – Article 92, I and sole Paragraph (extent of jurisdiction) – Article 95, I, II, III (guarantees) and sole Paragraph (constitutional prohibitions) – Article 101 and sole Paragraph (over 35 and under 65 years of age, outstanding legal knowledge and impeccable reputation).

RISTF: Article 18 (regulatory incompatibilities) – Article 20 (jurisdiction).

CPC [Código de Processo Civil – Code of Civil Procedure]: Article 136 (incompatibilities).

CPP [Código de Processo Penal – Code of Criminal Procedure]: Article 253 (incompatibilities).

Sole Paragraph

The President and Vice-President shall be elected by the Court from among the Judges.

CF/88: Article 96, I, a

RISTF: Article 4, §2 (on leaving office they join new President's Chamber) – Article 7, I (elected by Plenary Court) – Article 12 (two-year term of office – re-election prohibited) – Article 13 (responsibilities of President) – Article 14 (responsibilities of Vice-President) – Article 75 (Reporting Judge: cases accepted) – Article 143 (directs Plenary Court) – sole Paragraph (elected with qualified quorum) – Article 148, sole Paragraph (presides over Chamber when Reporting Judge).

Article 3

The organs of the Court are the Plenary Court, the Chambers and the President.

CF/88: Article 96, I, a and b.

RISTF: Articles 5 to 8 (competence of Plenary Court) – Articles 8 to 11 (competence of Chamber) – Article 13 (competence of President and Vice-President).

Article 4

The Chambers shall each comprise five Judges.

CF/88: Article 96, I, a.

RISTF: Articles 8 to 11 (competence of Chamber) – Article 19 (transfer of Chamber) – Article 20 (jurisdiction) – Article 41 (securing a quorum) – Articles 147 to 150 (Chamber sessions).

Paragraph 1

Chambers shall be presided over by the most senior Judge for a non-renewable period of one year, until all members have acted as President, in descending order of seniority.

Paragraph 2

The most senior Judge may opt to decline to act as President, provided he/she does so before his/her selection is announced.

Paragraph 3

Should the position of President of a Chamber fall vacant, it shall be filled on a temporary basis by that Chamber's most senior Judge.

Paragraph 4

If the criteria set out in Paragraph 1 of this Article have been fulfilled, the President of a Chamber shall be selected in the final ordinary session of the Chamber preceding the ordinary cessation of the current term, subject to the situation provided for in the following paragraph.

Paragraph 5

Should a position of Chamber President become vacant for any other reason, the selection referred to in Paragraph 4 above shall be made in the ordinary session immediately after the vacancy arises, in which case the new President shall complete an entire one-year term of office from his/her appointment.

Paragraph 6

His/her successor shall be deemed to have taken office in any of the situations referred to in Paragraphs 4 and 5 of this Article on the date he/she was selected as President of the Chamber, the respective term of office beginning from the ensuing session.

Paragraph 7

When a Chamber President is absent on a temporary basis or is prevented from attending, he/she shall be replaced by the most senior Judge from among its constituent members.

Paragraph 8

On leaving office, the President of the Court shall become a member of the Chamber vacated by the new President.

Paragraph 9

The Judge elected as Vice-President shall remain in the same Chamber.

Paragraph 10

A Judge who takes office in the Supreme Federal Court shall become a member of the Chamber which has a vacancy.

Chapter II – Competence of the Plenary Court**Article 5**

It is incumbent on the Plenary Court to adjudicate:

CF/88: Article 96, I, a, b and f.

RISTF: Article 3 (organ of the STF [Supremo Tribunal Federal – Supreme Federal Court]).

I – in ordinary crimes, the President of the Republic, the Vice-President, members of the National Congress, Government Ministers, its own Judges and the Attorney General;

CF/88: Article 102, I, b and c (constitutional competence), in conjunction with Articles 5, LX (open session) – 15, III (loss of rights) – 51, I (authorisation by Chamber of Deputies) – 53, as amended by EC ([Emenda constitucional – constitutional amendment] no. 35/01 §§ 1, 2 and 3 (notification to Chamber of Deputies and Federal Senate following receipt of accusation) – 55, VI and § 2 (Federal Senate and Chamber of Deputies, which determine loss of office) – and 86, § 1, I and II (legal proceedings against the President of the Republic).

RISTF: Article 55, II (criminal proceedings) – Article 56, IV and V, in fine (complaint and investigation) – Articles 230 to 246 (proceedings and trial) – Article 340 (execution).

CPP: Article 5 (investigation) – Articles 18 and 28 (suspension of investigation) – Article 24 (criminal proceedings) – Articles 27 and 29 (standing to bring criminal proceedings) – Article 30 (standing to bring complaint) – Articles 84 to 86 (prerogative of office).

Law no. 8.038/90: Articles 1 to 12 (originating criminal proceedings).

II – in ordinary crimes and cases of misconduct in public office, Government Ministers, except as provided for in Article 42.1² of the Constitution; members of the Higher Courts of the Union, the State and Federal District Courts of Justice³, Judges of the Court of Auditors of the Union and permanent heads of diplomatic missions;

²Current provision of CF/88: Article 52, I and sole Paragraph.

³Current competence of STJ [Superior Tribunal de Justiça – Higher Court of Justice]: Article 105, I, a of CF/88.

CF/88: Article 102, I, c, in conjunction with Article 50, § 2.

RISTF: Article 55, II (criminal proceedings) – Article 56, IV and V, in fine (complaint and investigation) – Articles 230 to 246 (proceedings and trial) – Article 340 (execution).

Law no. 1.079/50: defines misconduct by President of the Republic, Government Ministers, STF Judges and Attorney General.

Law no. 8.038/90: Articles 1 to 12 (originating criminal proceedings).

III – disputes between foreign States or international organisations and the Union, the States, the Federal District or the Territories;

CF/88: Article 102, I, e.

RISTF: Article 55, I (ACO [Ação Cível Originária – original civil proceedings]) – Articles 247 to 251 and Articles 273 to 275 (proceedings and trial).

IV – actions and disputes between the Union, the States, the Federal District and the Territories or among the latter, including their indirect administrative organs;

CF/88: Article 102, I, f.

RISTF: Article 55, I (ACO) – Articles 247 to 251 (proceedings and trial).

V – injunctions against acts of the President of the Republic, Chamber of Deputies and Federal Senate Committees, the Supreme Federal Court, the Conselho Nacional da Magistratura (National Council of the Judiciary⁴), the Court of Auditors of the Union, or their Presidents, the Attorney General, and those brought by the Union against acts of State Governments, or by one State against another;

⁴Body not provided for in CF/88: see main Section of Article 93 of CF and LC [Lei Complementar – Supplementary Law] no. 35/79.

CF/88: Article 102, I, d – Article 5, LXIX and LXX, a and b.

RISTF: Article 55, XVI (category) – Articles 200 to 206 (proceedings and trial).

VI – declaration of suspension of rights provided for in Article 154 of the Constitution⁵;

⁵Rule not provided for in CF/88.

VII – representation of the Attorney General in a case of unconstitutionality or with a view to interpreting⁵ a Federal or State law or legislative instrument;

⁵Rule not provided for in CF/88.

- Direct action to declare unconstitutionality⁶;

⁶Rule introduced by CF/88: Article 102, I, a (ADI [Ação Direta de Inconstitucionalidade – direct action to declare unconstitutionality]) – (1) (ADPF⁶ [Arguição

de Descumprimento de Preceito Fundamental – objection of breach of fundamental principle]) and (2) (declaratory action of constitutionality), in conjunction with Article 103 (EC no. 3/93).

LC no. 75/93: Article 6, points I to III, and Article 46, sole Paragraph, I (competence of Attorney General to propose ADI).

Law no. 9.868/99: Articles 1 to 12 (proceedings and trial) – Articles 22 to 28 (decision and effects).

- Direct action to declare unconstitutional by omission⁶;

⁶Rule introduced by CF/88: Article 103, § 2.

Law no. 9.868/99: Articles 1 to 12 (proceedings and trial) – Articles 22 to 28 (decision and effects).

- Objection of breach of fundamental principle⁶;

⁶Rule introduced by CF/88: Article 102, § 1 (EC no. 3/93).

Law no. 9.882/99: proceedings, trial and effect.

- Declaratory action of constitutionality⁶ (ADC – [Ação Declaratória de Constitucionalidade]);

⁶Rule introduced by CF/88: Articles 102, § 2 and 103, § 4 (EC no. 3/93).

Law no. 9.868/99: Articles 13 to 21 (admissibility and procedure) – Articles 22 to 28 (decision and effects).

VIII – application for Federal intervention in States², subject to the competence of the TSE [Tribunal Superior Eleitoral – higher electoral court] provided for in Article 11, § 1, b^{2a} of the Constitution;

²Current provision of CF/88: Articles 34 and 36. I, II and III.

^{2a}Current provision of CF/88: Article 36, II, in fine.

RISTF: Article 13, XVI (competence of President of STF) – Article 55, XV and Article 56, VI (classification) – Articles 350 to 354 (proceedings and trial).

Law no. 8.038/90: Article 19, I in fine.

IX – application for referral and cases referred set out in Article 119, I, o of the Constitution⁵;

⁵Rule not provided for in CF/88.

X – application for preventive measures in submissions by the Attorney General;

²Current provision of CF/88: Article 102, I, p, in conjunction with Article 103.

RISTF: Article 21, IV and V (Reporting Judge: ad referendum) – Article 13, VIII and sole

Paragraph (President of STF: vacations and recess) – Article 170, 1 (judgment in Plenary Court).

Law no. 9.868/99: Articles 10 to 12 and Article 21 (preventive measures in ADI and ADC).

Law no. 9.882/99: Article 5 (as a preliminary point in objection of breach of fundamental principle).

- Actions under original jurisdiction⁶:

⁶Rule introduced by CF/88: Article 102, I, n.
RISTF: follow procedure of the action proposed.

Article 6

It is also incumbent on the Plenary Court:

I – to produce originating judgments in cases of:

a) *habeas corpus*, when the President of the Republic, the Chamber, the Senate, the Court itself or any of its Judges, the *Conselho Nacional da Magistratura*⁴ or the Attorney General is the petitioner or party making the request, or when constraint is exercised by the *Tribunal Superior Eleitoral*, or, in cases covered by Paragraph 2 of Article 129 of the Constitution, by the *Superior Tribunal Militar* [military court]⁵, and in cases of extradition requested by a foreign State;

⁴Body not provided for in CF/88: see main Section of Article 93 of CF/88 and LC no. 35/79.

⁵Rule not provided for in CF/88.

CF/88: Article 102, I, d.

RISTF: Article 55, XIII (category) – Articles 188 to 199 (proceedings and trial).

b) criminal review of a Court judgment;

CF/88: Article 102, I, j.

RISTF: Article 55, XXIV (category) – Articles 263 to 272 (proceedings and trial).

c) action to set aside a Court judgment;

CF/88: Article 102, I, j.

RISTF: Article 55, III (category) – Articles 259 to 262 (proceedings and trial).

d) conflict of jurisdiction between any Courts and between a Court and a court of first instance not subordinate to that Court³;

³Current competence of STJ: Article 105, I, d of CF/88.

CF/88: Article 102, I, o.

RISTF: Article 55, XI (category) – Articles 163 to 168 (proceedings and trial).

e) conflict of responsibilities³ between administrative and judicial authorities of the Union or between the judicial authorities of one State and the administrative authorities of another or of the Federal District and of the Territories, or between the latter and those of the Union;

³Current competence of STJ: Article 105, I, g of CF/88.

f) extradition requested by a foreign State;

CF/88: Article 102, I, g, in conjunction with Article 5, LI and LII (preventing extradition) – Article 12, I and II (native and naturalised Brazilian) – Article 22, XV (legislative competence: Union).

RISTF: Article 55, XII (category) – Articles 207 to 214 (proceedings and trial);

g) complaint⁷ which seeks to preserve the competence of the Court, in cases of the originating jurisdiction of the Plenary Court itself or where the authority of its plenary decisions must be guaranteed;

⁷Rule applied: Articles 13 to 18 (Complaint) of Law no. 8.038/90.

CF/88: Article 102, I, I.

RISTF: Article 55, XX (category) – Articles 156 to 162 (proceedings and trial).

h) objections of partiality;

CF/88: Article 96, I, a

RISTF: Article 55, VII (category) – Article 56, X, b (category unchanged) – Articles 277 to 287 (proceedings and trial).

CPC: Articles 134 to 138 (disqualification) – Articles 304 to 306 (motion for disqualification).

CPP: Articles 252 to 256 (disqualification).

i) ³ applications for confirmation of foreign judgments, in the circumstances provided for in Article 223 and objections against compliance with letters rogatory.

³Current competence of STJ: Article 105, I, i of CF/88.

CF/88: Articles 102, I, h – 109, X (execution: Federal judge).

RISTF: Article 55, VIII and XXV (category) – Articles 215 to 224 (SE [sentença estrangeira – foreign judgment]: proceedings and trial) – Articles 225 to 229 (CR [cartas rogatórias – letters rogatory]: proceedings and trial).

II – to adjudicate on:

a) in addition to the provision in Article 5, VII, objections of unconstitutionality raised in other proceedings;

CF/88: Article 97 (absolute majority) – Article 102, main Section (guardian of CF).

RISTF: Article 11, I and II (referred back by Chamber) – Article 22, main Section (referred back by Reporting Judge), in conjunction with Articles 52, I – 56, X, c (category unchanged) – Article 103 (proposed by another Judge) – Article 143, sole Paragraph, in conjunction with Article 40 (quorum) – Articles 176 and 178 (proceedings and trial).

b) proceedings referred back by the Chambers and interlocutory procedures submitted thereto under Article 343;

CF/88: Article 102, I, i, as amended by EC no. 22/99 (HC [habeas corpus]), II (RO [Recurso Ordinário – ordinary appeal]) and III (RE [Recurso Extraordinário – extraordinary appeal]).

RISTF: Article 11 (referred back by Chamber) – Article 21, III, IV and XI, and Article 22 (referred back by Reporting Judge) – Article 83, 1, II (irrespective of dossier) – Article 93, sole Paragraph (judgment waived) – Article 305 (final judgment).

c) habeas corpus referred back by Reporting Judge;

RISTF: Article 21, XI (referred back by Reporting Judge) – Article 93, sole Paragraph (judgment waived) – Article 305 (final).

d) AgR [agravo regimental – internal appeal] against an act of the President and against an order of the Reporting Judge in proceedings within their competence.

RISTF: Article 13 (responsibilities of President) – Articles 21 and 22 (responsibilities of Reporting Judge) – Article 305 (final decisions) – Article 317 (AgR).

Resolution/STF no. 186/99: regulates collection of fine provided for in Article 557, § 2 of CPC.

CPC: Article 557 (refusal of leave to appeal).

CPP: Article 18 (suspension of investigation) – Article 522 (withdrawal of complaint).

Law no. 8.038/90: Article 38 (deny admissibility of application or appeal).

III – to rule in ordinary appeal procedure on:

CF/88: Article 102, II, a and b.

RISTF: Article 55, XIII (RHC [Recurso em Habeas Corpus – habeas corpus appeal]), XVI (RMS [Recurso em Mandado de Segurança – injunction]), XXI (RO), in conjunction with Article 56, I and III (category unchanged).

a) habeas corpus denied by the *Tribunal Superior Eleitoral* or, in the circumstances of Article 129.2⁵ of the Constitution, by the *Superior Tribunal Militar*;

⁵Rule not provided for in CF/88.

CF/88: Article 102, II, a.

RISTF: Article 55, XIII (category) – Article 56, I, X and XI (category unchanged) – Article 77, sole Paragraph (exclusion of remit) – Articles 310 to 312 (proceedings and trial).

b) habeas corpus denied by the *Tribunal Federal de Recursos* [Federal Court of Appeal]³, when a Government Minister is the constraining party;

³Current competence of STJ: Article 105, I, c of CF/88.

CF/88: Article 102, II, a.

RISTF: Article 55, XIII (category) – Article 56, I, X and XI (category unchanged) – Articles 310 to 312 (proceedings and trial).

c) criminal proceedings heard by the *Superior Tribunal Militar*³, when the defendant is a Governor or Secretary of State⁵;

³Current competence of STJ: Article 105, I, a of CF/88.

⁵Rule not provided for in CF/88.

d) actions involving a foreign State or an international organisation, on the one hand, or a municipality or a person domiciled or resident in the country, on the other³.

³Current competence of STJ: Article 105, I, c of CF/88.

- Political crime⁶;

⁶Rule introduced by CF/88: Article 102, II, b.

RISTF: Article 55, XXI, in conjunction with Article 56, III (category).

IV – rule, at the objections stage, on proceedings decided by the Plenary Court or by the Chambers, in the cases provided for in these Rules of Procedure.

RISTF: Articles 5 to 9 (competence of Plenary Court and Chambers) – Article 56, X, a and XI (category unchanged) – Articles 330 to 339 (proceedings and trial of objections).

Sole Paragraph

In the cases set out in Paragraphs III, a and b, the ordinary appeal procedure cannot be replaced by an originating application.

CF/88: Article 102, II, a (RHC, RMS, RHD [Recurso em Habeas Data – habeas corpus data] and RMI [Recurso em Mandado de Injunção – writ of injunction]).

Article 7

The Plenary Court shall also:

RISTF: Article 141 (formal sessions) – Article 151 (administrative sessions).

I – elect the President and Vice-President of the Court and the members of the *Conselho Nacional da Magistratura* [Judicial Council]⁴;

⁴Organ not provided for in CF/88: see Article 93 and LC no. 35/79.

CF/88: Article 96, I, a.

RISTF: Article 2, sole Paragraph (from among its Judges) – Article 4, § 2 (former-President's Chamber) and § 3 (Vice-President remains in his/her original Chamber) – Article 12 (election, taking office and duration of term of office) – Article 143 and sole Paragraph (quorum for election).

II – elect the Judges who will form the *Tribunal Superior Eleitoral* from among its own Judges and, for the same purpose, draw up lists of lawyers of high moral character with outstanding legal knowledge to be forwarded to the President of the Republic;

CF/88: Article 119, I, a and II, in conjunction with Article 84, XVI (composition of TSE).

RISTF: Article 40 (not applicable).

III – draw up and vote on the Rules of Procedure of the Court and apply the resources referred to in Article 119, III² a and d³ of the Constitution, bearing in mind the nature, type or financial value of the actions in which they are applied and the relevance of the Federal issue at stake;

²Current provision of CF/88: Articles 96, I, a and 102, III, a, b and c.

³Current competence of STJ: Article 105, III, a and c of CF/88.

⁵Rule not provided for in CF/88.

RISTF: Article 31, I (RISTF update) – Article 55, IV and XXII (AI [agravo de instrumento – interlocutory appeal] and RE [recurso extraordinário – extraordinary appeal]) – Articles 304 to 306 (appeals) – Articles 313 to 316 (AI) – Articles 321, 323 and 324 (RE).

IV – settle doubts raised by the President or Judges on the order of work or interpretation and implementation of the Rules of Procedure;

RISTF: Article 13, VII (responsibilities of President) – Article 21, III (responsibilities of Reporting Judge) – Article 30, I (responsibilities of Committees) – Article 31, I (responsibilities of Committee on Rules of Procedure) – Article 34 (responsibilities of Coordinating Committee).

V – set up temporary Committees;

RISTF: Article 26 (responsibilities of Committees) – Article 27, II and §§ 2 and 4 (setting up and composition of temporary Committees) – Article 28, main Section (appointment of members) – Article 29 (Chairmanship) – Article 30 (competence).

VI – grant leave of absence to the President and, in cases of periods exceeding three months, to Judges;

RISTF: Article 13, XI (competence of President) – Article 14 (replacement of President) – Article 35 (indication of period of leave of absence).

VII – deliberate on the inclusion, Amendment and cancellation of announcements in the *Súmula da Jurisprudência Predominante do Supremo Tribunal Federal* [Digest of principal STF case-law].

RISTF: Article 32, IV (responsibilities of the Case-Law Committee) – Article 102 and paragraphs (procedure) – Article 103, *in fine* (review).

Article 8

In their respective areas of competence, the Plenary Court and the Chambers shall:

RISTF: Article 3 (organs of the STF) – Articles 5 to 8 and Articles 143 to 146 (Plenary Court) – Articles 8 to 11 and Articles 147 to 150 (Chambers).

I – rule on internal appeals, interlocutory appeals, appeals for clarification and preventive measures;

RISTF: Articles 5 and 6 (Plenary Court proceedings) – Article 9 (Chamber proceedings) – Article 55, IV (AI) – Article 56, X, a and XI (category unchanged) – Article 83, 1, III (irrespective of dossier) – Article 130 (preventive measures: precedence for hearing) – Article 131, § 2 (oral argument inadmissible) – Article 158 (preventive measures at appeal level) – Article 297 (SS [Suspensão de Segurança – suspension of injunction]) – Article 304 (appeals) – Article 317 (AgR) – Articles 337 to 339 (proceedings and trial of ED [Embargos de Declaração – declaration of embargo]).

CPC: Articles 535 to 538 (ED) – Article 544, as amended by Law no. 10.352/01 (AI) – Article 545

(appeal: 5 days) – Articles 796 to 812 (preventive measures).

CPP: Articles 619 and 620 (ED) – Article 638, in conjunction with Article 28, § 5 of Law no. 8.038/90 (untitled appeal: 5 days).

II – reprimand or issue warnings to lower-court judges and award costs against them, without prejudice to the competence of the *Conselho Nacional da Magistratura*⁴;

⁴Body not provided for in CF/88.

RISTF: Articles 195 to 197 (costs and penalties).

III – approve withdrawals requested in session, before voting begins;

RISTF: Article 21(VIII) (attributions of Reporting Judge).
Order/STF no. 104: Article 5, main section.

IV – represent the competent authority when court papers or documents brought to their attention suggest crimes which may be prosecuted;

RISTF: Article 197, sole Paragraph (delay in compliance with order).

CPP: Article 40 (refer back to Attorney General) – Article 239 (conception of evidence).

V – order the deletion of disrespectful wording in petitions, opinions or pleadings lodged with the Court.

CPC: Article 15 (same principle).

Chapter III – Competence of Chambers

RISTF: Articles 8 to 11.

Article 9

In addition to the provisions of Article 8, the Chambers shall:

RISTF: Article 3 (organ of the Court) – Article 4 and paragraphs (composition, presidency, members) – Article 19 (transfer of members) – Article 41 (securing a quorum) – Articles 122 to 140 (sessions) – Articles 147 to 150 (Chamber sessions) – Article 344 (execution of decisions) – Article 355 Paragraphs 5 (secretary: STF employee), § 6 (suitable attire) and § 7 (incompatibilities).

I – produce originating judgments in cases of:

a) *habeas corpus*, when the requesting party or petitioner is a Court, official or authority whose acts

are directly subordinate to the jurisdiction of the Supreme Federal Court or, if the crime is subject to the same jurisdiction as the court of first and last instance, subject to the competence of the Plenary Court;

CF/88: Article 102, I, i – Article 5, LXVIII (preliminary assumptions).

RISTF: Article 55, XIII (category) – Article 56, I (electoral HC and RHC), X and XI (category unchanged) – Articles 188 to 199 (proceedings and trial) – Articles 340 to 344 (execution).

b) interlocutory procedures referred to them under Article 343, III;

RISTF: Article 56, X (category unchanged) and XI (note in accusation) – Articles 340 to 344 (execution).

c)⁷ complaints, subject to the competence of the Plenary Court (Article 6, I, g).

⁷ Rule applied: Articles 13 to 18 (Complaint) of Law no. 8.038/90.

RISTF: Article 55, XX (category) – Article 156.

- Special originating actions⁶.

⁶Rule introduced by CF/88: Article 9 of the ADCT [Ato das disposições constitucionais transitórias – Transitional Constitutional Provisions Act].

II – rule in ordinary appeals on:

a) *habeas corpus* rejected at sole or last instance by local or Federal courts³, subject to the competence of the Plenary Court;

³Current competence of STJ: Article 105, III, a, of CF/88.

CF/88: Article 102, II, a.

RISTF: Article 55, XIII (category) – Article 56, I, X and XI (category unchanged) – Articles 310 to 312 (proceedings and trial) – Articles 340 to 344 (execution).

b) criminal proceedings initiated under the circumstances set out in Article 129(1) of the Constitution, subject to the possibility provided for in Article 6(III)(c)⁵.

⁵Rule not provided for in CF/88.

III – rule, in ordinary appeals, on the cases referred to in Articles 119(III)², 119(III)³, 139^{2a} and 143 of the Constitution, subject to Article 11 and its sole Paragraph.

² Current provision of CF/88: Article 102, III, a, b and c.

^{2a} Current provision of CF/88: Article 121, § 3 (RE/TSE).

³ Current competence of STJ: Article 105, III, a, b and c of CF/88.

RISTF: Articles 55, XXII and 56, II (category), X and XI (category unchanged) – Article 321 (preliminary assumptions) – Articles 323 and 324 (proceedings and trial).

CPC: Article 508 (period for bringing an action) – Articles 541 to 546 (proceedings and trial).

Law no. 8.038/90: Articles 26 to 29 (RE and AI in criminal matters).

Sole Paragraph

In the case of II a, the ordinary appeal procedure cannot be replaced by an originating application.

Article 10

The Chamber responsible for the case or any related interlocutory procedures, including the review of an appeal denied or postponed in the originating court, shall have preventive jurisdiction for subsequent appeals, complaints and objections, even where these are under execution, subject to the competence of the Plenary Court and the President of the Court.

RISTF: Articles 5 to 8 (competence of Plenary Court) – Articles 8 and 9 (competence of Chambers) – Article 13 (competence of President) – Article 69 (notification by Reporting Judge) – Article 317 (AgR) – Article 321, Article 323 and Article 324 (RE) – Article 337 (ED).

Paragraph 1

This Article shall take precedence, even if the Chamber has referred the case or any interlocutory procedures to the Plenary Court.

RISTF: Article 7, IV (Plenary Court hearing) – Article 11 (referred back by Chamber) – Article 21, III (referred back by Reporting Judge).

Paragraph 2

The notification may, unless it is recognised ex officio, be challenged by any party or by the Attorney General until the commencement of the hearing by the other Chamber.

RISTF: Article 69 (notification by Reporting Judge) – Article 136 (preliminary questions).

Paragraph 3

The notification shall lapse if the Chamber does not include any of the Judges who acted in a previous hearing or if the composition of the Chambers has changed completely.

RISTF: Article 69, main section, § 3, in fine, in conjunction with Article 38, IV, a (replacement: successor to the Reporting Judge).

Article 11

The Chamber shall refer the proceedings to the Plenary Court, regardless of whether a judgment has been issued and a new dossier set up:

RISTF: Article 83, § 1, II (irrespective of dossier) – Article 93, sole Paragraph (judgment waived).

I – where an unconstitutionality appeal which has not yet been decided by the Plenary Court is deemed admissible, and the Reporting Judge has not yet given a decision;

CF/88: Article 102, I, II and III.

RISTF: Article 6, II, a (Plenary Court hearing) – Article 22, main Section (referred back by Reporting Judge) – Article 56(X)(c) and (XI) (category unchanged) – Article 176, §§ 1 and 2 (interlocutory unconstitutionality) – Article 178 (communication of decision) – Article 305 (final judgment).

II – where, although the Plenary Court has ruled on the issue of unconstitutionality, a Judge proposes that the ruling should be reviewed;

RISTF: Article 6, II, a (Plenary Court hearing) – Article 22, main Section (referred back by Reporting Judge) – Article 103 (proposed review) – Article 305 (final judgment).

III – where a Judge proposes a review of the summarised case-law in the Court Digest.

RISTF: Article 102 and paragraphs (procedure for Official Digest)– Article 103 (proposed review).

Sole Paragraph

The Chamber may take the same action in the cases mentioned in Article 22, sole Paragraph, where the Reporting Judge has not done so.

RISTF: Article 305 (final judgment).

Chapter IV – President and Vice-President

Article 12

The President and Vice-President shall have two-year terms of office and may not be immediately re-elected.

CF/88: Article 96, I, a.

RISTF: Article 3 (President: organ of the STF) – Article 4, § 2 (Chamber of former President) – Article 12, § 8 (extension of term of office) – Article 13 (responsibilities of President) – Article 14 (responsibilities of Vice-President) – Article 75 (Reporting Judge remains) – Article 143 (presides over Plenary Court) – Article 146, V (during voting) – Article 148, sole Paragraph (presiding over Chamber as Reporting Judge).

Paragraph 1

The election shall take place, by secret vote, in the second ordinary session of the month prior to that in which the term of office expires, or in the second ordinary session immediately after the position falls vacant for other reasons.

RISTF: Article 2, sole Paragraph (election from among the Judges, by the Court).

Paragraph 2

The quorum for the election is eight Judges; if this is not achieved, an ordinary session shall be convened for the nearest date, the absent Judges being convened to attend.

RISTF: Article 143, sole Paragraph (quorum).

Paragraph 3

Judges who are on leave of absence but send their vote in a sealed envelope to be opened in public by the President (who places the ballot in the ballot box without breaching secrecy) shall be deemed to have been present at the election.

RISTF: Article 36 and sole Paragraph (exception).

Paragraph 4

Judges who obtain the votes of more than half the Judges in the first ballot shall be elected.

RISTF: Article 143, sole Paragraph (see Article 173, main section: six votes).

Paragraph 5

Only the two Judges obtaining the most votes in the first ballot shall proceed to the second ballot.

Paragraph 6

In the event of failure to achieve the majority referred to in Paragraph 4 above in the second ballot, the most senior of the two shall be declared elected.

RISTF: Article 17 (seniority).

Paragraph 7

Judges shall be sworn in at a formal session at the date and time set in the session in which they are elected.

RISTF: Article 141, I and Article 142 (formal session). Resolution/STF no. 6/82: rules of ceremony – Article 3 – Article 6, in conjunction with Article 20, IV – Article 21 – Articles 24 to 7.

Paragraph 8

The terms of office of the President and Vice-President shall be extended until their successors take office, if this is scheduled for a date exceeding two years.

RISTF: see main Section of this Article 12 above (duration: two years).

Article 13

The President shall be responsible for:

I – ensuring the prerogatives of the Court;

CF/88: Article 92, sole Paragraph (jurisdiction in the national territory) – Article 102, main section, in conjunction with Article 93 (STF LC initiative on the statute governing the Judiciary) – Article 95 (guarantees and prohibitions on Judges) – Article 96, I and II (exclusive competence of the Courts). RISTF: Article 16 (Judges' prerogatives)– Article 20 (jurisdiction in national territory).

II – representing the Court before other agencies and authorities;

RISTF: Articles 46 and 47 (representation for contempt or non – compliance). Resolution/STF no. 6/82: rules of ceremony – Articles 32 to 35.

III – conducting the work of the Court and presiding over plenary sessions, complying with and ensuring compliance with these Rules of Procedure;

RISTF: Article 40 (notice to attend for quorum) – Articles 42, 43 and 44 (accountable for supervision of STF) – Article 94 (co-signing judgments with Reporting Judge) – Article 98, sole Paragraph (signing judgment in restricted session) – Article 128, 2 (precedence for hearing) – Articles 122 to 140 and Articles 143 to 146 (plenary sessions) – Article 245, V (competence to extend period of oral pleadings).

IV – (deleted)

V – forwarding:

a) prior to distribution, applications for legal aid;

RISTF: Article 8, I (AgR, Plenary Court hearing) – Article 62 (application to President) – Article 63, sole Paragraph (taking precedence if already granted) – Article 317 (AgR).

b) complaints about errors in the minutes of a session over which he/she has presided;

RISTF: Article 82, § 6 (rectification of summons) – Article 89 (application to President) – Article 92 (final judgment) – Article 143, main Section (Plenary Court) – Article 155 (hearings).

Order/STF no. 104: Article 5, main section, in conjunction with Article 6, II.

c) dealing, as Reporting Judge, under Articles 544.3 and 557 of the Code of Civil Procedure, with interlocutory appeals, extraordinary appeals and defective petitions or petitions which are clearly inadmissible for other reasons, such as lack of jurisdiction, being time-barred, abandonment, prejudice or lack of a formal substantiated preliminary petition of general effect, as well as those, the subject-matter of which has no general effect according to the Court's case-law.

VI – implementing and ensuring the implementation of Court orders and decisions, subject to the responsibilities of Chamber Presidents and Reporting Judges;

RISTF: Articles 21 and 22 (remit of Reporting Judge) – Article 79 (certification of minutes) – Article 81 (criterion for notification) – Article 110, I (establish time-limits) – Article 119 (order of Plenary Court) – Article 162 (Complaint) – Article 168, § 3 (CC – [Conflito de Competência – conflict of jurisdiction]) – Article 175 (ADI) – Article 178 (communication to

Federal Senate) – Article 194 (decision in HC) – Article 197 (contempt of STF) – Article 206 (MS [Mandado de Segurança – writ of mandamus) – Articles 340 to 346 (execution) – Articles 348 and 349 (certified copy of judgment).

VII – deciding on questions of precedence and referring them where necessary to the Court;

RISTF: Article 7, IV (Plenary Court hearing) – Article 10, § 2 (plea and notification).

VIII – deciding on urgent matters during recess or holiday periods;

IX³ – granting exequatur procedure for letters rogatory and, in the case of Article 222, confirming foreign judgments;

³ *Current competence of STF: Article 105, I, i of CF/88.*

CF/88: Article 102, I, h.

RISTF: Article 6, I, i and Article 8, I (Plenary Court hearing: AgR and ED) – Article 55, VIII, in conjunction with Articles 225 to 229 (category, proceedings and trial of CR) – Article 55, XXV, in conjunction with Articles 215 to 224 (category, proceedings and trial of SE) – Article 317 (AgR) – Article 337 (ED).

X – swearing-in of Judges and authorising them to change Chamber;

RISTF: Article 15, in conjunction with Article 143, main Section (swearing in before Plenary Court) – Article 19 (transfer of Chamber) – Article 141, II and Article 142 (formal session).

XI – granting leave of absence to Judges, of up to three months, and to Court staff;

CF/88: Article 96, I, f.

RISTF: Article 7, VI (Plenary Court: over three months) – Article 35 (application for leave of absence) – Article 36, sole Paragraph (termination of leave of absence).

XII – swearing-in the Director-General, the Secretary-General to the Presidency and Departmental Directors;

RISTF: Article 355, §§ 2 and 3, a, b and c (STF services) – Article 356 (organisation of Presidency).

XIII – overseeing the order and discipline of the Court and imposing sanctions on employees;

RISTF: Articles 42 to 45 (supervision of Court) – Article 56, V (administrative investigation).

XIV – providing the Court on an annual basis with a detailed report of work done;

XV – reporting on complaints of partiality brought against a Judge;

RISTF: Article 6, I, h and II, d (Plenary Court hearing: objection and AgR) – Article 8, I (Plenary Court: ED) – Article 55, VII (category) – Article 56, X and XI (category unchanged) – Article 73 (rejection of President) – Articles 277 to 287 (proceedings and trial) – Article 317 (AgR) – Article 337 (ED).

XVI – signing correspondence addressed to the President of the Republic; the Vice-President of the Republic; the President of the Federal Senate; Presidents of the Higher Courts, including the Court of Auditors of the Union; the Attorney General; State and Federal District Governors; Heads of Foreign Governments and their representatives in Brazil; public authorities, in response to requests for information on matters relevant to the Judiciary and to the Supreme Federal Court, subject to Article 21, XVI;

XVI-A – appointing judges to act as Assistant Judges to the Supreme Federal Court in order to assist the office of the President and the Judges, without prejudice to the rights and advantages of their position, in addition to those afforded to Assistant Judges of the National Council of the Judiciary;

Resolution/STF no. 353/08: regulation.

XVII – convening public hearings in order to examine depositions by persons with experience and authority in particular areas when this is deemed necessary for the clarification of factual issues or circumstances have arisen of a general effect and of major public interest addressed by the Court;

XVIII – taking final decisions on third-party matters, counter-signed by a duly appointed person, in public hearings or any other proceedings being dealt with by the Presidency;

XIX – to carry out all other acts provided for by law and in the Rules of Procedure.

CF/88: Article 34, in conjunction with Article 36, I, II and III (Federal intervention) – Article 52, I, III and sole Paragraph (presiding over Federal Senate) – Article 80, in fine (fourth in succession to the President of the Republic).

*RISTF: Article 5, VIII (Reporting Judge, Federal intervention: Plenary Court hearing) – Article 55, XV (category) – Articles 71 and 72 (Reporting Judge: AgR, ED and interlocutory procedures) – Articles 350 to 354 (proceedings and trial in context of Federal intervention) – Article 55, XXVII (category: SS) – Article 56, X and XI (category unchanged) – Article 297 (deciding on SS) – Article 317 (AgR admissible, with Plenary Court hearing: Article 6, II, d) – Article 27, § 2 (setting up Committees) – Article 28 (appointing members of Committees) – Article 75, in conjunction with Article 148, sole Paragraph, and Article 146, V (continuing as Reporting Judge in proceedings accepted – presiding over Chamber when it is to rule on them) – Articles 94 and 97, I and II (signing judgment) – Article 259, main Section (AR [Ação Rescisória – rescission] of decisions of President) – Article 316(2) (communication of AI authorised) – Article 362, in conjunction with Articles 30 and 31, I (competence of President of STF and Committees) – Article 363 (acts of regulatory and administrative competence) – Article 367 (review of SE).
Law no. 8.038/90: Article 19, main Section and (I), and Article 20.*

Sole Paragraph

The President may delegate the exercise of the discretion specified in VIII to another Judge.

RISTF: Article 78, § 3 (address for notice to attend, where applicable).

Article 14

The Vice-President shall replace the President when the latter is on leave of absence, temporarily absent or prevented from attending. Should a vacancy arise, he/she shall act as President until the new President takes office.

RISTF: Article 7, VI (leave of absence of President) – Article 35 (period of leave of absence) – Article 37, I, in conjunction with Article 17 (replacement of President) – Article 73, in conjunction with Article 278, main Section (Reporting Judge, objection of partiality of President) – Article 205, sole Paragraph (MS against President) – Article 278, main Section (complaint of partiality).

Chapter V – Judges

Section I – General Provisions

Article 15

Judges shall be sworn in at a formal session of the Court, or before the President during recess or holiday periods.

RISTF: Article 13, X (before President) – Article 141, II (formal session) – Article 144 (seat on the Bureau). Resolution/STF no. 6/82: rules of ceremony – Article 3 – Articles 5, Articles 7 and 8 – Articles 13 to 17 – Article 19 – Article 20(III) – Article 23 – Articles 25 to 27.

Paragraph 1

On taking office, Judges shall take an oath to perform their official duties in accordance with the Constitution and the laws of the Republic.

Resolution/STF no. 6/82: rules of ceremony – Article 20(III)(b).

Paragraph 2

A record of the oath of office shall be drawn up and signed by the President, the Judge sworn in, the Judges present and the Director-General.

Article 16

Judges shall have the prerogatives, guarantees, rights and incompatibilities inherent in the exercise of their profession².

²*Current provision of CF/88: Article 95.*

RISTF: Article 18 (incompatibilities) – Article 357, sole Paragraph (composition of President's office: prohibitions).

Sole Paragraph

They shall be addressed as Your Excellency, shall retain the corresponding title and honours (also after retirement), and shall wear legal robes in formal sessions and gowns in ordinary and extraordinary sessions.

RISTF: Article 355, § 6 (officials also wear suitable attire) – Article 365 and indents (when being honoured).

Article 17

The seniority of Judges in the Court shall be regulated in the following order:

I – swearing in;

RISTF: Article 13, X (before the President) – Article 15 (formal session).

II – appointment;

CF/88: Article 84, XIV (Decree of the President of the Republic).

III – age.

Sole Paragraph

When the list has been exhausted, in cases where the Rules of Procedure require a descending order of seniority to be observed, the Judge immediately above the most junior Judge shall be the most senior in the Court or Chamber, as the case may be.

RISTF: seniority observed: Article 4, § 1 (President of Chamber) – Article 12, § 6 (election of President of STF) – Article 19 (precedence) – Article 24 (Reviewing Judge) – Articles 28, I and 29 (composition and chair of Committees) – Articles 37 to 39 (replacements) – Article 41 (securing a quorum) – Article 128(1) (hearing in order of Reporting Judges) – Article 135, main Section (voting order) – Articles 144 and 148 (order of seating in session) – Article 150, § 2 (securing a quorum).

Article 18

Relatives by blood or marriage, to the third degree inclusive in the ascending or descending line and collaterally, may not sit simultaneously in the Court.

RISTF: Article 2 (composition of STF) – Article 16 (guarantees, rights and incompatibilities).

LC no. 35/79: Article 128 (incompatibility of kinship).

CPC: Articles 134, V and 136 (incompatibilities).

Sole Paragraph

The incompatibility shall be resolved in the following order:

I – prior to taking office:

a) against the most recent appointee;

CF/88: Article 84, XIV (appointment).

b) if the appointment is on the same date, against the most junior appointee.

II – after taking office:

RISTF: Article 15 (cessation of office).

a) against the Judge causing the incompatibility;

b) if the cause is attributable to both, against the most junior.

RISTF: Article 17, sole Paragraph (seniority).

Article 19

A Chamber Judge shall be entitled to transfer to another Chamber which has a vacancy; if there is more than one application, the most senior applicant shall take precedence.

RISTF: Article 4, § 2 (President leaving office and transferring to the Chamber vacated by the new President) – Article 13(X) (President granting transfer) – Article 17, in conjunction with Article 4, § 4 (precedence over Judge taking office).

Article 20

Judges shall have jurisdiction throughout the national territory.

CF/88: Article 92, sole Paragraph (extent of jurisdiction).

RISTF: Article 2 (composition, location and jurisdiction).

Section II – Reporting Judge

RISTF: Article 66 (appointment by drawing lots) – Article 67 (distribution and compensation) – Article 68 (redistribution) – Article 69, in conjunction with Article 38, IV, a (notification) – Articles 70 to 72 (Reporting Judge: Complaint, ED, AgR and interlocutory procedures) – Articles 74 to 77, sole Paragraph (notification, links and exclusion).

CPC: Article 527, as amended by Law no. 10.352/01.

Article 21

The Reporting Judge shall:

RISTF: Article 10, § 2 (notification) – Article 65, II (declaring abandoned).

I – regulate and conduct proceedings;

RISTF: Article 44 (presiding over hearing) – Article 81 (form of notification) – Article 82, § 6 (correction of publication) – Article 84, § 2 (ordering deadline) – Article 86, §§ 1 and 2 (officially authorising lawyers) – Article 106 (changing the deadline) – Articles 108 and 110, I (setting the deadline) – Article 117 (form of order) – Article 341 (competence to execute).

II – assign to the judicial and administrative authorities measures relating to the judicial and investigatory proceedings and to the execution of their judgments, except for matters coming under the jurisdiction of the Plenary Court, the Chamber or their Presidents;

RISTF: Article 119 (ordering transfer of persons) – Article 191 (HC) – Article 157 ((Rcl [Reclamação – claim) – Article 167 (CC) – Article 170, main Section (ADI) – Article 203 (MS) – Article 210 (Extradition) – Articles 341 to 344 (implementing acts). Law no. 9.868/99: Article 6 (information) and Paragraph 2 (other declarations) – Article 9, § 1 and Article 20, § 1 (additional information and supplementary proceedings in the ADI and ADC).

III. submit to the Plenary Court, the Chamber or their Presidents, according to jurisdiction, questions of order for the proper running of proceedings;

RISTF: Article 7, IV (Plenary) – Article 305 (no recourse to appeal) – Articles 341 and 344 (objections to execution) – Article 362 (normative acts).

IV – submit to the Plenary Court or Chamber, in proceedings falling within their respective remits, the necessary preventive measures to protect rights exposed to the serious danger of uncertain compensation, or to guarantee the effectiveness of the subsequent judgment;

CF/88: Article 102, I p.

RISTF: Article 5, X (judgment to be protected in ADI) – Article 8, I, in fine (judgment to be protected in other proceedings) – Article 158 (Rcl) – Article 193, II (HC in a given set of proceedings) – Article 203 §§ 1 and 2 (MS) – Article 304 (at appeal level) – Article 305 (decisions with no recourse to appeal).

Law no. 8.968/99: Articles 10 to 12 and Article 21 (protective measures in ADI and ADC).

V – in urgent cases, determine the measures set out in the previous sub-Paragraph with reference to the Plenary Court or Chamber;

RISTF: Article 5, X (judgment to be protected in ADI) – Article 8, I, in fine (judgment to be protected in other proceedings) – Article 158 (Rcl) – Article 166 (CC) – Article 170, § 1 (ADI) – Article 191, IV (safe conduct) – Article 193, II (HC in a given set of proceedings) –

Article 203, § 1 et 2 (MS) – Article 304 (at appeal level) – Article 305 (decisions without recourse to appeal) – Article 341 (execution).

VI – in interlocutory appeals, decide on referral of delayed or rejected remedies, together with the parties' submissions, to higher instance for closer examination;

CF/88: Article 102, II and III (ordinary and extraordinary remedies).

RISTF: Article 305 (decisions without recourse to appeal) – Articles 313 and 316 (hearing and decision on the interlocutory appeal by the STF).

CPP; Article 522, Article 523 as worded in Law no. 10.352/01 – Article 524 – Article 525 – Article 526 and Article 527, as worded in Law no. 10.352/01, Articles 528 and 529 (processing of interlocutory appeal as an ordinary remedy) – Article 544 as worded in Law no. 10.352/01 (processing of interlocutory appeal as an extraordinary remedy).

VII – require transmission of the original documents, where necessary;

RISTF: Article 161, II (Rcl) – Article 191, II (HC) – sole Paragraph of Article 267 ((RvC [Revisão Criminal – criminal review) – Article 342 (implementing acts).

VIII – confirm non-suits, even when the case is still on trial in court;

RISTF: Article 8, III (jurisdiction of the Plenary Court or Chamber).

Supreme Federal Court Order no. 104: Article 5, main section.

IX – adjudicate an inhibited application or an appeal which has become objectless;

RISTF: Article 317 (AgR).

CPP: Article 557.

Law no. 8.038/90: Article 38 (interlocutory appeal and extraordinary criminal remedy).

X – set a date for the trial of the facts on which it is entitled to vote, or transmit it to the Reviewing Judge, together with the report, as appropriate;

RISTF: Article 21, § 3 (indicating the competent body) – Article 25, III (Reviewing Judge sets date) – Article 83 publication of timetable).

XI – refer writs of *habeas corpus* or appeals to the Plenary Court for trial;

RISTF: Article 6, II c (jurisdiction of the Plenary Court) – Article 22, Sole Paragraph, a and b (presented by the Reporting Judge) – Article 305 (decision not subject to appeal).

XII – provide certified copies of judgments;

RISTF: Article 347, main section, II (provisional enforcement) – Articles 348 and 349 (processing certified copies of judgments).

XIII – delegate powers to other judicial authorities in cases provided for in law and in these Regulations;

RISTF: Article 136, § 2 (delegation of proceedings) – Article 211 (questioning of person to be extradited) – Article 239, § 1 (questioning of the defendant) – Article 247, § 2 (ACO: investigatory measures) – Article 300 – (lost documents) – Articles 341 and 342 (execution of investigatory and protective orders).

XIV – submit to the court facts not included on the official schedule for trial;

RISTF: Article 83, § 1, indents I, II and III (QO [Queixa Crime – Questions regarding schedule for trial] presented before the Plenary Court – HC – CC – ED – AgR – Interlocutory Appeal).

XV – decide on termination of inquiries at the request of the Attorney General;

RISTF/ Article 231, § 4 (requests from the Public Prosecutor's Office).

CPP: Article 18.

Law no. 8.038/90: Article 3, I (requests from the Public Prosecutor's Office).

Law no. 8.625/93: Articles 25 to 27 (functions of the Public Prosecutor's Office).

XVI – sign official correspondence on behalf of the Supreme Federal Court in matters and cases falling under their jurisdiction, to be sent to any public authority, including the Head of State;

XVII – organise public hearings to gather evidence from persons with expertise and authority in specific fields, where clarification is deemed necessary on questions or factual situations with a general impact or of major public interest;

XVIII – issue decisions, without recourse to appeal, on declarations from third parties, signed by a qualified prosecutor, in public hearings or trials in which they are Reporting Judges;

XIX – conduct any other acts which are incumbent on them or which they are empowered to carry out by law or the Rules of Procedure.

RISTF: Article 93, main section, and Article 94 (drawing up court decisions) – Article 96 § 3 (correcting errors in decisions) – Article 103 (deciding to remand the defendant in custody for the purposes of extradition) – Article 135, preliminary statement on the scope – Article 208 (use of preventive detention against the accused for extradition) – Articles 341 to 344 (execution).

Paragraph 1

The Reporting Judge may reject any application or remedy which is manifestly inadmissible, unfounded, or contrary to established case-law or to the Court Digest, may decide not to hear such remedies in the event of manifest lack of jurisdiction and refer the file to the body it deems competent, and may quash or set aside, on a preliminary basis, any appeal judgment contrary to the orientation laid down in Article 543-B of the Code of Civil Procedure.

*RISTF: Article 317, main Section (under AgR) – Articles 334 and 335 (applies to seizures).
CPP: Article 557.*

Law no. 8.038/90: Article 38 (aforementioned).

Law no. 9.868/99: Articles 4 and 15 (main Section of ADI and ADC).

Paragraph 2

In the event of a blatant disagreement with the *Súmula*, the Reporting Judge can provide for an extraordinary remedy.

CPP: Article 557, § 1 A.

Paragraph 3

When the Reporting Judge applies for a date for the trial or submission of the facts to the court, he/she must indicate, in the case file, whether this involves the Plenary Court or a Chamber, except where the mere fact of designating the category establishes the competent body.

RISTF: Articles 5 and 8 (Plenary) – Articles 8 and 11 (Chamber) – Article 83 (official schedule and exemption therefrom).

Paragraph 4

For the purposes of Article 328 of these Regulations, the Reporting Judge will communicate to the President's Office the subjects on which decisions are

required as to dismissal or transmission of documents, by virtue of Article 543-B of the CPP.

Article 22

The Reporting Judge shall submit the facts to the Plenary Court for trial in cases involving a significant but as yet undecided, issue over constitutionality.

CF/88: Article 52, X (communication to the Federal Senate: interlocutory declaration).

RISTF: Article 6 II a and b (trial before the Plenary Court) – Article 11 I and II (referral by the Chamber) – Article 83, main Section and § 1, II (official schedule and exemption there from) – Arts 176 and 178 (hearing and trial).

Sole Paragraph

The Reporting Judge may proceed as set out in this Article:

a) in the case of subjects on which there is disagreement among the Chambers or between some of them and the Plenary Court;

RISTF: Article 7 IV (trial before the Plenary Court) – Article 11, sole Paragraph (referral by the Chamber).

b) when a Plenary Court decision is required due to the significance of the legal issue or the need to prevent disagreement among the Chambers.

*RISTF: Article 34 (preventing disagreement: Coordinating Committee) – Article 103 (case-law review).
CPP: Article 555 as worded under Law no. 10.352/01.*

Section III – The Reviewing Judge

Article 23

The following types of hearing require revision:

RISTF: Article 87, II (distribution of copies of the report in cases of revision).

I. action for rescission;

RISTF: Articles 259 to 267 (hearing and trial)

II. criminal review;

RISTF: Articles 263 to 272 (hearing and trial).

III. originating criminal lawsuit provided for in Article 5 I and II;

RISTF: Articles 235 to 246 (hearing and trial);

IV. ordinary criminal appeal provided for in Article 6 III c⁵;

⁵*Rule not provided for in CF/88.*

V. declaration of suspension of rights set out in Article 5 VI⁵;

⁵*Rule not provided for in CF/88.*

Sole Paragraph

In the case of seizures relating to the hearings mentioned above, no revision shall be effected.

RISTF: Article 333 (wrongful seizures).

Article 24

The duties of Reviewing Judge shall be taken on by the Judge of the Court next to the Reporting Judge in descending order of seniority.

RISTF: Article 17 (seniority) – Articles 38 and 39 (replacement).

Sole Paragraph

In the event of definitive replacement of the Reporting Judge, the Reviewing Judge shall also be replaced, in accordance with the provisions of this Article.

RISTF: Article 38 III (redistribution with leave of absence of over 30 days) and IV (retirement, resignation or death).

Article 25

It is incumbent on the Reviewing Judge:

RISTF: Article 38 I (replacement by the Reporting Judge) and Article 39 (replacement of the Reviewing Judge).

I. to suggest to the Reporting Judge any organisational measures for the hearing which may have been omitted;

RISTF: Article 21 I (Reporting Judge: organising and directing the hearing).

II. to confirm, complement or rectify the report;

RISTF: Articles 243 and 245 I (AP [Ação Penal – penal action) – Article 262, in fine (AR [Ação Rescisória – Rescission) – Article 268 (RvC).

III. to apply for a date for a trial of the facts in respect of which he/she is entitled to vote.

RISTF: Article 83 (official schedule) – Article 87, II (copies of the report).

Chapter VI – Committees

Article 26

The committees shall co-operate in discharging the duties of the Court.

RISTF: Articles 27 and 28 (general provisions).

Article 27

The committees are of two types:

- I. Standing committees;
- II. *Ad hoc* committees.

Paragraph 1

The Standing Committees are:

RISTF: § 3 du présent article 27 (trois membres).

- I. Committee on Rules of Procedure;

RISTF: Article 28, main Section and indent I (appointment by the President and composition) – Article 29 (chairmanship) – Articles 30 and 31 (terms of reference).

- II. Committee on Case-Law;

RISTF: Article 28, main Section (appointment by the President) – Article 29 (chairmanship) – Articles 30 and 32 (terms of reference).

- III. Committee on Documentation;

RISTF: Article 28, main Section (appointment by the President and composition) – Article 29 (chairmanship) – Articles 30 and 33 (terms of reference).

- IV. Co-ordinating Committee;

RISTF: Article 28, main Section and indent I (appointment by the President and composition) – Article 29 (chairmanship) – Articles 30 and 34 (terms of reference).

Paragraph 2

Ad hoc committees may be set up by the Plenary Court or by the President, and shall be dissolved once they have completed the task for which they were created.

RISTF: Article 365, § 2 (special committees).

Paragraph 3

Standing committees shall comprise three members, and may operate with two members present; the Committee on Rules of Procedure can provide a substitute member.

Paragraph 4

Ad hoc committee can have any number of members.

Article 28

The President shall appoint committee members, with terms of office coinciding with his/her own, ensuring the participation of Judges from both Chambers.

Article 29

Each committee shall be chaired by the most senior of its members.

RISTF: Article 17 (seniority) – Article 37 III and IV (replacement).

Article 30

It is incumbent on Standing and *Ad hoc* Committees:

I. to issue departmental rules and propose to the President of the Court regulations on matters under his/her jurisdiction;

RISTF: Article 13 (powers and duties of the President).

II. to apply to the President of the Court for secondment of any court staff who may be needed, and who cannot be seconded without consulting the judges whom they assist;

RISTF: Article 357 (composition of judges' private offices).

III. to consult, through their Chairs, with other authorities or institutions in areas within their remit subject to the jurisdiction of the President of the Court.

RISTF: Articles 13 and 340 (jurisdiction of the President of the STF).

Article 31

It is incumbent on the Committee on Rules of Procedure:

RISTF: Article 26 (powers) – Article 27, I and § 1, I and § 3 (Standing Committee with three full members and one substitute member) – Articles 28 I, 29 and 30 (chairmanship and terms of reference).

I. to ensure the Rules of Procedure are kept up to date, to suggest changes to the current text and issue opinions on amendments from other committees or Judges;

RISTF: Article 7 IV (trial in Plenary Court) – Article 361 I, Articles 362, § 2 and 366 (prior opinions on matters relating to the Rules of Procedure).

II. to give opinions on administrative proceedings when consulted by the President.

Article 32

It is incumbent on the Committee on Case-Law:

RISTF: Article 26 (powers) – Article 27, I and, § 1, II and § 3 (Standing Committee with three members) – Articles 29 and 30 (chairmanship and terms of reference).

I. to select court decisions to be published in their entirety in the *Revista Trimestral de Jurisprudência*, giving priority to those highlighted by the Reporting Judges;

RISTF: Article 99 (official repository) – Article 100 (court decisions in DJ [Diário da Justiça – Official Gazette]).

II. to promote and disclose, in summary, decisions which have not been published verbatim, and to publish an internal newsletter providing information on legal questions decided by the Chambers and the Plenary Court before publication of the court decisions;

Obs.: information from the Supreme Federal Court.

III. to ensure the abridged or verbatim publication, in series, of decisions on constitutional issues;

IV. to ensure the expansion, updating and publication of the *Súmula*;

RISTF: Article 7, VII (Plenary Court decision) – Articles 102 and 103 (formulation and modification).

V. to supervise:

a) the system for organising and disseminating Court case-law;

RISTF: Article 100 (publication of court decisions and the Revista Trimestral de Jurisprudência).

b) the publication of the *Revista Trimestral de Jurisprudência* and other publications, together with indices for facilitating retrieval of decisions or cases.

RISTF: Article 99 (case-law repositories) – Article 322 in conjunction with Article 331 (confirmation of divergences in seizures).

Article 33

It is incumbent on the Committee on Documentation:

Resolution STF no. 156/97: Rules on the operation of the STF Library

I. to direct the services stacking and conserving Court procedures, books and documents;

II. to maintain a documentation service in order to compile facts on the history of the Court, with individual folders containing bibliographical data on Judges and Public Prosecutors.

Article 34

It is incumbent on the Co-ordinating Committee to propose to the Presidents of the Court and the Chambers, as well as to Judges, measures to prevent contradictory decisions, increase court session efficiency, expedite the publication of court decisions and facilitate the work of lawyers.

RISTF: Article 22, sole Paragraph, a (initiative of the Reporting Judge) – Article 82 (requirements for publications) – Article 93 in conjunction with Article 95 (publication of court decisions).

Chapter VII – Leave of Absence, Replacements and Convocations

Article 35

Requests for leave of absence shall be accompanied by an indication of the period it is to cover and the date when it will commence.

RISTF: Article 7, VI (Plenary Court decision) – Article 13, XI (decision by the President) – Articles 40,

41 and 150, § 2 (convocation of Judges in order to secure a quorum).

Article 36

Judges granted leave of absence may not exercise judicial or administrative duties.

RISTF: Article 12 §§ 2 and 3 (execution) – indents I and II of the sole Paragraph of Article 205 (MS against decision of the President of the STF).

Sole Paragraph

In the absence of medical reasons to the contrary, Judges granted leave of absence can resume office at any time, on the understanding that they waive the remainder of the period of leave, and can give decisions in hearings which, before the period of leave, would have been assigned to them for trial or in which their opinion would have been heard as Reporting Judge or Reviewing Judge.

RISTF: Articles 21 and 22 (competence of the Reporting Judge) – Articles 23 and 25 (competence of the Reviewing Judge).

Article 37

In the Reporting Judge's or Reviewing Judge's temporary or longer-term absence, the following replacements shall be made:

RISTF: Article 17 (seniority).

I – the President of the Court replaced by the Vice-President, and the Vice-President by other Judges, in decreasing order of seniority;

II – the President of the Chamber by the most senior Judge;

III – the Committee Chair by the most senior committee member;

IV – any of the members of the Committee on Rules of Procedure by the substitute member.

RISTF: Article 27, I, § 1, I, and § 3 (composition).

Article 38

The Reporting Judge shall be replaced by:

RISTF: Article 17 (seniority)

I – the Reviewing Judge, where appropriate, or by the next most senior Judge of the Court or Chamber, depending on jurisdiction, in the case of short or long-term absence, where urgent decisions must be taken;

RISTF: Article 17, sole Paragraph (replacement of the most recent Judge) – Articles 23 and 24 (replacement of the Reviewing Judge) – Article 135 § 3 (drafting court judgments).

II. the Judge appointed to draw up the judgment, where he/she loses during the trial;

RISTF: Article 23 – Article 135 §§ 3 and 4 (Reviewing Judge or winning vote).

III. by means of redistribution, in the case of leave of absence or an absence for over thirty days;

RISTF: Sole Paragraph of Article 24 (definitive replacement of the Reviewing Judge) – Article 68 §§ 1 and 2 (cases of redistribution).

IV. in the event of retirement, resignation or death:

a) by the Judge appointed to his/her vacant post;

RISTF: Article 4, § 4 (Chamber) – Article 68, § 2 (redistribution in HC).

b) by the Judge casting the first winning vote, accompanying that of the Reporting Judge, with a view to drafting or signing judgments in trials prior to the post falling vacant;

RISTF: Article 135, main Section and § 4 (order of voting and winning vote).

c) in the manner provided for in indent b above, where the new Judge has not yet taken up his/her duties, with a view to signing official copies of the judgment and admitting appeals.

Article 39

In the event of vacancy, short-term absence or leave of absence for over thirty days, the Reviewing Judge shall be replaced by the Judge next in line in decreasing order of seniority.

RISTF: Article 17 (seniority) – Sole Paragraph of Article 24 (definitive replacement of the Reviewing Judge).

Article 40

In order to secure a quorum in the Plenary Court on account of an absence or leave of absence of over three months, the President of the Court shall summon the absent Judge, or if this is impossible, a Judge from the Federal Appeal Court², who must not, however, take part in the debate and voting on matters set out in Articles 7 I and II and 151 II.

² *current purview of CF/88: Article 92 II in conjunction with Article 27, § 2, I of ADCT (setting up the STJ).*

CF/88: Article 97 (quorum for declaration of unconstitutionality).

RISTF: Article 35 (period of leave of absence) – Article 143 (Plenary Court quorum) – exception: indents I and II of the sole Paragraph of Article 205 (MS vs. President of the Supreme Federal Court).

Law no. 9.868/99: Articles 22 and 23 (quorum for ADI and ADC trial).

Law no. 9.882/99: Article 8 (quorum for ADPF).

Article 41

In order to secure a quorum in a Chamber, further Judges will be summoned to attend, in ascending order of seniority.

RISTF: Article 4, main Section and § 1 (Chamber President) – Article 134 § 3 (renewed trial) – Article 147 (minimum quorum) – Article 150 § 2 (summons for the purposes of securing a quorum).

Chapter VIII – Responsibility for maintaining order in Court

Article 42

The President is responsible for order in Court. He/she may call on the services of other bodies in discharging this responsibility, if necessary.

RISTF: Article 13 (responsibilities of the President).

Article 43

If an infringement of criminal law occurs on the premises of the Court, the President will initiate investigations, where an authority or individual subject to his/her jurisdiction is involved, or delegate this responsibility to another Judge.

Paragraph 1

In other cases the President may proceed in the manner set out in this article or instruct the relevant authority to conduct investigations.

Paragraph 2

The Judge responsible for the investigations shall appoint a clerk from among the Court staff.

Article 44

The President is responsible for order during sessions and hearings.

RISTF: Article 4 Paragraph 1 (Chamber President) – Article 21 I (Reporting Judge) – Article 143, main Section (Plenary Court) – sole Paragraph of Article 148 (where the President of the Supreme Federal Court is Reporting Judge).

Article 45

Administrative investigations shall be conducted in accordance with separate rules.

Chapter IX – Contempt of Court**Article 46**

Where the President is apprised of non-compliance with an order issued by the Court or its Judges, in the exercise of official duties, or of disrespect towards the Court or its Judges, he/she shall communicate this fact to the relevant body in the Public Prosecutor's Office, providing any factual evidence at his/her disposal for the initiation of prosecution.

RISTF: Article 13 VI (attributions of the President) – Articles 195 to 197 (non-compliance with HC) – Article 340 (enforcement).

Article 47

If no prosecution has been initiated after a period of thirty days, the President shall notify the Court, secret⁷ session, of the measures he/she deems necessary.

⁷*Provision applied: Article 5 LX (publicity), in conjunction with Article 93 IX and X (reserved or justified sessions), of CF/88. RISTF: Articles 151 II to 153 (Administrative sessions).*

Law no. 8.625/93: sole Paragraph of Article 41 (criminal responsibility).

...

Title VI – Declaration of Unconstitutionality And Interpretation⁵ of Legislation

⁵*Provision not included in CF/88.*

Chapter I – Declaration of Unconstitutionality of a Law or Normative Act

CF/88: Article 102 I a (ADI). RISTF: Article 5 (Plenary Court adjudicating), VII (lawsuit) and X (protective measures) – Article 6 II a (interlocutory unconstitutionality) and d (AgR: Act by the President or Reporting Judge) – Article 8 I (ED and interlocutory procedures) – Article 13 VIII and sole Paragraph (protective measures during holidays) – Article 56 X and XI (category unchanged) – Article 66 (distribution) – Article 69 (prevention) – Articles 71 and 72 (Reporting Judge: EC, AgR and interlocutory procedures) – Article 76 (Reporting Judge: EI) – Article 83 Paragraph 1 (off official schedule). Law no. 9.868/99: hearing and trial of ADI and ADC. Law no. 9.882/99: hearing and trial of ADPF.

Article 169

The Attorney General of the Republic may submit to the Court, via a representative², a request for examination of a federal or state law or normative act with an eye to a declaration of unconstitutionality.

²*Current purview of CF/88: Article 102 I a Paragraphs 1 and 2 (ADI) in conjunction with Article 103, the indents thereof, and Paragraphs 1 to 4 (with wording as set out in EC no. 3/93). LC no. 75/93: Article 6 I to IV (jurisdiction of the Public Prosecutor's Office). Law no. 9.868/99: Articles 2 and 13 (legitimacy to propose ADI and ADC). Law no. 9.882/99: Article 2 indent I (legitimacy to propose ADPF) – Article 2 Paragraph 1 (rights of the interested party).*

Paragraph 1

Once the representative has been appointed, no withdrawals shall be allowed, even where the Attorney General is in fact appearing on the basis of ill-founded proceedings.

⁵(Direct action against unconstitutionality and Article 16 (Declaration of constitutionality).

Paragraph 2

No assistance shall be allowed for any of the parties.

Article 170

The Reporting Judge shall request information from the authority having issued the act, and from the National Congress or the Legislative Assembly, as appropriate.

RISTF: Article 21 I, II and XVI (powers of the Reporting Judge).

Law no. 9.868/99: Articles 6, 9 and 20.

Law no. 9.882/99: Article 6 request for information in ADPF).

Paragraph 1

In the case of requests for provisional measures, the Reporting Judge shall submit them to the Plenary Court, only asking for information after the relevant decision.

Law no. 9.868/99: Article 10, main Section and Paragraph 3 (granting of initial request in ADI).

Law no. 9.882/99: Article 5 and paragraphs (granting of initial request in ADPF).

Paragraph 2

Information will be provided within thirty days of receipt of the request, whereby the Reporting Judge may dispense with this time-limit in urgent cases, subject to the approval (ad referendum) of the Court.

RISTF: Article 21 V (ad referendum measures).

Law no. 9.868/99: sole Paragraph of Article 6 (providing information: 30 days) and Article 10 Paragraph 3 (exceptional urgency).

Law no. 9.882/99: Article 6, main Section (10 days).

Paragraph 3

Where, on receipt of the documents or during proceedings, the Reporting Judge realises that an urgent decision is required in the light of the major public order interest of the case, he/she may, with prior notification of the parties, submit it to the Court for adjudication, which may proceed on the basis of the facts at its disposal.

RISTF: Article 5 VII (Plenary Court) – Article 83 Paragraph 2 (off the official schedule).

Law no. 9.868/99: Article 10 Paragraph 3 (exemption from providing information on account of exception urgency).

Law no. 9.882/99: Article 5 Paragraph 1 (ad referendum).

Article 171

On receipt of the information⁶, the Attorney General shall have a right of inspection within fifteen days, with a view to issuing an opinion.

⁶*Provision introduced under CF/88: Article 103 Paragraph 3 (previously summoning the Advocate General of the Union to defend the impugned act).*

RISTF: Article 52 I (mandatory inspection).

Law no. 9.868/99: Article 9 (ADI) and Article 20 (ADC).

Law no. 9.882/99: Article 7 (ADPF).

...

Article 173

On completion of the trial, with the quorum as set out in Article 143, sole Paragraph, the unconstitutionality or constitutionality of the impugned provision or act shall be declared, if the Judges have reached a definite conclusion.

RISTF: sole Paragraph of Article 143 (eight Judges: minimum quorum) – Article 131, main Section (oral pleadings) – Articles 122 to 140 and 143 to 145 (trial session) – Article 146 I (President's vote).

Law no. 9.868/99: Article 22 (quorum).

Law no. 9.882/99: Article 8, main Section (quorum).

Sole Paragraph

If the requisite majority for a declaration of unconstitutionality is not achieved, and enough Judges are on short – or long-term leave for this to influence the trial, it will be adjourned until the absent Judges can attend, in order to secure a quorum.

RISTF: Article 40 (summoning absent Judges).

Law no. 9.868/99: sole Paragraph of Article 23.

Article 174

Following a declaration of constitutionality in accordance with the previous article, the merits of the application must be assessed.

RISTF: Article 101 (decision applies to new facts) – Article 143, main Section (attendance by eight Judges) – Article 173 (vote by six Judges) – Article 13 VI in conjunction with Article 340 (enforcement).

Law no. 9.868/99: Article 24 (result).

Article 175

Where the application is deemed well-founded and the total or partial unconstitutionality declared of a State Constitution, law, federal or state decree, a resolution by a judicial or legislative body, or any other federal or state normative act or such act passed by an authority of direct or indirect administration, it will be communicated to the authority or body responsible for dispatching the impugned normative act.

*RISTF: Article 101 (decision applies to new facts) – Article 143, main Section (attendance by eight Judges) – Article 173 (vote by six Judges) – Article 13 VI in conjunction with Article 340 (enforcement).
Law no. 9.868/99: Article 25 (communication).
Law no. 9.882/99: Article 10 (communication).*

Sole Paragraph

Where the declaration of unconstitutionality of a law or state act is based on indents VI and VII of Article 10² of the Constitution, the text will be communicated, after the decision, to the relevant authority and also, after the decision has become final, to the President of the Republic, for the purposes of Article 11 Paragraph 2^{2a} of the Constitution.

²current purview of CF/88: Article 34 VI (enforcement of a judicial decision) and VII (obs. constitutional principles).

^{2a}current purview of CF/88: Article 36 Paragraph 3 (suspending the impugned act).

Article 176

Where a Federal, State or municipal law or normative active is challenged for unconstitutionality in any other proceedings brought before the Plenary Court, this challenge will be adjudicated in accordance with the provisions of Articles 172 to 174, before being heard by the Attorney General.

RISTF: Article 6 II a (Plenary Court trial) – Article 52 I (mandatory inspection) – Article 56 X c and XI (category unchanged).

Paragraph 1

Where such contentions are advanced in a trial before one of the Chambers and are deemed important, they will be submitted to the Plenary Court, regardless of the judgment, in consultation with the Attorney General.

RISTF: Article 11 I (referral by the Chamber) – Article 22, main Section (referral by the Reporting Judge).

Paragraph 2

The Presidents of the Court and Chambers shall proceed in the same manner where contentions of unconstitutionality are advanced in proceedings falling under their jurisdiction.

RISTF: Article 11 I (non-decided contention of unconstitutionality) and II (re-examination of unconstitutionality).

Article 177

The Plenary Court will adjudicate on preliminary questions of unconstitutionality and other matters arising in the case.

RISTF: Article 9 II a (unconstitutionality) and d (AgR), and IC (ED).

Article 178

Where unconstitutionality is declared on an interlocutory basis in the manner laid down in Articles 176 and 177, this will be communicated, after the decision, to the relevant authority and, after the decision has become final, to the Federal Senate, for the purposes of Article 42 VII² of the Constitution.

² current purview of CF/88: Article 52 X.

RISTF: Article 101 (effects of unconstitutionality) – Article 340 (enforcement).

Chapter II – Interpretation of Legislation**Article 179**

The Attorney General of the Republic may submit to the Court for examination any federal or state law or normative act and ask it for an interpretation.

Article 180

The application will be examined on the basis of the full text of the law or normative act, including an explanation as to the need for interpretation and the applicant's opinion on this matter.

Article 181

Once the application has been submitted, the Attorney General can no longer withdraw it.

Sole Paragraph¹

None of the parties qualify for assistance.

¹*Updated under Amendment no. 2/85 to the Rules of Procedure.*

Article 182

If the Reporting Judge considers that there are no grounds for producing an interpretation, he/she may reject the application on a preliminary basis, by means of a reasoned decision, which will lead to a court injunction.

Article 183

If the application is not rejected on a preliminary basis, the Reporting Judge shall request information from the authority that issued the act and from the National Congress or Legislative Assembly, as appropriate.

Sole Paragraph

This information, which shall be provided within thirty days, will be accompanied, in the case of a law, by copies of all texts relating to the legislative process.

Article 184

On receipt of the information, the Reporting Judge shall initiate the report, copies of which the secretary must distribute to all Judges, and shall apply for a trial date.

Article 185

After the trial, with the quorum as set out in the sole Paragraph of Article 143, the interpretation as supported by a minimum of six Judges will be pronounced.

Paragraph 1

Where the requisite majority is not obtained, as a sufficient number of Judges are on short – or long-term leave as to influence the trial, it will be adjourned until the absent Judges can attend, in order to secure a quorum.

Paragraph 2

Where the votes are split among more than two interpretations, the President will organise another session to hold a second vote, in order to decide, by a quorum of at least six Judges, between the two interpretations which previously secured the most votes.

Article 186

The interpretation adopted at the session will be communicated immediately by the President of the Court to the authority from which the information had been requested.

Article 187

As soon as the judgment is published, with its conclusions and summary, in the Official Journal of the Union, the interpretation set out therein will have binding effect for all relevant purposes.

Resolution/STF no. 341/07: Electronic version of the official journal.

⁵*Provision not included in CF/88.*

Title VII – Constitutional Safeguards**Chapter I – Habeas Corpus**

CF/88: Article 102 I d and I (as worded in EC no. 22/99), and II a.

RISTF: Article 56 I, X and XI (category unchanged) – Article 61 Paragraph 1 I (exemption from first costs) – Article 66 (distribution) – Article 68 Paragraph 2 (redistribution) – Article 69 (prevention) – Articles 71 and 72 (Reporting Judge: ED, AgR and interlocutory procedures) – sole Paragraph of Article 77 (exclusion of distribution).

CPP – Articles 650 I and 667 (jurisdiction of the Supreme Federal Court).

Article 188

Habeas corpus is applicable where someone is exposed to, or is threatened with, violence or coercion vis-à-vis his/her freedom of movement, on account of illegal action or abuse of authority.

CF/88: Article 5 LXVIII and LXXVII (applicability and gratuitousness).

CPP: Article 647 (applicability) – Article 648 (illegal coercion).

Article 189

The following are entitled to request *habeas corpus*:

CF/88: Article 5 LXXIV (legal assistance from the State).

CPP: Article 654, main Section (locus standi)

Law no. 7.210/84: Article 10 (assistance to the prisoner) – Articles 11 III, 15 and 16 (legal assistance).

Law no. 8.906/94: Article 34 XII (rejection of lawyer).

I. any person, on his/her own or someone else's behalf;

II. the Public Prosecutor's Office.

Article 190

The petition of *habeas corpus* must include:

CPP: Article 654 Paragraph 1.

I. the names of the petitioner, the prisoner and the constraining party;

CPP; Article 654 Paragraph 1 a (name of the prisoner and constraining party).

II. the grounds of petition and, where possible, documentary evidence for the alleged facts;

RISTF: Article 113 (second procedural law) – Article 114 (submissions by the Reporting Judge) – Article 115 (admission of appeal) – Articles 116 to 118 (obligation of parties and lawyers to prove document reliability).

CPP: Articles 231 to 237 (documents) – Article 654 Paragraph 1 b (grounds of petition).

III. the signature of the petitioner or his/her proxy, if he/she cannot write.

CPP: Article 654 Paragraph 1 c (petitioner's signature).

Article 191

The Reporting Judge shall request information from the constraining party and, without prejudice to the provisions of Article 21 IV and V, may:

RISTF: Article 10 (alerting the Chamber) – Article 69 (alerting the Reporting Judge) – Article 21 II (investigatory proceedings) and VII (requesting original documents).

CPP: Article 234 (submissions by the Reporting Judge).

I. where the facts prove important, appoint a lawyer to support and orally defend the petition, where the petitioner is not versed in the law;

CF/88: Article 5 LXXIV (assistance from the state).

RISTF: Article 21, XVI (attributions of the Reporting Judge) – Article 63 (appointment of the defence lawyer).

Law no. 8.906/94: Article 34 XII (rejection of lawyer).

II. order the requisite action for investigating the petition within the set timescale, unless the petitioner was responsible for any delays;

RISTF: Article 21 I, II and VII (responsibilities of the Reporting Judge) – Article 108 (timescale set by the Reporting Judge) – Article 110 II (no specified timescale).

III. decide on the prisoner's appearance at the trial session, if he/she sees fit;

CPP: Article 656, main Section (court appearance by prisoner).

IV. in cases of preventive *habeas corpus*, allow the prisoner safe-conduct until the actual decision is taken, where there is a serious risk of violence.

CPP: Article 660 Paragraph 4 (safe-conduct).

Article 192

On completion of the proceedings and after the two-day hearing of the Attorney General, the Reporting Judge will bring the case to trial at the next session of the Chamber or the Plenary Court. Voting must then proceed in accordance with Articles 146, Sole Paragraph, and 150 Paragraph 3.

RISTF: Article 6 (Plenary Court), I a (Article 102 I d, CF), II c (referral by Reporting Judge), III a (RHS of TSE), b (RHS of STJ: State Minister as constraining party) – Article 9 (Chambers) I a (Article 102 I e, CF) II a (RHC constraining parties Superior Courts except TSE) – Article 10 (alerting the Chamber) – Article 52 VIII (mandatory inspection) – Article 83 Paragraph 1 (official schedule) – Articles 122 to 140 – Articles 143 to 146 – Arts 147 to 150 (trial sessions).

Sole Paragraph

The petition will not be heard if the prisoner forbids it.

Sole Paragraph A

Where the presentation does not take place in court during the session set out in the main Section above, the *habeas corpus* petitioner may ask to be notified by the Registry, by any means at its disposal, of the trial date.

Article 193

The Court may, *ex officio*:

I. have recourse to the option set out in Article 191 iii;

CPP: Article 656, main Section (court appearance by prisoner).

II. issue an *habeas corpus* writ where, during any proceedings, it emerges that someone is exposed to, or threatened with, violence or coercion *vis-à-vis* his/her freedom of movement, on account of illegal action or abuse of authority.

CPP: Article 654 Paragraph 2 (HC ex officio).

Article 194

The *habeas corpus* writ will be communicated immediately to the authorities responsible for executing it, without prejudice to the presentation of authenticated copies of the judgment.

RISTF: Articles 122 to 140 and 147 to 150 (trial session).

CPP: Article 665 (communication) – Article 660 Paragraph 5 (copies of the decision).

Sole Paragraph

Communication by official letter, telegram or radiogram, and safe-conduct in the case of threat of violence or coercion, shall be signed by the President of the Court or Chamber.

RISTF; Article 81 (mode of communication).

CPP: sole Paragraph of Article 665 (prerequisites for authenticity of communication) – Article 660 Paragraph 4 (safe-conduct).

Article 195

Once the prisoner's release has been ordered under the *habeas corpus* writ, the authority which, through malice or obvious abuse of authority, decided on the coercion, shall be sentenced to pay costs. Copies of the documentary evidence required for establishing their criminal responsibility must be transmitted to the Public Prosecutor's Office.

CPP: Article 653 aforementioned.

Article 196

The prison warder or director, clerk, court officer, or the judicial, police or military authority which/who impeded or delayed the processing of the *habeas corpus* petition, information on the case of violence, coercion or threats, or the transport and court appearance of the prisoner, shall be fined in accordance with current procedural legislation, without prejudice to other penal and administrative sanctions.

CPP: Article 655 (aforementioned).

Article 197

If the prison governor or warder does not comply with the *habeas corpus* writ or is unreasonably slow in doing so, the President of the Court shall issue an arrest warrant against the person guilty of non-compliance and contact the Public Prosecutor's Office with a view to commencing criminal action.

Regimento Interno do Supremo Tribunal Federal – RISTF (Rules of Procedure of the Supreme Federal Court): Article 13, VI (attributions of the President of the Supreme Federal Court) – Articles 340 – 344 (execution).

Sole Paragraph

In the context of this paragraph, the Court or its President will take the necessary action to enforce the decision, by means of the appropriate legal measures, and shall, if necessary, decide to present the prisoner to the Reporting Judge or the local legal officer appointed by the latter.

CPP: sole Paragraph of Article 656 (arrest of person and court appearance by prisoner)

Article 198

Securities to be presented to the Court under *habeas corpus* proceedings will be processed by the Reporting Judge, unless this responsibility is delegated to another legal officer.

RISTF: Article 21 XIII (delegation of responsibility).

Article 199

If, during the *habeas corpus* proceedings, the violence or coercions ceases, the petition shall be considered prejudiced, although the Court can still declare the act unlawful and impose appropriate sanctions on those responsible.

CPP: Article 659 (prejudiced petition).

Chapter II – Court Injunction

CF/88: Article 102 I d.

RISTF: Article 5 V (Plenary Court trial), Article 6 II d (AgR), Article 8 I ED and interlocutory procedures) – Article 56 X and XI (category unchanged) – Articles 57 and 59 II (subject to first costs: Table B VI a and b, and Table C) and Paragraph 3, c/c

Article 107 (time-limit for first costs) – Article 61 Paragraph 1 II, end (exemption from first costs) – Article 62 (legal assistance) – Article 65 (desertion) – Article 66 (distribution) – Article 68 (redistribution) – Article 69 (prevention) – Arts 71 and 72 (Reporting Judge: ED, AgR and interlocutory procedures) – Article 83 Paragraph 1 (off official schedule).

Article 200

Court injunctions must be granted in order to protect definite rights which are not protected by *habeas corpus* where the authority responsible for the illegal action or abuse of authority comes within the Court's jurisdiction.

CF/88/ Article 5 LXIX, LXX a and b.

RISTF: Article 5 V (trial in Plenary Court).

Law no. 1.533/51: Article 1 (conditions of admissibility).

Sole Paragraph

The right to apply for a court injunction lapses one hundred and twenty days after notification of the impugned act by the person concerned.

Law no. 1.533/51: Article 18 (period for bringing action).

RISTF: Article 21 Paragraph 1 (responsibility of the Reporting Judge)

Article 201

A court injunction will not be issued in the following cases:

Law no. 1.533/51: Article 5, main Section (inadmissibility).

I. an act liable to an administrative appeal with suspensory effect, without surety;

Law no. 1.533/51: Article 5 I (aforementioned).

II. an appealable or amendable judicial ruling or decision;

Law no. 1.533/51: Article 5 II (aforementioned).

III. a disciplinary decision, unless it is taken by an incompetent authority or in a manner breaching an essential formality.

Law no. 1.533/51: Article 5 III (aforementioned).

Article 202

The initial petition, which must fulfil the requirements of Articles 282 and 283 of the Code of Civil Procedure, shall be submitted twice, and the documents used to prepare the first petition must be copied into the second one, subject to the provisions of Article 114 of these Regulations.

RISTF: Article 113 (conformity to procedural laws) – Article 114 (requested by the Reporting Judge) – Articles 116 to 118 (proving document reliability).

Law no. 1.533/51: Article 6 (requirements of initial petition).

Article 203

The Reporting Judge shall notify the constraining authority of its obligation to provide information within the legal time-limit.

RISTF: Article 21 I and II (powers of the Reporting Judge).

Law no. 1.533/51: Article 7 I (request for information) – Article 14 (preparation of proceedings).

Law no. 4.348/64: Article 1 a (time-limit: 10 days).

Paragraph 1

Where the substance of the case is important and the impugned act could render the measure ineffective if it is granted, the Reporting Judge shall order its suspension, except in cases where this is prohibited by law.

RISTF: Article 21 V (attribution ad referendum).

Law no. 1.553/51: Article 7 II (suspension of the act).

Law no. 4.348/64: Article 1 b (validity of preliminary measure: 90 days).

Law no. 5.021/66: Article 1 Paragraph 4 (prohibition).

Law no. 8.437/92: Article 1, main Section (prohibition against public authority) – Article 2 (conditions for granting in collective MS).

Paragraph 2

The notification will be effected during the second submission of the initial petition, together with the order granting the preliminary measure, if appropriate.

RISTF: Arts 79 and 80 (authenticity of procedural acts and documents) – Article 104 Paragraphs 1, 5 and 6 (calculation of time-limit).

Law no. 1.553/51: Article 7 I (processing the request for information) – Article 9 (documentary evidence of notification).

Article 204

The preliminary measure shall be valid for ninety days starting from the date of entry into force, extendable for a further thirty days if required by the court workload.

Law no. 4.348/64: Article 1 b (validity of preliminary measure).

Sole Paragraph

If the beneficiary of the preliminary measure causes delays in the trial of the petition, whether by action or omission, the Reporting Judge may revoke the measure.

Law no. 4.348/64: Article 2 (revocation of preliminary measure).

Article 205

If, on receipt of the information, or on expiry of the period in question, the trial has not yet been arranged, the Reporting Judge, in consultation with the Attorney General, shall request a trial date, or, if the subject is covered by the Court's established case-law, shall adjudicate the petition.

RISTF: Article 52 IX (mandatory inspection) – Article 50 Paragraph 1 (time-limit: 15 days) – Article 22 X (requesting trial date).

Sole Paragraph

Trials concerning a court injunction against an act of the President of the Supreme Federal Court or the National Council of the Judiciary⁴ will be presided over by the Vice-President or, in the latter's absence, by the most senior Court member among those attending the session. If a vote is to be taken under the terms of Article 146 I to III, and his/her vote leads to stalemate, the procedure shall be as follows:

Body not provided for in CF/88.

⁴*RISTF: Articles 14 and 37 I (replacement of the President of the Supreme Federal Court) – Article 40 (inapplicable to the provisions of this paragraph).*

I. where a Court member has failed to vote owing to absence or leave of absence for three months or less, the Court shall await his/her return to vote;

RISTF: Article 13 XI (granting leave of absence).

II. where all Court members have voted, apart from those unavoidably absent and those on leave of absence with over three months' leave still to run, the impugned act shall stand.

RISTF: Article 7 VI (granting leave of absence).

Article 206

The granting or withholding of securities for the validity of preliminary measures will be immediately communicated to the authority identified as the constraining party.

RISTF; Article 81 (modes of communication).

Law no. 1.553/51: Article 11 (effects of granting and communication).

...

Title IX – Originating Actions**Chapter VII – Suspension of Rights****Article 276**

The petition provided for in Article 154 of the Constitution shall have the status of an original penal action.

Sole Paragraph

In the absence of a preliminary measure, the President may proceed in the manner set out in Article 162.

⁵*Rule not provided for in CF/88.*



CHILE

Constitution

21 October 1980

– extracts –

...

Chapter II – Nationality and Citizenship

Article 16

The right to vote is suspended:

...

3. As a penalty imposed by the Constitutional Court under Article 19.15.7 of this Constitution. Those who are deprived of the right to vote on these grounds will recover it after five years from the Court's decision. Suspension will produce no other legal effect notwithstanding the provisions of Article 19.15.7.

...

Chapter III – Constitutional Rights and Duties

Article 19

The Constitution guarantees to all persons:

...

15. The right of association without prior authorisation.

...

The Political Constitution guarantees political pluralism. Parties, movements or other forms of organisation whose aims, acts or conduct do not respect the basic principles of democratic and constitutional government and seek the establishment of a totalitarian system, together with those that use, advocate and incite violence as a method of political action, are unconstitutional. It is for the Constitutional Court to declare such unconstitutionality.

...

Chapter IV – Government

President of the Republic

Article 32

The special powers of the President of the Republic include the following:

...

12. appointment of law officers and public prosecutors of the Appeal Courts and judges on the proposal of the Supreme Court and the Appeal Courts respectively; members of the Constitutional Court whom it is required to nominate; law officers and public prosecutors of the Supreme Court and of the national Public Prosecutor's Office nominated by the latter Court, in agreement with the Senate, as laid down in this Constitution.

...

Chapter V – National Congress

Exclusive powers of the Senate

Article 53

The Senate's exclusive powers include the following:

...

7) to declare the President of the Republic or the President elect incapable where a physical or mental disability renders him/her unfit to exercise his/her functions; to declare similar incapacity where the President of the Republic resigns from his/her post, whether the grounds for his/her resignation are justified or not, and accordingly accept or reject it. In both cases it must hear the Constitutional Court beforehand.

8) to approve, by a majority of its members, the Constitutional Court's declaration concerning the second subSection of Paragraph 10 of Article 93;

Common rules for deputies and senators

...

Article 60

...

Deputies and senators may resign their posts when they have a serious illness that prevents them from discharging their functions and provided this is so attested by the Constitutional Court.

...

Chapter VI – The Judiciary

Article 82

The Supreme Court has the managerial, corrective and economic oversight of all national courts. Exceptions to this rule are the Constitutional Court, the Election Validation Court and the Regional Electoral Courts.

...

Chapter VIII – The Constitutional Court

Article 92

A Constitutional Court will be set up comprising ten Judges appointed as follows:

- a) three Judges shall be appointed by the President of the Republic;
- b) four Judges shall be elected by the National Congress. Two are appointed directly by the Senate and two proposed in advance by the Chamber of Deputies for approval or rejection by the Senate. Appointments or nominations, as appropriate, are made in single ballots and require for approval a favourable vote by two thirds of the senators or deputies, as the case may be;
- c) three Judges are elected by the Supreme Court in a secret ballot held at a specially convened meeting. Judges will serve nine years in their posts, some of these posts being renewed every three years. They must have held a degree of lawyer for at least fifteen years, have distinguished themselves in their professional, university or public activity, must not suffer from any disability that disqualifies them from discharging the post of judge, be subject to the rules

in Articles 58, 59 and 81 and may not practise the profession of lawyer, including the office of judge, or be subject to any requirement listed in Article 60.2 and 60.3.

Judges of the Constitutional Court may not be removed from their posts and may not be re-elected, except for those who have been elected as replacements and have held the post for a period of less than five years. They will cease their functions on reaching the age of 75. If a Constitutional Court member ends his/her function he/she will be replaced by a suitable person in accordance with the first subsection of this article and for as long as needed to complete the period of replacement.

The Court will operate in plenary session or as two separate Chambers. In the first case, the quorum will be at least eight members and in the second, a minimum of four. The Court will adopt its judgments by simple majority, except in cases where a different quorum is required and will give its verdict according to law. The Plenary Court will give a definitive ruling on the powers indicated in Paragraphs 1, 3, 4, 5, 6, 7, 8, 9 and 11 of the next Article. For the exercise of its other powers, it may operate in plenary session or in chambers as provided by the corresponding constitutional organic law.

A constitutional organic law will determine its organisation, functioning, and procedures and establish the staff, its pay scale and statute.

Article 93

The powers of the Constitutional Court include the following:

1. verifying the constitutionality of laws reflecting certain precepts of the Constitution, the constitutionality of constitutional organic laws and that of the rules of treaties dealing with subjects covered by those rules before they are promulgated;
2. rule on questions of the constitutionality of legal rules issued by the Supreme Court, the Appeal Courts and the Election Validation Court;
3. rule on constitutionality questions arising during the passage of draft laws, constitutional reform laws and treaties submitted to Congress approval;
4. rule on questions of the constitutionality of a decree having the force of law;
5. rule on questions of constitutionality arising from the announcement of a plebiscite, without prejudice to the powers of the Election Validation Court;

6. rule, by a majority of its members, on the inapplicability of a legal precept whose application in any proceedings before an ordinary or special court is contrary to the Constitution;

7. rule, by a majority of four-fifth of its members, on the unconstitutionality of a legal precept declared inapplicable under the provisions of the previous paragraph;

8. rule on complaints where the President of the Republic fails to enact a law or enacts a text other than the constitutionally appropriate text;

9. rule on the constitutionality of a decree or resolution of the President of the Republic which the Office Comptroller General of the Republic has re-submitted on the grounds that it considers it unconstitutional, when requested by the President under Article 99;

10. declare that certain political organisations, movements or parties are unconstitutional and that persons who have participated in the activities leading to the declaration of unconstitutionality are liable under the provisions of Article 19 (15), sixth, seventh and eighth sub-Sections of this Constitution.

However, if the person concerned is the President of the Republic or the President elect, the declaration in question will also require the Senate's agreement, adopted by a majority of its members;

11. inform the Senate in cases referred to in Article 53.7 of this Constitution;

12. rule on disputes regarding jurisdiction arising between the political or administrative authorities and the courts of justice which do not fall within the remit of the Senate;

13. rule on constitutional or legal disabilities which affect a person who may be appointed Minister of State, who remains in that function or who performs other functions at the same time;

14. give an opinion on disabilities, incompatibilities and grounds for suspending parliamentarians from their posts;

15. qualify the disability invoked by a parliamentarian as described in the final sub-Section of Article 60 and give an opinion on his/her renunciation of the post, and

16. rule on the constitutionality of supreme decrees regardless of the defect invoked, including defects arising in the exercise of the autonomous regulatory

authority of the President of the Republic, when these refer to subjects which may be reserved for the law under the terms of Article 63.

In the case of Paragraph 1, the originating Chamber will send the bill in question to the Constitutional Court within five days after the date on which it completes its passage through Congress.

In the case of Paragraph 2, the Court may examine the subject at the request of the President of the Republic, of either of the Chambers or of ten of its members. The Court may also be requested by any person who is a party to a judgment or proceedings pending before an ordinary or special court or immediately the criminal procedure is set in motion, if that person is affected in the exercise of his/her fundamental rights by the provisions of the legal rule in question.

In the case of Paragraph 3, the Court may examine the subject only at the request of the President of the Republic, of either of the Chambers or of a quarter of its members, provided that the request is made before promulgation of the law or dispatch of the notification of the approval of the treaty by the National Congress, and never later than the fifth day from dispatch of the said bill or notification.

The Court must rule within ten days of receiving the request, unless it decides to extend that period by another ten days for serious and justified reasons.

The request will not suspend passage of the bill, but the contested part of the bill may not be enacted until the period concerned has expired, with the exception of the Budget Bill or a bill containing a declaration of war proposed by the President of the Republic.

In the case of Paragraph 4, the question may be raised by the President of the Republic within a period of ten days when the Office of the Comptroller General rejects a decree having the force of law on the grounds of unconstitutionality. It may also be raised by either of the Chambers or by a quarter of its members where the Office of the Comptroller General considers that a decree having the force of law is unconstitutional. This request must be made within thirty days from publication of the relevant decree having the force of law.

In the case of Paragraph 5, the question may be raised at the request of the Senate or Chamber of Deputies within ten days from the date of publication of the decree fixing the date of the plebiscite.

The Court ruling will establish the definitive text of the plebiscite, where appropriate.

If, at the time of issuing the ruling, there are fewer than thirty days left to organise the plebiscite, the Court will set a new date of between thirty and sixty days after the ruling.

In the case of Paragraph 6, the question may be raised by either of the parties or by the judge hearing the case. It will be for either of the Court Chambers to declare the admissibility of the question without further appeal, provided that proceedings are shown to be pending before the ordinary or special court, that application of the contested legal precept may prove decisive for the resolution of a matter, that there are reasonable grounds for the challenge in question and that the other requirements laid down by law are met. The same Chamber must then rule on the suspension of the procedure which gave rise to the action for inapplicability on the grounds of unconstitutionality.

In the case of Paragraph 7, once a legal precept has been declared inapplicable by means of a previous ruling in accordance with Paragraph 6 of this Article, public action will be initiated to require the Court to declare unconstitutionality notwithstanding the latter's power to declare it *ex officio*. The appropriate constitutional organic law must then set out the requirements for admissibility in cases where public action is initiated and must also regulate the procedure that must be followed for *ex officio* action.

In the case of Paragraph 8, the question may be raised by either of the Chambers or by a quarter of its members within thirty days following publication of the disputed text or within sixty days following the date on which the President of the Republic should have enacted the law. If the Court accepts the complaint, it will enact in its verdict the legislation which has not been enacted or will correct the faulty wording.

In the case of Paragraph 11, the Court may examine the matter only at the request of the Senate.

Public action will be initiated to require the Court to respect the powers which it has been given in Paragraphs 10 and 13 of this Article.

Nevertheless, if, in the case of Paragraph 10, the person concerned is the President of the Republic or the President elect, the request must be made by the Chamber of Deputies or a quarter of its members.

In the case of Paragraph 12, the request must be made by any of the authorities or courts under dispute.

In the case of Paragraph 14, the Court can examine the matter only at the request of the President of the Republic or at least ten parliamentarians.

In the case of Paragraph 16, the Court may examine the matter only at the request of either of the Chambers made within thirty days following publication or notification of the disputed text. In the case of defects that do not involve decrees exceeding the autonomous rule-making authority of the President of the Republic, the request may also be made by a quarter of the members.

The Constitutional Court can perform an assessment in full knowledge of the facts when it examines the powers mentioned in Paragraphs 10, 11 and 13, and also when it examines the grounds for resignation of the post of parliamentarian.

In the cases of Paragraphs 10 and 13, as well as Paragraph 2, when required by one party, it will be for a Chamber of the Court to issue a ruling without further appeal on admissibility.

Article 94

There can be no appeal against rulings by the Constitutional Court, although the latter may, in accordance with the law, correct any factual errors which it has committed.

Provisions declared unconstitutional by the Court may not be converted into law in the bill or decree having the force of law.

In the case of Article 93.16, the disputed Supreme Decree will, *ipso jure*, be without effect apart from the ruling by the Court which accepts the complaint. Nevertheless, the provision declared unconstitutional under the provisions of Article 93.2, 93.4 or 93.7 will be regarded as repealed from the time of publication in the Official Gazette of the ruling accepting the complaint, which will have no retroactive effect.

Rulings declaring the unconstitutionality of all or part of a law, a decree having the force of law or a supreme decree or legal rule, as appropriate, will be published in the Official Gazette within three days of their issuance.

...

Chapter X – Office of the Comptroller General of the Republic

Article 99

...

If re-submission occurs in the case of a decree having the force of law, a decree enacting a law or a constitutional reform departing from the approved text, or a decree or resolution on the grounds that it is contrary to the Constitution, the President of the Republic will not be entitled to insist, and if he/she disagrees with the re-submission by the Office of the Comptroller General, he/she must inform the Constitutional Court of the background to the case within ten days in order to enable the Court to settle the dispute.

...



CHILE

The Constitutional Organic Law on the Constitutional Court Law no. 17.997

Decree having force of law no. 5 – Santiago, 1 June 2010.-

Having regard to the provisions of Article 64, sub-Paragraph 5 of the Political Constitution of the Republic, Decree having force of law:

The following revised, harmonised and systematised text of Law no. 17.997, the Constitutional Organic Law on the Constitutional Court is hereby established:

10 August 2010

Chapter I – Organisation, Competence and Functioning of the Constitutional Court

Title I – Organisation of the Constitutional Court

Article 1

The Constitutional Court, as governed by Chapter VIII of the Political Constitution and by this Law, shall be an autonomous State body independent of any other authority or power.

Article 2

The term of office of the members of the Court shall run from the date on which they take office in accordance with the provisions of Article 11 of this Law.

At the end of their term of office the members of the Court may not be re-elected, unless they were elected as a replacement, have held office for less than five years and are under the age of 75.

The Court shall be referred to as “Excellency” and each of its members as “Judge”.

Article 3

The Court may exercise its jurisdiction only at the request of persons or constitutional bodies having legal standing under Article 93 of the Political Constitution of the Republic or of its own motion in

the cases laid down in the Political Constitution of the Republic and in this Law.

Having been lawfully asked to act in relation to matters within its competence, the Court may not decline to exercise its authority, even if there is no law to resolve the matter brought before it.

Article 4

The acts and decisions of the Court shall be public, as shall be its grounds for them and the procedures that it uses. However, by a reasoned decision, approved by two-thirds of its members, the Court may rule that certain documents or files shall be confidential or secret, including documents added to a case file, subject to the provisions of Article 8.2 of the Constitution.

Article 5

The judges [*Ministros*] of the Court shall elect one of their number as President by an absolute majority of votes. If none of the candidates attains the required majority for election, there shall be a new round of voting, which shall be limited to the two candidates having scored the highest number of votes in the previous round. The President shall hold office for two years and may not be re-elected for two consecutive terms.

Article 6

The judges of the Court shall take precedence according to their order of appointment, or of their first appointment where appropriate.

In the event that two judges have held office for the same length of time, their order of precedence shall be determined by the Court in a specially convened vote. An outgoing President shall nonetheless rank first by order of precedence during the subsequent term.

The judge present who ranks next after the President by order of precedence shall serve as substitute for the President, and so on successively.

The substitute for the President of each chamber shall be determined in the same way.

Article 7

In the event that the President of the Court ceases to perform his/her duties before the end of his/her term of office, a replacement shall be elected for the remainder of the term.

Article 8

The duties of the President shall be to:

a) preside over the meetings and hearings of the Court and approach authorities, bodies, entities or persons on the Court's behalf, as necessary;

b) allocate the caseload fairly between the two chambers of the Court, taking into account the nature, complexity and volume of the cases currently before the chambers;

c) form the benches constituting the plenary Court and the chambers in accordance with Article 36 and appoint the reporting judge in cases before the plenary Court;

d) direct the keeping of the Court's records and issue orders and decisions relating solely to the examination of cases before the Court;

e) open and close the sessions of the Court, bring forward or adjourn hearings in the event that an urgent matter so requires and convene the Court in extraordinary session whenever necessary;

f) declare the deliberations closed and put the matters discussed to the vote;

g) cast the deciding vote in the event of a tie, save in matters coming under Paragraphs 6 and 7 of Article 93 of the Political Constitution; and

h) Submit a public annual report on the functioning of the Court.

Article 9

The judge who, in accordance with the provisions of the relevant article presides over the chamber in which the President of the Court does not sit, shall perform the duties laid down in Article 8 during sessions of that chamber insofar as they are applicable.

Article 10

The Court shall appoint a Clerk of the Court [*Secretario*], who must be a lawyer and who, as the certifying officer, shall authenticate all the decisions and other acts of the Court, and shall perform other duties falling to him/her in that capacity and any that are entrusted to him/her.

If the Clerk of the Court is replaced by a Rapporteur [*Relator*] in accordance with the provisions of Article 160, the longest-serving senior officer [*Oficial*]

Primero] may authenticate the decisions and other acts of the Court, after taking the relevant oath or making the relevant solemn declaration.

Article 11

The President and the judges shall take an oath or make a solemn declaration before the Clerk of the Court to uphold the Constitution and the laws of the Republic.

The Clerk of the Court and the Rapporteur shall take their oath of office or make their solemn declaration before the President.

A record of the oath or solemn declaration shall be made in a special register, in which the stamped constituent instrument of the Court shall also be kept along with a record of any changes to its composition.

Before taking the oath or making the solemn declaration, the President and the judges shall provide a sworn statement that they are not affected by any ground of incapacity.

Article 12

Judges shall incur no liability for decisions, orders and reports that they issue in the cases they hear.

Article 13

Judges shall be excused from any personal service obligation that is imposed by law on Chilean citizens.

Judges shall not be obliged to respond to a court summons, save as provided in Articles 361 and 389 of the Code of Civil Procedure and Articles 300 and 301 of the Code of Criminal Procedure .

Article 14

Judges may not practice as lawyers or sit in a judicial capacity, nor may they enter into or guarantee contracts with the State. Similarly they may not act as legal representative in any class of proceedings against the Treasury, either themselves or through the intermediary of any natural or legal person or through a partnership to which they belong, nor may they act as attorneys or agents in specific administrative procedures. Neither may they accept jobs in the public sector, regional ministerial posts or any office or commission of a similar kind, or be directors of a bank or a limited company or hold positions of similar rank in these spheres of activity.

The office of judge shall be incompatible with that of Member of Parliament or Senator and with any office or commission remunerated with funds from the Treasury, municipal authorities, autonomous fiscal entities, semi-fiscal entities, or state-owned enterprises or enterprises to which the Treasury has contributed capital, and with any other office or commission of a similar nature. These provisions shall not apply to teaching positions and any similar offices or commissions in public or private higher, secondary and special education establishments for up to a maximum of twelve hours per week, outside Court hearings. However, teaching shall not be deemed to include tasks that correspond to senior management functions within an academic institution, to which the incompatibility referred to in this sub-paragraph shall apply.

The office of judge shall also be incompatible with the functions of director or board member, even in an honorary capacity, in autonomous fiscal entities, semi-fiscal entities or state-owned enterprises or enterprises to which the State has contributed capital.

Article 15

Without prejudice to the provisions of Article 92 of the Constitution, the members of the Court shall cease to hold office in the following cases:

1. if their resignation is accepted by the Court;
2. on the expiry of their term of office;
3. when they reach the age of 75;
4. where, under the relevant constitutional or legal provisions, an impediment disqualifies the member appointed from performing his/her duties, or
5. in the event of an incompatibility arising under the second sub-paragraph of Article 92 of the Political Constitution.

The provisions of Article 25 of this Law shall apply to members accused of an offence.

Removal from office on the grounds set out in Paragraphs 4 and 5 of this Article shall require the approval of the majority of the serving members of the Court, apart from the member or members concerned, given at a sitting specially convened for the purpose.

Article 16

If any judge ceases to hold office, the President of the Court shall immediately notify the President of the Republic, the Senate, the House of Representatives, or the Supreme Court, as appropriate, for the purposes of appointing a replacement.

If a judge ceases to hold office while a case is being heard by the Court, the other judges shall continue to deal with the matter without the need for a re-hearing, provided that a quorum exists. If the judge ceases to hold office after the decision has been reached, but before it has been pronounced, the judgment shall be signed by the other members and mention shall be made of the judge's situation.

Article 17

Judges and substitute judges of the Constitutional Court shall provide a sworn declaration of their assets as laid down in Articles 60 B, 60 C and 60 D of Law no. 18.575, the Constitutional Organic Law on the General Foundations of State Administration.

The declaration shall be made before the Clerk of the Court, who shall make it available for public consultation.

Failure to submit a declaration of assets within the deadline will attract a fine of ten to thirty monthly tax units. If a judge fails to submit a declaration sixty days after it was due, he/she shall be deemed to be in breach of his/her obligations.

A breach of the obligation to update the declaration of assets shall be sanctioned by a fine of five to fifteen monthly tax units.

The sanctions referred to in the preceding sub-paragraphs shall be applied by the Constitutional Court.

The procedure may be initiated by the Court of its own motion or upon information put forward by one of the judges. Upon the formulation of the charges, the judge concerned shall have the right to contest them within ten working days. If necessary the period for the presentation of evidence shall be eight days. All forms of evidence may be adduced and shall be fairly assessed.

The Court shall give its final decision within ten days of the date on which the last procedural step takes place.

Notwithstanding the provisions of the preceding sub-paragraphs, the judge under scrutiny shall have an

irrevocable period of ten days from the notification of the decision imposing the fine in which to submit the missing declaration or to rectify the declaration submitted. In this event the fine shall be halved.

Article 18

Every three years, in January, two substitute judges shall be appointed who satisfy the requirements to be appointed as a member of the Court. They may replace judges and form part of the plenary Court or of either of the chambers only if the respective quorums required to hold a sitting are not achieved.

The substitute judges referred to in the preceding sub-paragraph shall be appointed by the President of the Republic, with the approval of the Senate, and shall be chosen from a list of seven candidates proposed by the Constitutional Court, following a public competition held under objective, public, transparent and non-discriminatory conditions. The Court shall adopt the list by a single public vote, in which each judge shall have the right to vote for five candidates, with the candidates obtaining the seven highest scores being chosen. The Senate shall give its approval by a two-thirds majority of its serving members at a sitting specially convened for the purpose and in relation to the proposal as a whole. If the Senate fails to approve the proposal made by the President of the Republic, the Constitutional Court shall present a new list, in accordance with the provisions of this sub-paragraph, within sixty days of the rejection, proposing two new names to replace those rejected, with this procedure being repeated until such time as the appointments are approved.

The substitute judges shall be eligible to sit as members of the plenary Court or the chambers by order of precedence decided by public drawing of lots. The decision of the President of the Court appointing a substitute judge to sit as a member of the plenary Court or a chamber shall give reasons and shall be published on the Court's website.

Substitute judges shall be subject to the same prohibitions, have the same obligations and be liable to disqualification for the same reasons as judges, and the conflicts of interest that apply to judges shall also apply them. However, they shall not cease to hold office at the age of 75, nor shall the incompatibility with teaching functions to which Article 14 refers apply to them.

Substitute judges shall devote at least half a day to the tasks of members of the Court and other tasks entrusted to them by the Court and shall receive a monthly salary that is equivalent to fifty percent of a judge's salary.

Article 19

The Court shall sit in the capital of the Republic or, in exceptional circumstances, in any place which the Court itself may determine.

The Court shall fix its ordinary sessions and hearing times, by means of a procedural order [*auto acordado*].

Article 20

Decisions of the Court shall be governed, as appropriate, by the rules established in sub-Section 2 of Title V of the Code on Organisation of the Courts to the extent that they do not conflict with this Law, and votes shall be cast in reverse order to the order of precedence laid down by Article 6. The final vote shall be that of the President.

In the situation provided for in Article 86.2 of the Code on Organisation of the Courts, and in the event that no majority emerges, the opinion for which the President voted shall prevail. If he/she has not voted in favour of any opinion, the matter shall be resolved by the President by means of a reasoned decision.

Article 21

Under no circumstances may the jurisdiction or competence of the Court be challenged. Only the Court, of its own motion, may consider and decide whether it lacks jurisdiction or competence.

Article 22

The fact that a judge has issued a public opinion or a report on a specific case that has now come before the Court shall give rise to a conflict of interest in relation to the matters referred to in Paragraphs 1 to 16 inclusive of Article 93 of the Constitution.

The grounds laid down in Paragraphs 2 and 4 to 7 inclusive of Article 195 of the Code on Organisation of the Courts shall also give rise to a conflict of interest in relation to the matters referred to in Paragraphs 10, 13 and 14 of Article 93, to the extent that they are relevant.

As soon as a judge becomes aware of a potential conflict of interest affecting him/her, he/she shall annotate the case file and the Court shall decide the question of the conflict of interest in his/her absence. If it considers that there is a conflict of interest, the judge concerned shall abstain from hearing the case.

Conflicts of interest may be raised by the judge concerned, by any of the other judges and by constitutional bodies concerned that have become party to the proceedings.

Judges shall not be subject to challenge.

Conflicts of interest may also arise where a judge has a current employment, commercial or corporate relationship with a lawyer or attorney acting in any case before the Court.

The provisions of this article shall apply, as relevant, to the Clerk and the Rapporteurs of the Court.

Article 23

A judge of the Santiago Court of Appeal, whose turn it is to hear the case according to the Court of Appeal's rota, shall hear at first instance any civil cases in which members of the Court are parties or have an interest.

Article 24

From the date of his/her appointment no member of the Court may be charged with an offence or deprived of his/her liberty, save if caught *in flagrante delicto*, unless the Santiago Court of Appeal, in plenary session, has first decided that there is a case to answer. There is a right to appeal against the decision to the Supreme Court.

In the event that any member of the Court is arrested, having been caught *in flagrante delicto*, he/she shall immediately be placed at the disposal of the Santiago Court of Appeal with the corresponding summary investigation report. The Court shall then proceed in accordance with the provisions of the preceding subparagraph.

Article 25

As soon as a binding decision has been issued that a member of the Court has a case to answer in relation to a crime or misdemeanour, the member shall be suspended and shall be brought before the competent court.

In such cases the provisions of Article 18 of the present Law shall apply.

Article 26

If the Court of Appeal issues an enforceable decision that there is no case to answer, the court before which the proceedings are pending shall definitively drop the case against the member concerned.

Article 27

The Court shall have the disciplinary powers laid down in Articles 542, 543, 544 and 546 of the Code on Organisation of the Courts, to the extent that they are not in conflict with this Law.

Article 28

With regard to the offences covered by Paragraph 1 of Title VI of Book Two of the Criminal Code, the Court is deemed to be a High Court of Justice and its members to be members of such courts.

Article 29

The Court, in sittings specially convened for the purpose, may issue procedural orders on matters that do not come within the legal domain and are relevant to the good administration and functioning of the Court.

Title II – Competence and Functioning of the Constitutional Court**Article 30**

The Court shall function as a plenary Court or in two chambers. In the first case the quorum required for the Court to be able to sit shall be at least eight members, and in the second case at least four members. If necessary, either chamber may include judges from the other chamber.

In December each year, in a public session convened for that specific purpose, a committee made up of the President of the Court and its two longest-serving judges shall appoint the judges composing the two chambers of the Court from March of the following year. The President shall preside over the chamber in which he/she sits, and the other chamber shall be presided over by the longest-serving judge present among its members.

Ordinary sessions shall be suspended during the month of February each year.

Extraordinary sessions shall be held when convened by the President of the Court or the President of the respective chamber, on his/her own initiative or at the request of three or more members of the Court, in the case of extraordinary sessions of the plenary Court, or two or more members of the chamber in question, in the case of extraordinary sessions of that chamber.

Each chamber shall represent the Court in the matters with which it deals.

Article 31

The plenary Court shall be responsible for the following matters:

1. reviewing the constitutionality of laws that interpret a rule of the Constitution, of constitutional organic laws or of treaties dealing with matters falling within the ambit of constitutional organic laws before they are promulgated;
2. deciding questions of constitutionality in relation to procedural orders of the Supreme Court, the Courts of Appeal and the Electoral Review Court;
3. deciding questions of constitutionality that arise during the reading of bills, constitutional reform proposals or treaties submitted to Parliament for approval;
4. deciding questions of constitutionality relating to decrees having force of law;
5. deciding questions of constitutionality that arise in relation to the convening of referendums, without prejudice to the powers of the Electoral Review Court;
6. ruling on the inapplicability of a legal rule the application of which in any case before an ordinary or special court conflicts with the Constitution;
7. ruling on the admissibility of a question of unconstitutionality relating to a legal rule declared inapplicable;
8. ruling on the unconstitutionality of a legal rule declared inapplicable in accordance with the provisions of point 6 of this Article;
9. deciding on applications in the event that the President of the Republic fails to enact a law when he/she is required to do so or promulgates a text other than the one that is constitutionally appropriate;
10. at the request of the President of the Republic, in accordance with Article 99 of the Political Constitution, ruling on the constitutionality of a presidential decree or decision that the Office of the Comptroller General of the Republic has referred on grounds of unconstitutionality;
11. ruling on the constitutionality of Supreme Decrees, whatever defect has been raised, including decrees issued under the autonomous regulatory

authority of the President of the Republic where they relate to matters that could be the preserve of the law by virtue of Article 63 of the Political Constitution of the Republic;

12. declaring the unconstitutionality of organisations, movements or political parties, as well as the liability of persons having participated in the events that gave rise to the declaration of unconstitutionality, in accordance with the sixth, seventh and eighth Paragraphs of point 15 of Article 19 of the Political Constitution. However, if the person concerned is the President of the Republic or the President elect, this declaration shall also require the approval of a majority of the serving members of the Senate;

13. reporting to the Senate in the cases referred to in point seven of Article 53 of the Political Constitution;

14. deciding questions of constitutional or legal incapacity that disqualify an individual from being appointed as a Minister of State, continuing to hold such office, or performing other functions simultaneously;

15. determining the admissibility of and deciding questions relating to incapacity, incompatibility and grounds for removing Members of Parliament from office;

16. assessing incapacity raised by a Member of Parliament in accordance with the final sub-paragraph of Article 60 of the Political Constitution and ruling on his/her resignation, and

17. performing the other functions conferred on it by the Political Constitution and this Law.

Article 32

The chambers of the Court shall be responsible for the following:

1. deciding questions of admissibility that do not fall within the competence of the plenary Court;

2. deciding disputes over jurisdiction that arise between political or administrative authorities and the courts, which are not a matter for the Senate;

3. deciding to stay proceedings in which a question of inapplicability due to unconstitutionality has arisen, and

4. performing the other functions conferred on it by the Political Constitution and this Law.

Chapter II – Procedure of the Constitutional Court

Title 1 – General Procedural Rules

Article 33

The processing of cases and matters before the Court shall be subject to the provisions of this Chapter.

Article 34

Proceedings before the Court shall be conducted in writing and applications shall be lodged and actions taken using plain, unstamped paper.

Article 35

The Court may order the joinder of matters or cases with other related matters or cases that justify a single procedure and decision.

Article 36

The Court shall decide on matters referred to it in the order that they come before it, although a matter may be given priority on justified grounds and by means of a reasoned decision.

If the Court decides to make use of the extension of deadlines referred to in the fifth sub-paragraph of Article 93 of the Political Constitution or to avail itself of the possibility of extending the time-limits set out in this Law or by the Court, it shall do so in a decision giving reasons, which shall be issued before the expiry of the time-limits in question.

Article 37

The Court may order the measures it deems appropriate to the case in order to achieve the best possible examination and resolution of the matter being heard.

It may also ask any power, public body or authority, organisation or political movement or party, as the case may be, for any background information or records it deems appropriate, which they shall be obliged to provide in a timely manner.

Article 38

Special provisions within this Law allow the Court, in plenary session or represented by one of its chambers, to order interim measures such as a stay of proceedings. The Court may also, by a reasoned

decision, at a party's request or of its own motion, order interim measures from such time as the application in question is accepted for processing, even before it is declared admissible in cases where such a declaration is required. In the same way, it may invalidate or re-order such interim measures, of its own motion or at the request of a party, as often as necessary, according to the procedural merits.

Article 39

Judgments of the Court must comply, as appropriate, with the requirements of points 1 to 6 inclusive of Article 170 of the Code of Civil Procedure.

Judges who dissent from the majority opinion of the Court shall have their dissent recorded in the judgment.

Article 40

Judgments of the Court shall be published in full on its website or another similar electronic medium, without prejudice to the publications in the Official Gazette required by the Constitution and this Law. The issue of both publications shall be simultaneous.

Decisions on questions of constitutionality raised pursuant to Paragraphs 2, 4, 7 and 16 of Article 93 of the Constitution shall be published in full in the Official Gazette. Other judgments that have to be published shall be published in summary form, with the summary containing at the very least the operative part of the judgment.

The following, at least, shall also be published on the Court's website: decisions that bring proceedings to an end or make their prosecution impossible, a list of cases received and the date of receipt, the composition of the chambers and the plenary Court, the appointment of a Rapporteur, designation of the chamber that has to decide on the admissibility of an application and the reporting judge, the minutes of sessions and the decisions of the plenary Court.

Decisions shall be published in the Official Gazette within three days from their date of delivery.

Article 41

No appeal shall lie against decisions of the Court. The Court may amend its decisions of its own motion or at the request of a party only if a factual error has been made which requires such amendment.

An Amendment at the request of a party shall be requested within seven days from the notification of the decision in question. The Court shall rule on the request directly.

Article 42

In cases where a question submitted to the Court is pursued through a public action or by a party to the proceedings or judicial process in which the inapplicability of a legal rule or the unconstitutionality of a procedural order is being sought, the natural or legal persons pursuing it shall, on first submitting the application to the Court, provide a known address within the province of Santiago. The application shall be sponsored and signed by a lawyer authorised to practice.

Decisions handed down in the proceedings referred to in the previous sub-paragraph shall be notified by registered post to the party or its representative.

Final judgments shall be notified personally or, if that is not possible, by service of documents to the address that a party has provided. In both cases the notification shall be given by a certifying officer appointed by the Court.

Communications referred to in this Law that have to be given to the constitutional bodies concerned or to parties to proceedings shall be made by means of an official letter.

A record of these actions or measures shall be made in the case file.

The date of notifications given by registered letter and by means of the communications referred to herein shall, for all legal purposes, be the third day following their despatch.

In the case of the House of Representatives and the Senate, official letters shall be sent to their respective Presidents, who shall be obliged to report to their respective Chambers at the first subsequent session. They shall be deemed to have been officially received and shall take effect once they have been so reported. In the case of the President of the Republic, official letters shall be sent through the intermediary of the Ministry of the Secretariat General of the Presidency and shall be deemed to have been officially received and shall take effect once they have been received by the registry of the said Ministry.

The Court may however authorise other forms of notification, which may be requested upon their first appearance by any of the bodies or persons coming before it. The particular form of notification that is authorised shall be applicable only to the person requesting it and, in any event, a record of each action shall be made in the respective case file on the day on which it is carried out.

Article 43

The Court shall hear submissions in the cases referred to in Paragraphs 2, 6, 8, 9, 10, 11, 14 and 15 of Article 31. In all other cases the Court may order submissions to be heard.

The duration, form and conditions of submissions shall be established by the Court by means of a procedural order.

In cases where submissions are heard the hearing shall be public.

Article 44

The bodies and persons having legal standing shall be those bodies and persons that have the legal capacity to pursue before the Court each of the questions and matters coming within its jurisdiction in accordance with Article 93 of the Political Constitution of the Republic.

The constitutional bodies concerned shall be those bodies that may intervene in each of the questions raised before the Court in accordance with this Law, either to defend the exercise of their powers or to defend the existing legal order.

The parties to proceedings before the Court shall be the body or bodies and the person or persons who, having the constitutional standing to do so, have raised a question before the Court, together with the other parties to a pending judicial process or proceedings in which a question of inapplicability of a legal rule or unconstitutionality of a procedural order has been raised. The constitutional bodies concerned who are entitled to intervene in a matter and who express the wish to be treated as a party within the period conferred on them for making observations and presenting background information may also be parties.

Article 45

To the extent that they are relevant, the rules contained in Titles II, V and VII of Book One of the Code of Civil Procedure shall also be applicable, as long as they do not conflict with this Law.

Time-limits established herein in days shall be computed by reference to days elapsed and shall not be stayed during public holidays. In no case shall the expiry of a time-limit laid down for an action or a decision of the Court prevent the Court from issuing an order or a decision at a later date.

In cases in which this Law sets time-limits for the Court to accept a case, to rule on its admissibility and to issue a judgment, such time-limits shall run from the date when the matter is brought before the chamber or the plenary Court, as the case may be, or from when the case is ready for judgment, where appropriate.

Article 46

Until such time as the case has been declared admissible, questions raised before the Court by bodies or persons having legal standing to do so may be withdrawn by whoever raised them and shall be treated as not having been submitted.

The withdrawal of their signatures by Members of Parliament who have lodged a question with the Court shall have the effect laid down in the preceding sub-paragraph, provided that the withdrawal takes place before the case is referred to the plenary Court or the chamber, as the case may be, and provided that, due to the number of signatures withdrawn, the application no longer meets the quorum required by the Political Constitution of the Republic.

Once a case has been declared admissible, such bodies and persons may indicate to the Court that they wish to withdraw it. If they do so, notice of the case's withdrawal shall be given to the parties and shall be communicated to the constitutional bodies concerned, giving them a period of five days in which to make any observations they deem relevant.

The case's withdrawal shall be decided and shall have the effects provided for in the relevant rules of Title XV of Book One of the Code of Civil Procedure, to the extent that they are applicable.

Article 47

The abandonment of proceedings shall be possible only in the case of the questions of inapplicability referred to in Article 93.6 of the Political Constitution of the Republic, which have been pursued by a party to the pending proceedings or judicial process in which the challenged rule is to be applied.

Proceedings shall be deemed abandoned if all parties to them have ceased to prosecute them for three months, starting from the date of the last decision in relation to any process serving to advance the case.

The party that has pursued the question of unconstitutionality shall not be able to claim that the proceedings have been abandoned. If, once the proceedings are resumed, the other parties take any measure not aimed at claiming that the proceedings

have been abandoned, they shall be deemed to have waived this right.

Once abandonment is alleged, the Court shall give notice to the other parties and inform the constitutional bodies concerned, allowing them a period of five days in which to submit any observations they deem relevant.

A declaration by the Court that the proceedings have been abandoned shall have the effects provided for in Title XVI of Book One of the Code of Civil Procedure.

Title II – Special Procedural Rules

Paragraph 1 – Mandatory Review of Constitutionality

Article 48

In the case of Article 93.1 of the Constitution, the President of the originating Chamber of Parliament shall be responsible for sending to the Court the drafts of laws that interpret a rule of the Constitution, constitutional organic laws and treaties dealing with matters falling within the ambit of constitutional organic laws.

The five-day time-limit referred to in the second subparagraph of Article 93 of the Constitution shall run from the date when the bill or treaty in question has been fully dealt with by Parliament, which shall be certified by the Clerk of the originating Chamber of Parliament.

If during the debate on the bill or treaty a question arises as to the constitutionality of one or more of its provisions, the Court shall also be sent the minutes of the sessions of the Chamber of Parliament or committee or the official record of the President of the Republic, as the case may be, setting out the question of constitutionality that has been debated or raised.

Article 49

Once the Court has received the communication, the President shall order the case file to be prepared and the matter is ready to be decided.

After the hearing has taken place the Court shall decide on the constitutionality of the bill or the respective treaty provisions within a period of thirty days, which may be extended by up to a further fifteen days in specific cases by means of a reasoned decision.

If the Court decides that the bill in question is constitutional, and provided that the situation contemplated in the final paragraph of the preceding Article has not arisen during the deliberations stage, the Court shall make a declaration to that effect and its President shall communicate the decision to the originating Chamber of Parliament.

In the case of a law interpreting the Constitution, the reasons for the decision shall always be given.

If the Court decides that the bill is constitutional and the situation contemplated in the final subparagraph of the preceding Article has arisen, the Court shall declare the constitutionality of the bill, giving reasons for the decision by reference to the provisions questioned during its reading.

If the Court holds that one or more provisions of the bill are unconstitutional, it shall issue a declaration to that effect by means of a reasoned decision, the full text of which shall be sent to the originating Chamber of Parliament.

If the Court decides that one or more provisions of a treaty are unconstitutional, it shall issue a declaration to that effect, by means of a reasoned decision, the full text of which shall be sent to the originating Chamber of Parliament. In the event of complete unconstitutionality the President of the Republic shall be prevented from ratifying and promulgating the treaty. In the event of partial unconstitutionality the President of the Republic shall be empowered to decide whether the treaty shall be ratified and enacted without the impugned provisions, provided this is permissible under the provisions of the treaty itself and the general rules of international law.

Article 50

Once the Court has carried out its constitutional review, the originating Chamber shall send the bill to the President of the Republic for enactment, excluding those provisions that have been declared unconstitutional by the Court.

In the case of an international treaty part of which has been declared unconstitutional, the decision taken by Parliament, with the corresponding quorum, shall be communicated, along with the provisions that have been held to be unconstitutional, so that the President of the Republic can decide whether to make use of the power referred to in the final subparagraph of the preceding Article.

Article 51

Once the Court has ruled on the constitutionality of the provisions of a treaty or a draft constitutional organic law or a bill interpreting a rule of the Political Constitution in the conditions set out in the preceding Articles, no application to decide questions of constitutionality in relation to those draft instruments or one or more of their provisions shall be accepted by the Court.

Once the Court has decided that a provision of a law is constitutional, it may not be declared inapplicable by reason of the same defect as raised in the proceedings and the respective judgment.

Paragraph 2 – Questions of Constitutionality in relation to Procedural Orders**Article 52**

In the case of Paragraph 2 of Article 93 of the Political Constitution of the Republic, the bodies having legal standing shall be the President of the Republic, either of the Chambers of Parliament or ten of their currently serving members; and the persons having legal standing shall be persons who are parties to a judicial process or proceedings pending before an ordinary or special court or who, from the first measure in a criminal procedure, are affected in the exercise of their fundamental rights by the provisions of a procedural order. The application shall be lodged in the form indicated in sub-paragraph one of Article 63 and shall be accompanied by the procedural order in question, with a specific indication of the Section being challenged and the grounds for the challenge. If the application is lodged by a person having legal standing it shall also specifically mention the manner in which the provisions of the procedural order affect the exercise of his/her fundamental rights.

The lodging of the application shall not suspend the implementation of the procedural order being challenged.

Article 53

Once the application has been lodged, the relevant chamber shall examine whether it complies with the requirements laid down in the preceding Article and, in the event that it does not do so, it shall not be accepted and shall be treated, for all legal purposes, as not having been lodged. A decision not to accept an application shall be reasoned and shall be issued within three days from the date when the application is lodged.

However, in the case of defects of form or the omission of background information that should accompany an application, the Court shall, in the same decision as referred to in the preceding sub-paragraph, allow the parties concerned three days in which to cure the defects of form or provide the information. Should they fail to do so, the application shall be treated, for all legal purposes, as not having been lodged.

Article 54

Within five days of the acceptance of the application, the Court shall rule on its admissibility or inadmissibility. If the petitioner asks to make submissions on admissibility and if, pursuant to the provisions of Article 43, the Court allows this request, it shall refer this matter, for three days, to the court that issued the impugned procedural order and to the bodies and persons having legal standing.

It shall proceed to declare the question of unconstitutionality inadmissible in the following cases:

1. if an application has not been lodged by a person or body having legal standing;
2. if it relates to a procedural order, or one of its provisions, that has been found to be constitutional in an earlier judgment issued in accordance with this paragraph and the defect relied on is the same defect that was the subject of that judgment;
3. if there is no pending judicial process, proceedings or criminal action in cases where the question is raised by a party or person having legal standing under the Constitution, and
4. if there is no indication of the manner in which the procedural order affects the exercise of the petitioner's constitutional rights, in cases in which the question is raised by a party or person having legal standing under the Constitution.

Once the application has been declared inadmissible by means of a reasoned decision, the decision shall be notified to the petitioner and the application shall be treated, for all legal purposes, as not having been lodged.

Article 55

Once the application has been declared admissible, this decision shall be communicated to the Supreme Court, the Court of Appeal or the Electoral Review Court that issued the challenged procedural order and, where applicable, to the court dealing with the pending judicial process or proceedings and shall be notified to the parties to the process or proceedings. They shall be

sent a copy of the application so that within a period of ten days they can submit to the Court any observations or background information they deem relevant.

Once an application has been declared admissible, the decision shall be notified to the petitioner.

No appeal shall lie against the decision that declares the application admissible or inadmissible.

Article 56

Once the procedural steps referred to above have been completed, or once the time-limits for completing them have expired, the Court shall proceed in accordance with the provisions of Article 68. The time-limit for issuing judgment shall be thirty days from the conclusion of the case's processing. This time-limit may be extended by up to a further fifteen days by a reasoned decision of the Court.

Article 57

In exceptional circumstances and on justified grounds, the Court may declare that the provisions challenged are unconstitutional solely on the basis of constitutional grounds other than the ones invoked by the parties. In such a case it shall draw their attention to the application of this possible constitutional rule that has not been invoked and thus allow them to refer to it. This notification may be given at any Stage in the proceedings, including at the hearing itself, where appropriate, and may also be used as a means of better resolving the matter at issue.

Article 58

A decision declaring all or part of a procedural order unconstitutional shall be published in the Official Gazette within three days of its being issued. From the date of such publication the procedural order, or the part of it that has been declared unconstitutional, shall be deemed to have been set aside. This shall not have retroactive effect.

Article 59

Once the Court has ruled on the constitutionality of a procedural order, no application to determine questions of constitutionality in relation to it shall be accepted, unless it relies on a defect other than the one previously raised.

Article 60

Where an application is lodged by a party to a judicial process or proceedings pending before an ordinary or special court, the Court shall order costs against the

natural or legal person who requested its intervention if the application is dismissed in the final judgment. However, the Court may release petitioners from liability for costs where they had plausible grounds for bringing the action, and an express ruling to this effect shall be made in its decision.

For the purposes of costs the provisions of Article 104 of this Law shall apply.

Paragraph 3 – Questions of Constitutionality in relation to Bills, Proposed Constitutional Reforms and Treaties Before Parliament

Article 61

In the case of Article 93.3 of the Political Constitution of the Republic, the bodies having legal standing shall be the President of the Republic, either of the Chambers of Parliament or a quarter of their current serving members.

An application by the President of the Republic shall also bear the signature of the relevant Minister of State.

If the petitioner is one of the Chambers, the application shall be signed by the respective President and authenticated by the Clerk.

If the application originates from a quarter of the serving members of either Chamber, it may be made via the Clerk of the respective Chamber or directly to the Court. In both cases the Members of Parliament shall sign it and their signature shall be authenticated by the Clerk referred to above or by the Clerk of the Court. It shall always be established that the signatories constitute at least the number of Members of Parliament required by the Constitution. The application shall also designate one of the signatory Members of Parliament as the petitioners' representative when it comes to dealing with their complaint.

Article 62

For the purposes of determining the time-limit for lodging the application, the enactment shall be deemed to have been done by the President of the Republic when the respective enacting decree is received by the registry of the Office of the Comptroller General of the Republic.

Under no circumstances shall applications lodged subsequently be accepted. Applications relating to treaties also shall not be accepted if they are lodged more than five days following the notification of the treaty's approval by Parliament.

Article 63

The application shall contain a clear explanation of the facts and legal principles on which it is based. The question of constitutionality shall be precisely formulated and, where appropriate, the alleged defect or defects of unconstitutionality shall be stated, with an indication of the provisions that are deemed to have been infringed.

The application shall be accompanied, as the case may be, by complete copies of the minutes of meetings of the Chamber or committee in which the problem was dealt with and of the instruments, documents and other background information relied upon.

In all cases it shall be accompanied by the draft bill, proposed constitutional reform or treaty, with a precise indication of the Section challenged.

Article 64

Once the application has been received by the Court, it shall notify the President of the Republic of the existence of the challenge so that he/she can refrain from enacting the relevant part of the bill, subject to the exceptions set out in sub-paragraph 6 of Article 93.6 of the Political Constitution.

Article 65

If the application fails to meet the requirements of Article 63, it shall not be accepted and shall be treated, for all legal purposes, as not having been lodged. The decision not to accept it shall give reasons, shall be issued within two days of its referral to the Court and shall be notified to the petitioner.

However, in the case of defects of form or the omission of background information that should accompany the application, the Court shall, in the same decision as is referred to in the preceding sub-paragraph, allow the parties concerned three days in which to cure the defects of form or provide the information. Should they fail to do so, the application shall be treated, for all legal purposes, as not having been lodged.

If the time-limit indicated in the previous sub-paragraph expires without the defects in the application having been cured or the background information having been provided, the Court shall inform the President of the Republic thereof so that he/she can proceed to enact the Section of the bill that was challenged.

Article 66

Within five days of the acceptance of the application, the Court shall rule on its admissibility. If the petitioner asks to make submissions regarding admissibility and if, pursuant to the provisions of Article 43, the Court allows this request, it shall refer this matter, for two days, to the bodies having legal standing.

It shall proceed to declare an application inadmissible in the following cases:

1. if it has not been lodged by a body having legal standing to do so; and
2. if the question is raised after expiry of the time-limits indicated in Article 62.

Once the application has been declared inadmissible by means of a reasoned decision, the decision shall be notified to the petitioner and the application shall be treated, for all legal purposes, as not having been lodged.

Article 67

The application shall be deemed to have been received from the date on which it is declared admissible and shall be decided within ten days, without prejudice to the extension of the time-limit provided for in sub-paragraph 5 of Article 93 of the Political Constitution of the Republic. Once it has been declared admissible the constitutional bodies concerned shall be informed thereof and a copy of the decision shall be sent to them. They shall have five days, from the date of this notification, to submit to the Court any observations and background information they deem necessary. After this time-limit has expired the Court shall proceed, with or without a response. Solely for this purpose the notification shall be deemed to have been made when it is received by the registry of the House of Representatives, the Senate or the Ministry of the Secretariat General of the Presidency.

Article 68

Once the above procedural stages or steps have been completed, the President shall order the preparation of the case-file and the case is deemed ready for hearing.

Once the case has been heard and agreement has been reached, the reporting judge shall be appointed.

Article 69

In exceptional circumstances and on justified grounds, the Court may declare that the provisions challenged are unconstitutional solely on the basis of constitutional grounds other than the ones invoked by the parties. In such a case it shall draw their attention to the application of this possible constitutional rule that has not been invoked and thus allow them to refer to it. This notification may be given at any Stage in the proceedings, including at the hearing itself, where appropriate, and may also be used as a means of better resolving the matter at issue.

Article 70

Judgments shall be notified to the petitioner and, where appropriate, the President of the Republic, the Senate, the House of Representatives and the Office of the Comptroller General of the Republic, for all relevant purposes.

Article 71

Once the Court has declared the constitutionality of a legal provision challenged in accordance with this paragraph, it may not subsequently rule it inapplicable for the same defect as was raised in the earlier proceedings and the respective judgment.

Paragraph 4 – Questions of Constitutionality in relation to Decrees Having Force of Law**Article 72**

In the case of Article 93.4 of the Political Constitution of the Republic, the bodies having legal standing shall be the President of the Republic, either of the Chambers of Parliament or a quarter of their currently serving members.

The examination of questions of constitutionality in relation to decrees having force of law shall be governed by the following Articles and, to the extent relevant, by the provisions of Paragraph 3.

Article 73

In order to be accepted, the application shall comply with the requirements of Article 63 and be accompanied by the decree having force of law that is being challenged or the version thereof published in the Official Gazette.

Where the application is made by the President of the Republic, the official document designating as

representative the Office of the Comptroller General of the Republic shall be attached.

If the application is made by the President of the Republic, the time-limit laid down in sub-paragraph 7 of Article 93 of the Constitution shall start to run from the moment when the originating Ministry receives the official document designating the Office of the Comptroller General of the Republic as representative.

If the application fails to meet the requirements of Article 63 it shall not be accepted and shall be treated, for all legal purposes, as not having been lodged. The decision shall be issued within three days of this finding and shall be notified to the petitioner. Reasons shall be given for any non-acceptance.

However, in the case of defects of form or the omission of background information that should accompany the application, the Court shall, in the same decision as is referred to in the preceding sub-paragraph, allow the parties concerned three days in which to cure the defects of form or provide the information. Should they fail to do so, the application shall be treated, for all legal purposes, as not having been lodged.

Article 74

Within five days of accepting the application, the Court shall rule on its admissibility in accordance with the provisions of Paragraph 3. If the petitioner asks to make submissions regarding admissibility and if, pursuant to the provisions of Article 43, the Court allows this request, it shall refer the question of admissibility to the bodies having legal standing for five days.

It shall proceed to declare an application inadmissible in the following cases:

1. if it has not been lodged by a person or body having legal standing;
2. if the matter is raised out of time; and
3. if a matter raised by one of the Chambers or a quarter of its current serving members is based on arguments of legality.

Article 75

Once the question has been declared admissible, the constitutional bodies concerned shall be notified and shall have ten days to make any observations or provide any background information they deem relevant.

The judgment shall be issued within thirty days of the finding of admissibility.

This time-limit may be extended by up to a further fifteen days by a reasoned decision of the Court.

Article 76

A judgment dealing with a question raised by the President of the Republic shall be notified to the Office of the Comptroller General of the Republic so that it can immediately take account of the relevant decree having force of law.

A judgment dealing with a question in respect of all or part of a decree having force of law, which the Office of the Comptroller General of the Republic has taken into account, shall be published in the form and within the time-limit indicated in Article 40. The provision in question shall be deemed to have been repealed with effect from the date of publication, without retroactive effect.

...



MEXICO Constitution

5 February 1917

– extracts –

...

Chapter Four – The Judicial Branch

Article 94

The exercise of the Judicial Branch of the Federation is vested on the Nation's Supreme Court of Justice, in an Electoral Tribunal, in Collegiate and Unitary Circuit Courts, and in District Courts.

Management, supervision and discipline of the Judicial Branch of the Federation, with the exception of the Nation's Supreme Court of Justice, shall be entrusted to the Federal Judicial Council, under the terms established by the Law, in accordance with the bases set forth in this Constitution.

The Nation's Supreme Court of Justice shall be composed with eleven Justices and shall function in Full Court or in Chambers.

In accordance with the terms provided by the Law, the sessions in Full Court and in Chambers shall be public, and by exception, when public interest or public morals should so require it, the sessions shall be secret.

The jurisdiction of the Supreme Court, its operation in Full Court or in Chambers, the jurisdiction of Circuit Courts, District Courts and of the Electoral Tribunal, as well as the liabilities in which the public officers of the Judicial Branch of the Federation may incur, shall be governed by the provisions set forth in the laws, in accordance with the bases established in this Constitution.

The Federal Judicial Council shall establish the number, circuit division, territorial jurisdiction and, as appropriate, the specialisation by subject matter of Collegiate Courts, Unitary Circuit Courts and District Courts.

It shall likewise establish, by means of general decrees, Circuit Plenary Courts according to the number and specialisation of the Collegiate Courts belonging to each Circuit. Their composition and functioning shall be determined by law.

The Supreme Court of Justice in Full Court shall have powers to issue general decrees, with the aim of attaining an adequate distribution among the Chambers, of the affairs under the jurisdiction of the Court, as well as to remit to Collegiate Circuit Courts those cases where it shall have established binding judicial precedents for their prompt dispatch, or such cases which the Court decides to forward, in accordance with such decrees, for a better dispensation of justice. Said decrees shall be in force upon their publication.

Amparo proceedings, constitutional disputes and actions for unconstitutionality shall be conducted and decided as a matter of priority if either of the Chambers of Congress, via its President, or the Federal Executive, through the government's legal adviser, establishes the need for urgency having regard to the social interest and public order, in accordance with the provisions of the regulatory laws.

The Law shall determine the terms under which binding judicial precedents established by the courts of the Judicial Branch of the Federation shall be mandatory in respect to the interpretation of the Constitution, federal or local laws and regulations, and international treaties celebrated by the Mexican State, as well as the requirements for its interruption and amendment.

The remuneration received by the Justices of the Supreme Court, Circuit Magistrates, District Judges and Councillors of the Council of the Federal Judiciary, as well as the Electoral Magistrates, may not be reduced during their term in office.

The Justices of the Supreme Court shall hold their office for a term of fifteen years, and may only be removed therefrom in accordance with the terms set forth by Title Fourth of this Constitution. Justices shall be entitled to a retirement payment at the end of their term.

No individual who has been a Justice may be appointed for a new term, unless he has held the office in a provisional or interim character.

Article 95

To be elected Justice of the Nation's Supreme Court of Justice, it is required:

I – To be a Mexican citizen by birth with legal capacity to exercise his political and civil rights;

II – To be at least thirty five years old on the day of the appointment;

III – To have held on the day of the appointment, a professional Law degree, for a minimum of ten years, issued by an authority or institution legally empowered theretofor;

IV – To have a good reputation and not have been convicted for a crime punishable by imprisonment for more than one year; but should the crime have been robbery, fraud, forgery, embezzlement or any other which would seriously hurt good reputation as the public perceives it, he shall be disqualified for office whatever the penalty may have been;

V – To have resided within the country for the last two years previous to the day of the appointment; and

VI – Not to have been State Secretary, Attorney General of the Republic or Attorney General of the Federal District, Senator, Federal Deputy or Governor of a State or Head of Government of the Federal District, in the year previous to the day of the appointment.

The appointment of Justices must preferably go to those individuals who have served with efficiency, capacity and honesty in the dispensation of justice, or who have distinguished themselves for their honorability, proficiency and a good professional record in the exercise of legal activities.

Article 96

In order to appoint Justices to the Supreme Court of Justice, the President of the Republic shall submit three candidates to the Senate. The latter, upon previous appearance of the individuals proposed, shall designate the one of them, who shall fill the vacancy. The appointment shall be made by the vote of two-thirds of the Senators present in the respective session, within a term of thirty days which may not be extended. Should the Senate not decide within such term, the position shall be filled by the individual appointed by the President of the Republic from the aforesaid group of three candidates previously submitted.

In the event that the Senate should reject all three candidates proposed, the President of the Republic shall submit a new group of three candidates under the terms of the previous paragraph. Should this second group of candidates be also rejected, the position shall be filled by the individual appointed by the President of the Republic from the aforesaid group of three candidates proposed.

Article 97

Circuit Magistrates and District Judges shall be appointed and assigned to their jurisdiction by the Council of the Federal Judiciary on the grounds of objective criteria and in accordance with the requirements and procedures set forth by the Law. They shall hold office for six years, upon which, should they be ratified or promoted to higher offices, they may only be removed therefrom in the cases and in accordance with the procedures established by the Law.

The Nation's Supreme Court of Justice may require the Federal Judicial Council to investigate the conduct of a Federal Judge or Magistrate.

(Repealed)

The Supreme Court of Justice shall appoint and remove its clerk and all other officers and employees. The Magistrates and Judges shall appoint and remove their respective officers and employees of Circuit Courts and District Courts, in accordance with the provisions set forth by the Law in respect to the judicial career.

Each fourth year period, the Nation's Supreme Court of Justice in Full Court, shall elect from amongst its members one of them to act as its President, who may not be reelected for the next immediate term. Each Justice of the Supreme Court of Justice when taking office shall take oath before the Senate in the following manner:

President: "Do you solemnly swear to faithfully and patriotically execute the office of Justice of the Nation's Supreme Court of Justice which has been vested upon you, and to uphold and enforce the Political Constitution of the United Mexican States and the laws enacted under its authority, pursuing in all matters the welfare and prosperity of the Union?"

Justice: "Yes, I do swear."

President: "Should you fail to do so, may the Nation demand it from you."

The Circuit Magistrates and District Judges shall take oath before the Supreme Court of Justice and the Federal Judicial Council.

Article 98

Whenever the absence of a Justice should exceed one month, the President of the Republic shall submit the appointment of an interim Justice to the Senate's approval, under the terms set forth in Article 96 of this

Constitution. Should a Minister be absent by cause of death or for any other final cause of removal, the President shall submit for the Senate's approval a new appointment under the terms set forth in Article 96 of this Constitution.

The resignations of Justices of the Supreme Court of Justice shall only be admitted for serious causes. Resignations shall be submitted to the President of the Republic and if the latter accepts them, he shall send them to the Senate for approval.

The leaves of absence of Justices, when they do not exceed one month, may be granted by the Nation's Supreme Court of Justice. Those exceeding such term shall be granted by the President of the Republic with approval of the Senate. No leave of absence may exceed a term of two years.

Article 99

Except for the provisions in Section II of Article 105 of this Constitution, the Electoral Tribunal shall be the highest jurisdictional authority on the subject matter and shall constitute a specialised body of the Judicial Branch of the Federation.

To exercise its powers, the Electoral Tribunal shall operate through a Superior Chamber as well as through Regional Chambers and its sessions to pass judgment shall be public, in accordance with the terms set forth by the Law. The Tribunal shall be staffed with the legal and administrative personnel needed to operate adequately.

The Superior Chamber shall be composed with seven Electoral Magistrates. The Chief Magistrate of the Court shall be elected by the Superior Chamber, from amongst its members, to hold said office for a term of four years.

The Electoral Tribunal shall have the power to decide in a final and incontestable manner, subject to the terms set forth in this Constitution, and abiding by the provisions established by the Law, the following issues:

I – Contests submitted against federal elections for deputies and senators;

II – Contests submitted against the election of the President of the United Mexican States which shall be decided by the Superior Chamber in one single instance;

The Superior Chamber and the Regional Chambers shall declare the nullity of an election only by the causes expressly established by the laws.

Upon deciding any contests brought forth against the election for President of the United Mexican States, the Superior Chamber shall make the final computations thereof and shall thereafter make the declaration of validity of the election and the declaration of Elected President in respect to the candidate who shall have obtained the largest number of votes;

III – Contests submitted against acts and resolutions by federal electoral authorities, different from the ones set forth in the previous two sections, that infringe constitutional or legal provisions;

IV – Contests submitted against final and conclusive resolutions or acts by State authorities with jurisdiction to organise and qualify elections, or to decide the disputes arising during elections, which outcome may determine the development of the respective process or the final result thereof. This procedure shall be admissible only when the remedy requested is substantially and legally possible within electoral terms, and provided it is feasible to implement it before the date constitutionally or legally set forth for the installation of the elected government bodies or for the taking of office of the individuals elected;

V – Contests submitted against actions and resolutions infringing the electoral rights of citizens to vote, to be voted, and to freely and pacifically affiliate in order to participate in the political affairs of the country, under the terms provided by this Constitution and the laws;

In order to be able to bring a case before the Tribunal for violation of his or her rights by the political party to which he or she is affiliated, a citizen must have first exhausted the conflict resolution procedures provided for under its internal regulations. The applicable rules and time-limits shall be established by law.

VI – Labour disagreements or conflicts between the Electoral Court and its employees;

VII – Labour disagreements or conflicts between the Federal Electoral Institute and its employees;

VIII – Determination and imposition of penalties from the Federal Electoral Institute to political groups or parties or natural or artificial persons, national or foreign, who infringe this Constitution and the laws, and

IX – Any others set forth by the Law.

The Chambers of the Electoral Tribunal shall use every necessary means of pressure to have their sentences and resolutions rapidly fulfilled, in the terms set forth by the Law.

Notwithstanding the prevision of Article 105 of this Constitution, the Chambers of the Electoral Tribunal can determine not to apply electoral laws which are contrary to this Constitution. All sentences delivered when exercising this faculty shall refer to the specific case to which the process is about. In such cases the Superior Chamber shall inform the Supreme Court of Justice of the Nation.

When a Chamber of the Electoral Tribunal should uphold a judicial precedent regarding the unconstitutionality of an act or resolution or the interpretation of a provision of this Constitution and this precedent were inconsistent with another upheld by the Chambers of the Supreme Court of Justice or by the latter operating in Full Court, any of the Justices, the Chambers or the parties, may denounce the contradiction according to the terms established by the Law, so that the Nation's Supreme Court of Justice in Full Court may finally decide which precedent must prevail. The resolutions adjudged in accordance with this premise shall not affect the cases already decided.

The organisation of the Tribunal, the jurisdiction of the Chambers, the procedures to decide the affairs under its jurisdiction, as well as the mechanisms to establish binding judicial precedents in the subject matter, shall be the ones established by this Constitution and the laws.

The Superior Chamber can, by itself, at the request of a party or some of the Regional Chambers, to attract the cases tried by said Chambers; also, it can send the matters of its own cognizance to the Regional Chambers to be tried and resolved. The Law shall set forth the rules and proceeding for exercising such faculties.

In accordance with the terms provided by the Law, the administration, supervision and discipline of the Electoral Tribunal shall pertain to a Committee of the Federal Judicial Council, which shall be composed by the Chief Magistrate of the Electoral Tribunal, who shall act as chairman thereof, one Electoral Magistrate from the Superior Chamber, selected by drawing, and by three members of the Federal Judicial Council. The Electoral Tribunal shall propose its budget to the Chief Justice of the Nation's Supreme Court of Justice, so that it may be included in the Budget Draft of the Judicial Branch of the Federation. Likewise, the Electoral Tribunal shall issue its internal regulations and any general decrees it should require to operate adequately.

The Electoral Magistrates composing the Superior Chamber and the Regional Chambers shall be elected by the vote of two thirds of the Senators

present, or in the adjournments thereof, by the Permanent Commission, upon proposal submitted by the Nation's Supreme Court of Justice. The Law shall establish the corresponding rules and procedure.

The Electoral Magistrates constituting the Superior Chamber must fulfill the requirements established by the Law, which may not be less than those required to hold the office of justice of the Nation's Supreme Court of Justice, and they shall remain in office for a term of nine years which is non extendible. The resignations, absences and leaves of absence of the Electoral Magistrates of the Superior Chamber shall be processed, covered and granted by said Chamber, as applicable, in accordance with the terms of Article 98 of this Constitution.

The Electoral Magistrates composing the Regional Chambers must comply with the requirements set forth by the Law, which may not be less than those required to be Magistrate of Collegiate Circuit Courts. They shall hold their office for a non extendible term of nine years, unless they are promoted to higher offices.

In case of a definitive vacancy a new Magistrate shall be appointed for the remaining of the time of the original appointment.

The labour relationships of the Tribunal's personnel shall be governed by the provisions applicable to the Judicial Branch of the Federation and by the special rules and exceptions set forth by the Law.

Article 100

The Federal Judicial Council shall be a body of the Judicial Branch of the Federation, which shall have technical and operational independence and shall also be independent to issue its resolutions.

The Council shall be composed by seven members of which, one shall be the Chief Justice of the Supreme Court of Justice, who shall also be the chairman of the Council; by three Councillors appointed by the Supreme Court in Full Court, by a majority of at least eight votes, from amongst the Circuit Magistrates and District Judges; two Councillors appointed by the Senate and one by the President of the Republic.

All the Councillors must comply with the requirements provided under Article 95 of this Constitution and be individuals distinguished for their professional and administrative capacity, their honesty and the honorable performance of their activities, in the case of the individuals appointed by the Supreme Court, they must also be professionally well reputed within the scope of the judiciary.

The Council shall function in Full Court or in committees. When it is functioning in Full Court it shall decide the designation, adscription, ratification and removal of Magistrates and Judges, as well as any other issues established by the Law.

Save for the chairman of the Council, the remaining Councillors shall hold their office for five years. They shall be replaced in a subsequent manner, and shall not be designated for a new term.

The Councillors do not represent the institutions appointing them, therefore, they shall perform their duties in an independent and impartial manner. During their term in office they may only be removed in accordance with the terms set forth under Title Fourth of this Constitution.

The Law shall establish the principles to improve and advance the professional education and knowledge of officers, as well as for the development of the judicial career, which shall be governed by the principles of excellence, objectivity, impartiality, professionalism and independence.

According with the provisions established by the Law, the Council shall be empowered to issue general decrees to adequately exercise its duties. The Supreme Court of Justice may request from the Council to issue such general decrees as it deems necessary to ensure an adequate exercise of federal judicial functions. The Court *en Banc* may also review, and if appropriate, revoke the decrees approved by the Council, by a majority of at least eight votes. The Law shall establish the terms and procedures to exercise these powers.

The Council's decisions shall be final and without further appeal and, therefore, no action or remedy shall be admissible against them, save for the ones referring to the appointment, adscription, ratification and removal of Magistrates and Judges, which may be reviewed by the Supreme Court of Justice, only to verify that they have been adopted in accordance to the rules established by the respective organic law.

The Supreme Court of Justice shall prepare its own budget and the Council shall prepare it for the rest of the Judicial Power of the Federation, regardless of the provisions set forth in paragraph seventh of Article 99 of this Constitution. The budgets so prepared shall be forwarded by the Chief Justice of the Supreme Court, to be included in the Federation's Expenditure Budget draft. The administration of the Supreme Court of Justice shall pertain to its Chief Justice.

Article 101

The Justices of the Supreme Court of Justice, the Circuit Magistrates, the District Judges and their respective clerks, the Councillors of the Federal Judicial Council, as well as the Magistrates of the Superior Chamber of the Electoral Tribunal, may never, in any case, accept nor hold a job or an office of the Federation, the States, the Federal District, or for private persons, save for *pro bono* positions in scientific, academic, literary or charitable associations.

The individuals who have held the office of Justice of the Supreme Court, Circuit Magistrate, District Court or Councillor of the Federal Judicial Council, as well as of Magistrate of the Superior Chamber of the Electoral Tribunal may not, within the two years immediately following the date of their retirement, act as counsellors, attorneys or representatives in any proceedings before the bodies of the Judicial Branch of the Federation.

During such term, the individuals who have held the office of Justices, except when having held it in a provisional or interim character, may not hold the offices set forth in Section VI of Article 95 of this Constitution.

The disqualifications established in this Article shall be applicable to judicial officers enjoying a leave of absence.

The infraction to the provisions in the previous paragraphs shall be punished with the loss of the respective position within the Judicial Branch of the Federation, as well as with the forfeiture of the considerations and compensations which henceforth should correspond to said office, regardless of any other penalties provided by the laws.

Article 102

A. The Law shall organise the duties of the Public Prosecution Office of the Federation, whose officers shall be appointed and removed by the Executive branch in accordance with the respective law. The Public Prosecution Office of the Federation shall be presided by the Attorney General of the Republic, who shall be appointed by the Chief of the Federal executive with ratification by the Senate, or in the adjournments thereof, by the Permanent Commission. To become Attorney General it is required to be a Mexican citizen by birth; to be at least thirty five years of age on the day of the appointment; to have held a professional Law degree for a minimum of ten years; to have a good reputation, and not to have been convicted for an intentional crime. The Attorney General may be freely removed by the Executive branch.

The prosecution of all federal crimes before the courts pertains to the Public Prosecution Office of the Federation. Therefore, it is the duty of said office to request arrest warrants against suspects of a crime; to procure and submit evidence to prove their liability; to see that trials are conducted with regularity so that the administration of justice may be prompt and efficient, to request the imposition of penalties, and intervene in all matters set forth by the Law.

The Attorney General of the Republic shall personally intervene in all constitutional controversies and actions of unconstitutionality set forth in Article 105 of this Constitution.

In all cases where the Federation is a party; in cases involving diplomatic and general consuls and in any other cases where the Public Prosecution Office of the Federation should intervene, the Attorney General shall do so by himself or through his agents.

The Attorney General of the Republic and his agents shall be liable for any faults, omissions or violations to the Law in which they incur by cause of their duties.

The duty of legal counsel for Government shall be in charge of an agency under the President of the Republic, which shall be established by the Law for that purpose.

B. The Congress of the Union and the States Legislatures, within their respective jurisdiction, shall establish bodies for the protection of human rights protected by Mexican legal order. Such bodies shall hear complaints against administrative actions or omissions by any authority or public servant infringing these rights, except for complaints pertaining to the Judicial Branch of the Federation.

C. The bodies referred under the previous paragraph shall produce public recommendations which shall not be binding, and file accusations and complaints before the respective authorities. If the public authorities do not accept or comply with the recommendations issued, they shall justify, give reasons for and make public their refusal; furthermore, the Chamber of Senators or, when it is in recess, the Standing Committee, or the legislatures of the federal entities, as appropriate, may, at the request of those bodies, call upon the authorities or public servants responsible to appear before said legislative bodies to explain the reasons for their refusal.

These bodies shall not have jurisdiction in electoral, labour and judicial affairs.

The body so established by the Congress of the Union shall be called National Commission of Human Rights; it shall have autonomy for its operations and management of its budget, as well as its own legal capacity and patrimony.

The Constitutions of the States and the Governmental Statute of the Federal District shall establish and guarantee the independence of human rights protection bodies.

The National Commission of Human Rights shall have an Advisory Council composed by ten councillors who shall be elected by the vote of two thirds of the members present in the Senate or, in the adjournments thereof, by the Permanent Commission of the Congress of the Union, by the same qualified votes. The Law shall determine the procedures to be followed by the Senate for the submission of the proposals. Each year the two first appointed councillors shall be replaced in office unless they should be proposed or ratified for a second period in office.

The President of the National Commission of Human Rights, who shall also be Chairman of the Advisory Council, shall be elected in the same terms as provided under the foregoing paragraph. He shall hold his office for a period of five years and may be reelected for one single additional term, and may only be removed from office in accordance with the terms provided by Title Fourth of this Constitution.

The election of the President of the National Commission of Human Rights, the members of the Advisory Council and the officers of the federal entities' human rights protection bodies shall form the subject of a transparent public consultation procedure, under the terms and conditions determined by law.

The President of the National Commission of Human Rights shall annually present to the Powers of the Union a report of activities, to that end; he shall appear before the Houses of Congress in accordance with the terms provided by the Law.

The National Commission of Human Rights shall hear complaints against the recommendations, resolutions or omissions of its equivalent bodies in the States.

The National Human Rights Commission may investigate acts constituting serious human rights violations when it deems this appropriate or at the request of the Federal Executive, either of the Chambers of the Congress of the Union, a State Governor, the Head of Government of the Federal District or the legislatures of the federal entities.

Article 103

The Courts of the Federation shall decide all disputes concerning:

I – General provisions, acts or omission of an authority which violate recognised human rights and the guarantees given by this Constitution for their protection, and international treaties to which the Mexican State is party;

II – Laws or acts of a Federal authority which abridge or encroach on the sovereignty of the States or the jurisdiction of the Federal District; and

III – Laws or acts by authorities of the States or of the Federal District which encroach on the jurisdiction of Federal authorities.

Article 104

The Federal Courts shall have jurisdiction over:

I – All proceedings related to federal crimes and offenses;

II – All civil or criminal disputes arising out of the application and enforcement of federal laws or international treaties celebrated by the United Mexican States. Whenever such disputes should only affect the interests of private parties, ordinary Judges and courts may hear them, at the choice of the plaintiff;

Judgments of lower courts may be reviewed by the appeal court standing directly above the trial court that issued said judgment;

III – Reviews filed against final resolutions issued by the administrative law courts referred under Sections XXIX-H of Article 73 and Section IV, subsection e) of Article 122 of this Constitution, and only in those cases established by the laws. These reviews which shall be heard by the Collegiate Circuit Courts will be subject to the review procedures established by the Law Regulating Articles 103 and 107 of this Constitution for indirect Amparo trial, and no further actions or reviews shall be admissible against resolutions issued therein by Collegiate Circuit Courts;

IV – All disputes pertaining to the law of the sea;

V – Those disputes in which the Federation is a party;

VI – Those controversies and actions set forth under Article 105, which shall be exclusively brought forth before the Nation's Supreme Court of Justice;

VII – Those disputes arising between a State and one or more residents of another State; and

VIII – All cases involving members of the Diplomatic and Consular Service.

Article 105

The Nation's Supreme Court of Justice shall hear, under the terms set forth by the Law, of the following matters:

I – Constitutional controversies, except for the ones referring to electoral matters and the provisions of Article 46 of this Constitution, arising between:

- a) The Federation and a State or the Federal District;
- b) The Federation and a Municipality;
- c) The President of the Republic and the Congress of the Union; the President of the Republic and any of the Houses of the said Congress, or, as the case may be, the Permanent Commission, acting as Federal bodies or as bodies of the Federal District;
- d) A State and another one;
- e) A State and the Federal District;
- f) The Federal District and a Municipality;
- g) Two Municipalities from diverse States;
- h) Two Powers of the same State, regarding the constitutionality of their actions or general provisions;
- i) A State and one of its Municipalities, regarding the constitutionality of their actions or general provisions;
- j) A State and a Municipality from another State, regarding the constitutionality of their actions or general provisions; and
- k) Two government bodies of the Federal District, regarding the constitutionality of their actions or general provisions.

Whenever controversies should concern general legal provisions issued by the States or the Municipalities and contested by the Federation, or by the Municipalities and contested by the States, or in the cases in subsections c), h) and k) hereinbefore, and the resolution issued by the Supreme Court of Justice should declare them null and void, such resolution shall have general binding effects when approved by the vote of a majority of at least eight Justices.

In all other cases, the resolutions of the Supreme Court of Justice shall have binding effects only in respect to the parties of the controversy.

II – Actions of unconstitutionality directed to establish a possible contradiction between a general legal provision and this Constitution.

Actions of unconstitutionality may be brought forth, within thirty calendar days immediately following the date of publication of the contested provision, by:

- a) The equivalent of thirty three percent of the members of the House of Deputies of Congress of the Union, against Federal laws or laws of the Federal District enacted by the Congress of the Union;
- b) The equivalent to thirty three percent of the members of the Senate, against Federal laws or laws of the Federal District, enacted by the Congress of the Union or against international treaties celebrated by Mexico;
- c) The Attorney General of the Republic, against Federal, State and Federal District laws, as well as against international treaties celebrated by Mexico;
- d) The equivalent to thirty three percent of the members of any of the State Legislative Bodies, against laws enacted by that same body, and
- e) The equivalent of thirty three percent of the members composing the Assembly of the Federal District, against laws enacted by said Assembly;
- f) Political parties registered with the Federal Electoral Institute, through their national directorships, against federal or local electoral laws; and political parties registered in a State, through their directorships, exclusively against electoral laws issued by the legislative body of the State that granted their registry;
- g) The National Commission of Human Rights, against federal and local laws and those of the Federal District, as well as international treaties celebrated by the President of the Republic with the approval of the Senate, which violate the human rights set forth by this Constitution. Also the equivalent agencies of human rights' protection in the States, against laws delivered by their Congresses, and the Commission of Human Rights of the Federal District against laws delivered by the Assembly.

The only procedure to contest the constitutionality of electoral laws is the one established in this Article.

Electoral federal and local laws must be promulgated and published at least ninety days before the commencement of the electoral process that they will regulate, and during said process there may not be any fundamental amendments thereto.

The resolutions of the Supreme Court of Justice may only declare null and void the provisions contested, provided that such resolutions are approved by the vote of a majority of at least eight Justices.

III – By its own motion or by motion justified and submitted by the corresponding Unitary Circuit Court or by the General Attorney of the Republic, it may hear appeals against decisions issued by District Judges in proceedings where the Federation is a party and which so merit it, in the light of their interest and transcendence.

The resolutions declaring null and void any of the provisions mentioned under Sections I and II of this Article, shall not have retroactive effect, save in criminal matters, where general principles and legal provisions applicable thereto shall govern.

In case of failure to comply with the resolutions provided under Sections I and II of this Article, the proceedings established in the first two paragraphs of Section XVI of Article 107 of this Constitution shall be applied, as appropriate.

Article 106

The Judicial Branch of the Federation, under the terms provided by the respective law, shall decide the disputes arising by reason of jurisdiction between the Courts of the Federation, between the latter and State Courts or the Courts of the Federal District, between a State Court and a Court from another State, or between a State Court and a Court of the Federal District.

Article 107

All disputes considered under Article 103 shall be subject to the proceedings and formalities established by the Law, in accordance with the following bases:

I – *Amparo* proceedings must always be initiated at the instance of the injured party, this being any person who demonstrates a legitimate individual or collective right or interest and who alleges that the contested act violates rights recognised by this Constitution, thus affecting that person's legal sphere either directly or by virtue of his or her specific position in relation to the legal system.

In the case of acts or decisions of courts of law or administrative or labour tribunals, the complainant must demonstrate that he or she holds a subjective right which is personally and directly affected;

II – *Amparo* proceedings shall be always such that they involve only private persons, and will be limited to granting them relief and protection for the specific case concerned in the complaint.

When, in indirect *amparo* proceedings for review, a general provision is ruled unconstitutional for the second consecutive time, the Supreme Court of Justice of the Nation shall so inform the issuing authority.

When the organs of the federal judiciary establish the unconstitutionality of a general provision in a line of judicial decisions, the Supreme Court of Justice of the Nation shall notify this fact to the issuing authority. If, after a period of 90 calendar days, the issue of unconstitutionality has not been resolved, the Supreme Court of Justice of the Nation shall issue, subject to approval by a majority of at least eight votes, a general declaration of unconstitutionality which shall specify its scope and conditions in accordance with the regulatory law.

The provisions of the preceding two paragraphs shall not apply to general provisions relating to tax matters.

In *amparo* proceeding, deficient complaints on the concepts of violation or grievances must be corrected as provided under the *Amparo* Law.

Whenever the acts claimed in *amparo* proceedings deprive or may deprive any *ejidos* or communal population center that by law or in fact are organised as a community, or any *ejidatario* or any *comunero*, of their ownership, possession and enjoyment of their lands, waters, pastures and woodlands, all evidence that could benefit any of the aforesaid entities or individuals must be obtained at the court's own motion, and any actions or proceedings deemed necessary to determine their agrarian rights, as well as the nature and consequences of the acts claimed from any authority, must be ordered.

In the *amparo* proceedings referred in the preceding paragraph, neither dismissal of the suit for procedural inactivity nor for lapsing of the proceedings shall be admissible to the detriment of *ejido* or communal population centers, or *ejidatarios* or *comuneros*, but either one may be admissible to their benefit. Whenever any of the acts claimed should affect the collective rights of a rural settlement, neither their express motion for dismissal nor having consented the act claimed shall be admissible, unless such motion is determined by the General Assembly or said consent is granted by the latter.

III – *Amparo* applications against acts by judicial, administrative, or labour courts shall only be admissible in the following cases:

a) Against those final judgments or awards and decisions putting an end to a trial, where no ordinary review is available to amend or to change them, whether the grievance should occur therein or during the course of proceedings, affecting the petitioner's defences so as to influence the outcome of the judgment. In connection with the *amparo* proceedings referred to in this sub-section and in Section V of this article, the Circuit Collegiate Court shall rule on any procedural violations which have been invoked and any such violations raised by it in order to supplement the complaint, and shall specify the precise terms in which the new decision is to be given. If the procedural violations were not invoked in a first *amparo* application and if the appropriate Collegiate Court did not invoke them of its own motion in the cases in which complaints may be supplemented, they may neither be classified as violations nor examined unofficially in subsequent *amparo* proceedings.

Any party which has obtained a favourable judgment and which has a legal interest in the contested act being maintained may bring an *amparo* action jointly with that brought by any of the parties involved in the proceedings from which the contested act arises. The law shall determine the manner and terms in which it is to be brought.

In order for the proceedings to be valid, it is necessary first to exhaust the ordinary remedies laid down by law by means of which those final judgments, awards and decisions may be amended or revoked, except where the law allows the remedies to be relinquished.

When a complaint is lodged against a final judgment, award or decision putting an end to proceedings, any violations of procedural laws must be invoked if the complainant had challenged them during the proceedings using the remedy or means of defence provided for in such cases under the relevant ordinary law. These requisites shall not be required in *amparo* proceedings against judgments issued in disputes regarding minors' or disabled's rights, marital status actions or actions affecting the order and stability of the family, or in criminal-law actions brought by the person against whom the judgment was delivered.

b) Against acts during a trial which enforcement would render them impossible to reconstitute, whether out of court or after the trial's conclusion, upon having exhausted the appropriate remedies; and

c) Against acts affecting persons who are not involved in the lawsuit.

IV – In administrative cases, *amparo* proceedings may be brought also against decisions causing a grievance not rendered by judicial, administrative or labour authorities, which cannot be repaired by any remedy, court proceeding or any other lawful means of defence. It shall be necessary to exhaust these means of defence if, in accordance with the same laws, the effects of said acts are suspended automatically or through the action, remedy or defence relied upon by the aggrieved party, with the same scope as that provided for in the regulatory law and without stipulating any further requirements than those set forth therein for the granting of a definitive suspension or a longer time-limit than that set for the granting of a provisional suspension, regardless of whether the act in itself is or is not capable of being suspended in accordance with said law.

There is no obligation to exhaust these remedies or means of defence if the contested act is ill-founded or if only direct violations of this Constitution are alleged.

V – *Amparo* proceedings against final judgments or awards and decisions putting an end to the case, whether the grievances have occurred during the course of proceedings or in the judgment itself, shall be brought before the corresponding Collegiate Circuit Court subject to the territorial distribution set forth in the Organic Law of the Judicial Branch of the Federation, in the following cases:

a) In criminal causes, against final judgments issued by federal, ordinary, or military courts;

b) In administrative cases, whenever private persons contest any final judgments or decisions putting an end to the trial, issued by ordinary or administrative courts, which cannot be redressed by any remedy, trial or any other ordinary legal procedure;

c) In civil cases, against any final judgments issued by Federal courts or in commerce trials, whether the authority issuing the judgment be federal or local, or in suits under ordinary jurisdiction;

In federal civil cases, judgments may be contested through an *Amparo* trial by any of the parties, even by the Federation in defence of its own pecuniary interests; and

d) In labour cases, when contesting awards issued by Federal or Local Conciliation and Arbitration Boards or by the Federal Conciliation and Arbitration Board for Government Employees;

The Supreme Court of Justice by its own motion or by motion justified and submitted by the corresponding Collegiate Circuit Court or by the Attorney General of the Republic, may hear Direct Amparo trials in the light of their interest and transcendence.

VI – In the cases provided in the aforesaid section, the *Amparo* Law shall set forth the proceedings and terms that Collegiate Circuit Courts or the Supreme Court of Justice must abide by to issue their respective judgments.

VII – *Amparo* proceedings against acts during trial, outside court and after trial, or those acts affecting persons who are not involved in the lawsuit, against laws or against acts by any administrative authority, shall be brought before the District Judge under whose jurisdiction is the place where the contested act is carried out or where such act is attempted, and the proceedings shall be limited to the report rendered by the authority, to a hearing which shall be summoned in the same court order requiring the report from the respondent authority. In such hearing the evidence submitted by the parties shall be admitted, their allegations shall be heard, and judgment on the case shall be rendered.

VIII – Appeal for review is admissible against judgments rendered in *amparo* proceedings by District Judges or Unitary Circuit Courts. Such review shall be brought before the Supreme Court of Justice:

a) When after having contested in *amparo* proceedings any general laws for considering any of them in direct violation of the Constitution and the issue of constitutionality is still addressed in the appeal for review;

b) In the cases set forth under Sections II and III of Article 103 of this Constitution.

The Supreme Court of Justice by its own motion or by motion justified and submitted by the corresponding Collegiate Circuit Court or by the Attorney General of the Republic, may review those *amparo* judgments it deems relevant in the light of their interest and transcendence. In any other cases not provided for in the previous paragraphs, the appeal for review shall be brought forth before Collegiate Circuit Courts, whose judgments shall be final and shall not admit any further review.

IX – The judgments rendered in direct *amparo* lawsuits issued by Collegiate Circuit Courts shall not admit any further review, unless they decide on the unconstitutionality of a law or establish a direct interpretation of a provision of the Constitution. In these cases, the Supreme Court of Justice subject

to its own general decrees shall decide if a certain judgment implies the establishment of a significant and transcendent criterion. Only under these premises shall the appeal before the Supreme Court of Justice be admissible, but the subject matter of the case in review shall be restricted exclusively to decide issues of a purely constitutional nature.

X – Contested acts may be suspended in the cases and under the conditions determined by the regulatory law, for which purpose the judicial body, where the nature of the act so permits, shall make a balanced analysis of the appearance of good law and social interest.

Said suspension shall be granted in respect of final criminal judgments upon notification of the *amparo* action and, in civil, commercial and administrative matters, subject to a guarantee given by the complainant to meet any damage this suspension may cause to the interested third party. The suspension shall be terminated if the latter gives a counter-guarantee to restore things to their original state if the *amparo* application is successful and to pay the resulting damages.

XI – The suspension shall be requested from the respondent authority if direct *amparo* proceedings are brought, and the respondent authority shall decide the issue. In other cases the application shall be lodged with the District Courts or the Unitary Circuit Courts, which shall decide on the suspension, or before the courts of the States in cases where this is authorised by law.

XII – Violations to the constitutional rights provided under Articles 16, in criminal matters, and 19 and 20, shall be claimed before the appeal court standing directly above the trial court that committed the violation, or before the corresponding District Judge or Unitary Circuit Court, and in either case, the judgments rendered may be reviewed as provided under Section VIII.

Should the District Judge or the Unitary Circuit Court not reside in the same place as the respondent authority, the Law shall establish the court or the judge before whom the *amparo* proceedings must be brought, who may grant a provisional injunction of the contested act, in the cases and terms set forth by law.

XIII – If Collegiate Circuit Courts hold contradictory views in *amparo* proceedings within their jurisdiction, the Attorney General of the Republic, the aforesaid Courts and its justices, the District judges or the parties to the cases which gave rise to them may denounce the contradiction to the Full Court of the respective District,

as appropriate, so that the latter may decide which view must prevail as a binding judicial precedent. If the Plenary Circuit Courts of different Circuits, the Plenary Circuit Courts for specialised matters in the same Circuit or the Collegiate Courts of the same Circuit with different specialisations express contradictory views in deciding the disputes or cases within their jurisdiction, as appropriate the Judges of the Supreme Court of Justice of the Nation, the same Plenary Circuit Courts and the bodies referred to in the preceding paragraph may denounce the contradiction to the Supreme Court of Justice so that the Plenary Court or the appropriate Chamber may decide which view should prevail.

When the Chambers of the Supreme Court of Justice hold contradictory views in *amparo* cases heard under their jurisdiction, any judge of those Chambers, the Collegiate Circuit Courts and their members, the District Judges or the Attorney General of the Republic, or the parties to, the cases which gave rise to them, may denounce the contradiction to the Supreme Court of Justice, who acting in Full Court, shall decide which view shall prevail.

The decision given by the Chambers of the Supreme Court of Justice or by the latter acting in Full Court, and the Plenary Circuit Courts in the cases provided under the two previous paragraphs, shall only be effective for the purpose of establishing binding judicial precedents and shall not affect the specific legal situation arising from the judgments delivered in trials where the contradiction occurred, and

XIV – Repealed

XV – The General Attorney of the Republic or a Federal Public Prosecutor appointed by the former for that purpose, shall be a party in all *amparo* lawsuits; but they may abstain from intervening thereon, whenever the case in question should, in their opinion, lack public interest.

XVI – If an authority fails to comply with a judgment granting *amparo*, but that failure to comply is justified, the Supreme Court of Justice of the Nation, in accordance with the procedure provided for by the regulatory law, shall grant a reasonable time-limit for compliance, which may be extended at the authority's request. If the failure to comply is not justified or the time-limit has expired without compliance taking place, the authority responsible shall be removed from office and remanded before the District Judge. The same measures shall be taken in respect of the hierarchical superior of the authority responsible if he or she has incurred responsibility, and in respect of previous holders of the office who failed to comply with the final judgment.

If, once *amparo* has been granted, the respondent authority repeats the contested act, the Supreme Court of Justice, in accordance with the procedure established by the regulatory law, shall remove the respondent authority from office and shall notify the Federal Attorney General, unless he or she did not act intentionally and ceases the repeated act before the Supreme Court of Justice of the Nation gives its decision.

Alternative enforcement of *amparo* judgments may be requested by the complainant before the judicial body or ordered by the Supreme Court of Justice of the Nation of its own motion when enforcement of the judgment has effects on society that outweigh the potential benefits to the complainant or when, owing to the circumstances of the case, it is impossible or disproportionately expensive to restore the situation which prevailed before the violation. The effect of this step is that the final judgment will be considered as enforced through payment of damages to the complainant. The parties to the proceedings may agree on alternative enforcement by means of an agreement approved before the judicial body itself.

The lack of procedural activity or of motions by an interested party, in procedures pursuing the enforcement of *amparo* judgments, shall lead to the lapsing of the proceedings as provided by the *Amparo* Law. No *amparo* case may be filed until the judgment granting constitutional protection has been complied with.

XVII – The respondent authority not complying with the suspension of the contested act having the duty to do so, and whenever it should admit acting in bad faith or an insufficient or false bond, the authority shall be criminally liable.

XVIII – (Repealed).



MEXICO

Organic Law of the Federal Judiciary

26 May 1995
(last Amendment published in the Official Gazette of the Federation on 15.01.2009)

...

Title One – The Federal Judiciary

Chapter One – Courts and Other Bodies Forming the Federal Judiciary

Article 1

Judicial power in the Federation is exercised by:

- I – The Supreme Court of Justice of the Nation;
- II – The Electoral Tribunal;
- III – The Collegiate Circuit Courts;
- IV – The single-judge Circuit Courts;
- V – The District Courts;
- VI – The Council of Federal Judicature;
- VII – The Federal Jury of Citizens, and
- VIII – The State and Federal District Courts in the cases provided for by Article 107, Section XII of the Political Constitution of the United Mexican States or where the law requires that they act in support of Federal Justice.

Title Two – The Supreme Court of Justice of the Nation

Chapter I – Composition and Procedure

Article 2

The Supreme Court of Justice shall consist of eleven Justices and shall sit in Plenary or in Divisions. The President of the Supreme Court of Justice shall not form part of any Division.

Article 3

The Supreme Court of Justice shall hold sessions twice a year; the first session will commence on the first working day of the month of January and end on the last working day of the first fifteen days of the month of July; the second session will commence on the first working day of the month of August and end on the last working day of the first fifteen days of the month of December.

Chapter II – Plenary Court

Section 1 – Composition and Procedure

Article 4

The Plenary Court shall consist of eleven Justices, but it can operate when only seven Justices are present, except in the cases provided for in Article 105 of the Political Constitution of the United Mexican States, Section I, penultimate Paragraph and Section II, where at least eight Justices must be present.

Article 5

Ordinary sessions of the Supreme Court of Justice sitting in Plenary shall be held within the periods specified in Article 3 of this Law, on such days and at such times as the Plenary Court shall determine by general directions.

The Plenary Supreme Court of Justice may hold extraordinary sessions, even in periods of recess, at the request of any member of the Court. Any such request must be submitted to the President of the Supreme Court of Justice so that a session may be called.

Article 6

Sessions of the Plenary Supreme Court of Justice shall, when any matter or matters listed under Article 10 are being considered, be held in public as a general rule and in private when the Plenary Court itself so decides.

All sessions held for the purpose of considering any matter provided for in Article 11 shall be held in private.

Article 7

Decisions of the Plenary Supreme Court of Justice shall be taken unanimously or by a majority of votes except in the cases provided for in Section 1, penultimate paragraph and Section 2 of Article 105 of

the Constitution, where a majority of eight votes of the Justices present shall be required. In the cases provided for in the penultimate paragraph of Section I of Article 105 of the Constitution, decisions may be taken by a simple majority of Justices present but a majority of at least eight votes is needed in order for them to be valid.

Justices may only abstain from voting if they are legally impeded from doing so or were not present when the matter was discussed.

If there is an equal number of votes, the matter shall be resolved at the following session, which all Justices who are not legally impeded from attending will be summoned to attend; if at that session a majority is not achieved, the draft decision will be abandoned and the President of the Supreme Court of Justice will appoint another Justice to prepare a new draft based on the opinions that have been expressed. If that session again produces an equal number of votes, the President shall have a casting vote.

A Justice whose view is at variance with that of the majority may express a dissenting opinion, which will be added to the end of the judgment if it is submitted within five days of the date of the decision.

Article 8

Justices shall hold office for a period of fifteen years unless they become afflicted with permanent physical or mental disability.

Article 9

The Plenary Supreme Court shall, on the proposal of its President, appoint a chief clerk and an assistant chief clerk.

The President of the Supreme Court of Justice shall appoint such assistant clerks and reporting clerks as may be required to process cases to be decided by the Supreme Court of Justice, and any junior or supporting personnel for whom provision has been made in the budget.

Case management clerks shall be appointed by the Justices responsible for the relevant areas in accordance with Article 115, last paragraph, of this Law.

The chief clerk, the assistant chief clerk, assistant clerks, case management and reporting clerks must hold law degrees, be of good character and have no previous convictions for any deliberate offences punishable with imprisonment for more than one year; the assistant and case management clerks and the chief clerk must also have completed not less than

three and five years of professional practice respectively, preferably in the employment of the Federal Judiciary.

Section 2 – Powers and Jurisdiction

Article 10

The Supreme Court of Justice shall sit in Plenary to hear and determine the following matters:

I – Disputes on constitutional matters and claims of unconstitutionality under Sections I and II of Article 105 of the Political Constitution of the United Mexican States;

II – Applications for review of judgments handed down at constitutional hearings by district judges or single-judge circuit courts in the following cases:

a) Where there is an outstanding issue in an application as to the constitutionality of general rules if, in the *amparo* application, a federal, local or Federal District law or an international treaty has been contested as being in direct violation of a provision of the Political Constitution of the United Mexican States;

b) When the Plenary Court uses its power under Paragraph 2 of sub-section b) of Section VIII of Article 107 of the Political Constitution to rule on an *amparo* application, where this is desirable due to the interest and importance of the issue and

c) where an issue has arisen under Sections II and III of Article 103 of the Political Constitution, in which case it shall not suffice for the complainant simply to assert the existence of an issue of this nature;

III – Applications for review of judgments given in direct *amparo* proceedings by collegiate circuit courts where the constitutionality of a federal, local or Federal District law or an international treaty has been contested or the grounds of the alleged violation have raised questions concerning a direct interpretation of a provision of the Political Constitution and the judgments make or omit to make rulings on these issues; in such cases, the subject-matter of the application must be limited to a decision on the constitutional issues only;

IV – Complaints against a court's refusal of leave to appeal under Section V of Article 95 of the *Amparo* Law, where review jurisdiction in the *amparo* proceedings in which the complaint was made lay with the Plenary Supreme Court of Justice in accordance with Article 99, Paragraph 2 of the *Amparo* Law;

V – Appeals against orders or decisions of the President of the Supreme Court of Justice given in the course of proceedings involving a jurisdictional issue falling within the jurisdiction of the Plenary Supreme Court of Justice;

VI – Where justices have declined to act or are unable to act in cases falling within the jurisdiction of the Plenary Supreme Court of Justice;

VII – Where Section XVI of Article 107 of the Political Constitution of the United Mexican States is applicable;

VIII – Claims of contradictions in legal arguments put forward by Divisions of the Supreme Court of Justice and by collegiate circuit courts in cases which, due to their subject-matter do not fall within the exclusive jurisdiction of any Division of the Supreme Court, or by the Electoral Tribunal under the terms of Articles 236 and 237 of this Law;

IX – Labour disputes arising with the Court's own officials as referred to in Section XII of Part B of Article 123 of the Political Constitution of the United Mexican States, based on an Opinion given by the Disputes Committee of the Federal Judiciary, as required by Articles 152 to 161 of the Federal Law on Government Employees implementing Part B of Article 123 of the Political Constitution of the United Mexican States;

X – Proceedings to set aside a declaration to exclude any State or States from the National Fiscal Co-ordination System and proceedings concerned with the performance of co-ordination agreements made by the Federal Government with State Governments or the Federal District in accordance with the Fiscal Co-ordination Law, pursuant to the Law implementing that part of Article 105 of the Political Constitution of the United Mexican States which relates to constitutional disputes;

XI – Any other case falling within the jurisdiction of the Supreme Court of Justice which is not within the jurisdiction of any Division thereof, and

XII – Any other matter specifically assigned to its jurisdiction by law.

Article 11

The Plenary Supreme Court of Justice shall at all times ensure the autonomy of the Courts and other bodies of the Federal Judiciary and the independence of their members, and shall have the following powers and duties:

I – to elect its own President in accordance with Articles 12 and 13 of this Law, and to be informed of and, if appropriate, accept his/her resignation from that office;

II – to grant leave of absence to Justices of the Court in accordance with Article 99 of the Political Constitution of the United Mexican States;

III – to fix, by general directions, the days and times when the Plenary Supreme Court of Justice is required to be in ordinary session;

IV – to determine, by general directions, those matters that are to be within the jurisdiction of each Division of the Court, and the system for assigning the cases to be decided by each;

V – to refer, by general directions, matters within its jurisdiction to Divisions of the Court for decision. If any of the Divisions considers that a case referred to it should be decided by the Plenary Supreme Court of Justice, it shall inform the latter of this so that it may take appropriate action;

VI – to refer to collegiate circuit courts for a decision, based on general directions, any matters within its jurisdiction on which it has established legal precedents. If a collegiate court considers that a case referred to it should be decided by the Plenary Supreme Court of Justice, it shall inform the latter of this so that it may take appropriate action;

VII – to decide on administrative complaints related to any member or employee of the Supreme Court of Justice, following the production of a report by the President of the Court, including complaints concerning the breach of any impediment under Article 101 of the Federal Constitution, as required by Title 8 of this Law;

VIII – to rule, in accordance with this Law, on any reviews of administrative matters as provided for in Paragraph 8 of Article 100 of the Political Constitution of the United Mexican States;

IX – to hear and settle any disputes arising between Divisions of the Supreme Court of Justice or within the Federal Judiciary on the interpretation and applicability of any provision under Articles 94, 97, 100 and 101 of the Political Constitution of the United Mexican States and of any rules concerning this Organic Law;

X – to assign Justices to serve in Divisions of the Court and make any changes to their membership that may be required as a result of the election of the President of the Supreme Court;

XI – to set up any committees required to deal with cases within its jurisdiction;

XII – to appoint a representative on the Disputes Committee of the Federal Judiciary;

XIII – to keep records of and monitor the assets of public servants in its employ in the manner required by Section VI of Article 80 of the Federal Law on the Responsibilities of Public Servants;

XIV – to appoint, on the proposal of the President of the Supreme Court of Justice, a chief clerk, an assistant chief clerk and a chief co-ordinator responsible for compiling and organising legal arguments, and take decisions regarding the resignation of any of them, remove them from office when there are reasonable grounds for doing so, suspend them where this is deemed desirable for reasons of efficiency and discipline, and lodge complaints or take criminal proceedings against them should they be involved in the commission of an offence;

XV – to request the Council of Federal Judicature to take the necessary steps to ensure the efficient and properly co-ordinated organisation of courts and other bodies within the Federal Judiciary;

XVI – to approve the draft annual expenditure budget of the Supreme Court of Justice submitted to it by its President, taking note of the projected income and expenditure of the Federal Government;

XVII – to give warnings and admonitions to, and impose fines equivalent to up to 180 days of the general minimum wage applicable within the Federal District as of the date on which the infringement was committed, on lawyers, business agents, legal assistants or litigants, when in any representations they make to the Plenary Supreme Court of Justice they fail to show due respect for any court or member of the Federal Judiciary;

XVIII – to exercise the powers vested in them under Paragraphs 2 and 3 of Article 97 of the Political Constitution of the United Mexican States;

XIX – to regulate the activities of the departments responsible for compiling, organising and publishing legal arguments and court judgments and for collating them when they form case-law; for statistics and IT systems in the Supreme Court of Justice; for the documentation and research centre, including the central library, the historical archive, the central archive and the archives of foreign federal tribunals; and for compiling laws and archiving court records; the Plenary Court may also agree with the Council of

Federal Judicature any measures necessary to ensure the efficient distribution of publications;

XX – to rule on any matters related to the interpretation of and resolution of disputes arising from any contracts entered into, or the performance of obligations incurred by individuals or public bodies with the Supreme Court of Justice or the Council of Federal Judicature;

XXI – to issue regulations and give general directions on any matters within its jurisdiction; and

XXII – to deal with any other duties assigned to it by law.

Chapter III – The President of the Supreme Court of Justice

Article 12

Every four years the members of the Supreme Court of Justice shall elect a president from among their number, who may not be re-elected for the immediately following period. The election shall take place during the first session of the year in which it is to be held.

Article 13

In any absence of the President for which leave of absence is not required the President shall be replaced by Justices in the order in which they were appointed; if the absence is less than six months and requires leave of absence, the Justices shall appoint an interim president to replace the President; if the absence is more than six months they shall appoint a new President who shall remain in office until the end of the term; in the latter case, any Justices who have held office as interim presidents may be appointed.

Article 14

The powers and duties of the President of the Supreme Court of Justice are as follows:

I – To represent the Supreme Court of Justice and take charge of its administration;

II – To deal with cases falling within the jurisdiction of the Plenary Supreme Court of Justice and allocate cases among the Justices for the preparation of draft decisions.

If the President has concerns over a particular case or believes it to be of special significance, he shall

appoint a reporting Justice to submit a draft decision for consideration by the Supreme Court of Justice, which will then make a final determination on the correct procedure;

III – To approve lists of cases, lead discussions and maintain order during meetings of the Plenary Supreme Court of Justice;

IV – To sign decisions of the Plenary Supreme Court of Justice together with the reporting Justice, with the chief clerk signing in attestation. When a decision is approved that is at variance with the draft or substantial alterations have been made, the amended text will be distributed to the Justices and, provided no objections are raised within five working days, will be signed by the persons mentioned in this paragraph;

V – To attend to the correspondence of the Supreme Court of Justice, with the exception of correspondence for which the Presidents of Divisions of the Court are responsible;

VI – To take the necessary steps to maintain the smooth operation of and good order within the Supreme Court of Justice offices;

VII – To receive, attend to and, where appropriate, decide on administrative complaints relating to any errors or failures arising in the conduct of any business within the competence of the Plenary Supreme Court of Justice or any of its Divisions or administrative departments, in the manner required by Title 8 of this Law;

VIII – To legalise, in person or through the chief clerk, the signatures of public servants employed by the Supreme Court of Justice, in all cases where the law so requires;

IX – To grant leave of absence to officials of the Supreme Court of Justice in the manner required by this Law;

X – To inform the President of the Republic of any permanent vacancies in the post of Justice of the Supreme Court and any temporary absences, which shall be filled through the appointment of new Justices as required by Section XVIII of Article 89 of the Political Constitution of the United Mexican States;

XI – To submit an annual report on the work of the Federal Judiciary, at the end of the second session, to the Justices of the Supreme Court of Justice and the members of the Council of Federal Judicature;

XII – To make timely nominations for any appointments of public servants required to be made by the Plenary Supreme Court of Justice;

XIII – To appoint officials to take responsibility for running the Supreme Court of Justice and make the arrangements for their leave of absence, holidays, removal and resignation;

XIV – To draw up internal rules and make such general directions relating to administration as may be required by the Supreme Court of Justice;

XV – To prepare each year a draft expenditure budget for the Supreme Court of Justice and to submit it to the Plenary Supreme Court for approval;

XVI – To send to the President of the Republic, in a timely manner, the draft expenditure budgets for the Federal Judiciary with a view to fulfilling the requirements of the last paragraph of Article 100 of the Political Constitution of the United Mexican States, and to manage the budget of the Supreme Court of Justice;

XVII – To appoint Justices in the circumstances provided for in Articles 17 and 18 of this Law;

XVIII – to appoint one or more Justices to oversee administrative cases of an urgent nature at times when the Supreme Court of Justice is in recess;

XIX – To make general arrangements for the induction, motivation, training, promotion, seniority classification and removal of administrative staff employed by the Supreme Court of Justice;

XX – To impose any penalties to be imposed under Paragraph XVII of Article 11 of this Law in respect of any representations made to him/her, and

XXI – To take on any other duty vested in or ascribed to him/her by the law, internal regulations or general directions.

Chapter IV – Divisions of the Supreme Court

Section 1 – Composition and Procedure

Article 15

The Supreme Court of Justice shall have two Divisions, each composed of five Justices; the attendance of four Justices shall be sufficient for a Division to hold sessions.

Article 16

During the periods mentioned in Article 3 of this Law, sittings and hearings of Divisions of the Court shall be held on the dates and at the times determined by the Divisions themselves by means of general directions. Sittings of Divisions shall take place in public and also in private in exceptional circumstances, where, in their opinion, morality or the public interest so requires.

Article 17

Decisions of Divisions of the Court shall be taken unanimously or by a majority of votes of the Justices present, who shall not abstain from voting unless they are subject to a legal impediment or were not present when the issue was being discussed.

If a majority is not obtained when the vote is taken, the President of the Division shall refer the matter to a new Justice who shall prepare a draft ruling taking account of the statements made in the course of the deliberations.

If, notwithstanding the provisions made in the previous paragraph, a majority is not achieved when the vote is taken, the President of the Supreme Court of Justice shall appoint by rotation a member of another Division of the Court to attend the sitting and cast his/her vote. If despite the intervention of such additional Justice there is still no majority, the President of the Division shall have a casting vote.

Any Justice dissenting from the majority view may draw up a dissenting opinion, which shall be inserted into the judgment on the case if it is submitted within five days of the date of the decision.

Article 18

Divisions of the Court shall consider any reasons put forward by Justices as to why they are unable to preside over a case. If the disqualification or impediment makes it impossible for a case to be decided within a maximum of ten days, the President of the Supreme Court of Justice will be asked to appoint a Justice by rotation to attend the meeting of the Division concerned.

Article 19

Divisions of the Supreme Court of Justice shall have the power referred to in Paragraph XVII of Article 11 of this Law, provided that the representations were made in their presence.

Article 20

Each Division of the Court shall appoint, following a recommendation from its President, a chief clerk and an assistant chief clerk.

Each Division shall appoint assistant and reporting clerks and other junior staff for whom provision has been made in the budget and shall take all necessary decisions regarding leave of absence, removal, suspension or resignation of such personnel.

The chief clerk, assistant chief clerk, assistant clerks and reporting clerks must be qualified in law, be of good character and have no previous convictions for any deliberate offence punishable with imprisonment for more than one year; the assistant clerk must, in addition, have been in professional practice for at least three years, and the chief clerk for at least four.

Section 2 – Powers and Jurisdiction**Article 21**

Divisions of the Supreme Court shall have jurisdiction over the following matters:

I – Appeals against judgments given by district courts in ordinary proceedings to which the Federation is a party in accordance with Section III of Article 105 of the Political Constitution of the United Mexican States;

II – Applications for a review in *amparo* proceedings against judgments given at hearings of such matters by district judges or single-judge circuit courts, in the following cases:

a) where there is an outstanding issue of constitutionality in an application where, in *amparo* proceedings, federal regulations issued by the President of the Republic, or regulations issued by the Governor of a State or by the Head of the Federal District, have been contested as being in direct violation of a provision of the Political Constitution or if the judgment makes a direct interpretation of a constitutional provision relating to these matters; and

b) where the Division exercises its power under Paragraph 2 of sub-section b) of Section VIII of Article 107 of the Political Constitution to rule on an *amparo* application, where the interest and importance of the issue make this desirable;

III – Applications for review of judgments given by collegiate circuit courts in direct *amparo* proceedings:

a) where the constitutionality of a federal regulation issued by the President of the Republic or of a regulation issued by the Governor of a State or by the Head of the Federal District has been contested, or the grounds of the alleged violation have raised questions concerning a direct interpretation of a provision of the Political Constitution relating to these matters, and a ruling has been given, or not given, on that question of unconstitutionality or that interpretation of the Constitution; and

b) in direct *amparo* proceedings where the interest and importance of the issue makes such a review desirable, in the exercise of the Court's power of review under Paragraph 2, sub-section d), Section V of Article 107 of the Political Constitution;

IV – Where a complaint is made against a court's denial of leave to appeal in any of the cases referred to in Sections V, VII, VIII, IX and X of Article 95 of the *Amparo* Law and jurisdiction in the *amparo* proceedings giving rise to the complaint lay with a Division of the Supreme Court, whether directly or as a review body, in accordance with Article 99.2 and 99.3, of the *Amparo* Law;

V – Appeals against procedural orders issued by the President of the Division;

VI – Conflicts of jurisdiction arising between a Federal Court, or between a Federal Court and a State Court or a court of the Federal District, or between the courts of one State and the courts of another, or between the courts of a State and the courts of the Federal District, or between any of them and the military courts; or cases assigned to the jurisdiction of the Supreme Court of Justice under the Federal Labour Law and those arising between conciliation and arbitration tribunals or judicial authorities and the Federal Conciliation and Arbitration Tribunal;

VII – Conflicts of jurisdiction arising between collegiate circuit courts; or between a district judge and the high court of a State or of the Federal District, or between high courts in different States, or between the high court of one State and the High Court of Justice of the Federal District, in the *amparo* proceedings referred to in Articles 51.I and 51.II; Article 52.I; Article 53.I to 53.VI; or Article 54.I and 55 of this Law;

VIII – Claims of contradictions between legal arguments used by two or more collegiate circuit courts for the purposes of the Law implementing Articles 103 and 107 of the Political Constitution;

IX – disputes relating to agreements under Article 119.2 of the Constitution;

X – Declarations of innocence, and

XI – Any other cases or matters placed under their jurisdiction by law.

Article 22

In accordance with general directions given by the Plenary Supreme Court of Justice, Divisions of the Supreme Court may refer *amparo* cases brought before them to collegiate circuit courts for decision, provided there is established case-law relevant to those cases. Where a collegiate circuit court considers that a case should be decided by the Plenary Division of the Supreme Court, it shall inform the latter of this so that it may take appropriate action.

Section 3 – Presidents of Divisions of the Supreme Court

Article 23

Every two years members of Divisions shall elect one of their number to act as President; any person so elected shall not be re-elected to hold office for the immediately following period.

Article 24

Division Presidents who are absent for less than thirty days shall be replaced by other Division members in the order in which they were appointed. In the event of their being absent for more than thirty days, the Division shall elect a new member as its President.

Article 25

Division Presidents have the following duties and powers:

I – To lay down suitable procedures in cases within the jurisdiction of the Division. If a Division President has concerns over a particular file or believes it to be of special significance, he/she shall appoint a Justice to submit a draft to the Division so that the Division can decide on the matter;

II – To manage the assignment of cases to Justices in the Division by rotation and approve the lists of cases to be decided in the course of sessions;

III – To lead the discussion and keep order during sessions and hearings;

IV – To sign decisions of the Division together with the reporting Justice, with the chief clerk signing in attestation. When a decision is approved that is different from the draft or involves substantial amendments to it, the amended version shall be distributed to the Justices and, provided the Justices raise no objection within five working days, the decision will be signed by the persons mentioned above;

V – To attend to all official correspondence of the Division;

VI – To make suitable recommendations for appointments of public servants and employees required by the Division, and

VII – To exercise all other powers and responsibilities assigned to the President by this Law and by the internal regulations and general directions of the Supreme Court of Justice.

...

Title XI – The Electoral Tribunal of the Federal Judiciary

Chapter I – Composition and Procedure

Article 184

Under Article 99 of the Political Constitution of the United Mexican States, the Electoral Tribunal is a specialist body within the Federal Judiciary and, subject to the exception set out in Section II of Article 105 of the Constitution, the highest jurisdictional authority in election-related matters.

Article 185

The Electoral Tribunal shall operate on a permanent basis with a High Chamber and five Regional Chambers; sessions held to give judicial decisions shall be public.

Article 186

As provided by Article 41, Section VI; Article 60.2 and 60.3, and Article 99.4 of the Political Constitution of the United Mexican States, the Electoral Tribunal, in accordance with the Constitution and applicable laws, shall be competent to:

I – make final rulings without recourse to appeal on challenges or complaints related to federal elections of deputies and senators;

II – make final rulings without recourse to appeal in single-instance proceedings, in cases of challenges or complaints concerning the election of a President of the United Mexican States. Once all such challenges or complaints have been ruled upon, the High Chamber shall, not later than 6 September in the election year, make a final count and draw up a statement declaring the election to be valid and a statement declaring the candidate who has obtained the greatest number of votes as President-Elect.

The statement declaring the election to be valid and the statement prepared by the High Chamber declaring the President-Elect shall be notified to the Bureau of the Chamber of Deputies not later than September in the year of the election so that the Bureau may issue and immediately publish an official confirmation as required by Section I of Article 74 of the Political Constitution of the United Mexican States.

The chambers of the Electoral Tribunal shall declare an election to be void only on grounds expressly provided for in the General Law on the System of Complaint Procedures in relation to Elections;

III – make final rulings without recourse to appeal in complaints arising from:

a) acts and decisions of federal electoral authorities other than those mentioned in Sections I and II of this Article, which violate constitutional or legal rules;

b) final acts and decisions by authorities competent to organise, assess or decide complaints relating to State electoral processes which may be decisive in determining the course of the electoral process or the final outcome of the election. This complaint procedure will only be admissible if there has been a violation of a rule established by the Political Constitution of the United Mexican States, and if the remedy sought is physically and legally possible within the election time periods and can be completed before the date fixed by the Constitution or by law for elected bodies to be constituted or for elected officials to take office;

c) acts and decisions that violate the political and electoral rights of citizens to vote and be voted for in popular elections, to associate freely and individually with others in order to take part peacefully in political affairs, and to freely and individually join political parties, provided that all constitutional and statutory requirements for the exercise of these rights have been fulfilled;

d) labour disputes or disagreements between the Electoral Tribunal and its officials;

e) labour disputes or disagreements between the Federal Electoral Institute and its officials;

f) disputes concerning impediments alleged against electoral judges;

g) complaints against acts by the General Council, the President of the Council or the General Executive Board of the Federal Electoral Institute;

IV – establish legal precedents in accordance with Articles 232 and 235 of this Law;

V – deliver final decisions with no recourse to appeal on the fixing and imposition of penalties related to electoral matters;

VI – draw up a draft budget each year and submit it to the President of the Supreme Court of Justice of the Nation for inclusion in the budget of the Federal Judiciary;

VII – draw up Internal Regulations and such general directions as may be necessary for the Tribunal to function efficiently;

VIII – implement programmes, either directly or through the Centre for the Training of Electoral Judges, for training, research, instruction and dissemination of information in the electoral sphere;

IX – maintain relations with other electoral tribunals, authorities and institutions, both national and international; and

X – any other matters prescribed by law.

Chapter II – The High Chamber

Section 1 – Composition and Procedure

Article 187

The High Chamber shall consist of seven electoral judges and shall have its seat in the Federal District. The attendance of four judges shall be sufficient for sessions to be validly held and decisions shall be taken unanimously, or by qualified majority in cases specifically provided for by law, or by a simple majority of members.

Judges shall hold office for a period of nine years which shall not be extended; appointments of judges shall be staggered.

If a permanent vacancy arises, a new judge shall be appointed and shall hold office for the remaining period of the original appointment. In this case, while an election is taking place, the vacancy will be filled by the judge in the Regional Chamber ranking highest in seniority or, failing that, by the eldest, if there are any matters requiring urgent attention.

If an electoral judge is temporarily absent for a period not exceeding thirty days, the vacancy shall be filled by the judge in the Regional Chamber who is senior in rank or, failing that, who is senior in years. For this purpose, the President of the High Chamber shall make the corresponding request and nomination, which will be submitted to the Plenary High Chamber for decision.

To make a statement certifying the validity of the election and declaring the President-Elect of the United Mexican States, or to declare the election null and void, the High Chamber shall sit with not less six of its members in attendance.

Electoral judges may only abstain from voting when they are legally impeded from doing so or were not present when the matter was being discussed. In the event of an equality of votes, the President shall have a casting vote.

Where an electoral judge dissents from the majority or his/her draft is rejected, he/she may draw up a dissenting opinion, which will be inserted at the end of the judgment that has been approved, provided that it is submitted before the judgment is signed.

Article 188

The High Chamber shall appoint a chief clerk and an assistant chief clerk and such assistant and reporting clerks and administrative and technical staff as may be required for the Chamber to operate efficiently, in accordance with guidelines laid down by the Administration Committee.

Section 2 – Powers and Responsibilities

Article 189

The High Chamber shall be competent to:

I – hear and make final rulings which cannot be appealed on the following cases:

a) single-instance complaint proceedings brought against the counting of votes in electoral districts in elections for the President of the United Mexican States, in the manner required by the applicable law.

Once all such complaints have been decided, and provided that such complaint proceedings would not result in the election being void, the Chamber shall carry out a final count and draw up statements declaring the election to be valid and declaring the candidate who has obtained the greatest number of votes to be the President-Elect. All decisions by the High Chamber shall be immediately notified to the Chamber of Deputies of the Congress of the Union for the relevant constitutional purposes;

b) applications for reconsideration under Paragraph 3 of Article 60 of the Political Constitution of the United Mexican States, brought at second instance against decisions of Regional Chambers in complaint proceedings provided for by the applicable law, in federal elections for deputies and senators;

c) single-instance appeals against acts and decisions of central departments of the Federal Electoral Institute;

d) electoral constitutional review, in single-instance proceedings and in accordance with applicable law, of final acts and decisions of the authorities competent to organise, assess or rule on complaints in State electoral processes in relation to possible violations of provisions of the Political Constitution of the United Mexican States which could be decisive in determining the course of the State electoral process or the final outcome of an election for Governor or Head of the Government of the Federal District;

e) single-instance proceedings for the protection of political and electoral rights of citizens, in accordance with the applicable law, brought in connection with violations of the right to stand as candidate in elections for Constitutional President of the United Mexican States, federal deputies and senators under the proportional representation system, or for Governor, or Head of the Government of the Federal District; proceedings brought in connection with violations of the right of free and individual association in order to take part peacefully in the political process, and proceedings brought against decisions of political parties in the selection of candidates in any of the aforesaid elections or the members of their national bodies. In the latter two cases, the High Chamber shall admit the complaint proceedings once the complainant has exhausted all available remedies within the party concerned;

f) labour disputes or disagreements between the Electoral Tribunal and its officials; and

g) labour disputes or disagreements between the Federal Electoral Institute and officials of the Institute employed in its central departments.

II – complaint proceedings related to the fixing and, where applicable, imposition of penalties by central departments of the Institute on citizens, political parties, organisations, political or citizens' groupings, observers or any other natural or legal person, public or private, in accordance with applicable law;

III – give warnings or admonitions to, or impose fines of up to two hundred times the general daily minimum wage applicable in the Federal District at the time of the commission of the offence on, all persons failing to show due respect for any office or member of the Electoral Tribunal in any representations made by them, or submitting frivolous claims or submissions;

IV – establish mandatory case-law in accordance with Articles 232 to 235 of this Law;

V – elect the President of the Chamber in the manner required by Article 190 of this Law and be informed of and, if appropriate, accept the President's resignation from office;

VI – ballot its members, apart from the President, to elect a judge to represent it on the Administration Committee;

VII – grant leave of absence to members of the Electoral Tribunal who are members of the said Committee, provided that such absence is for not more than one month, in accordance with Paragraph d) of Article 227 of this Law;

VIII – appoint committees to attend to any matters within its competence as required;

IX – appoint the Chamber's representative in any proceedings of the Electoral Tribunal's Disputes Committee;

X – approve any internal regulations submitted to it for consideration by the Administration Committee and issue general directions in matters within its competence;

XI – fix the dates and times of the sessions of the Chamber, having regard to electoral timetables;

XII – consider and rule on any reasons put forward by Electoral Tribunal judges as to why they are unable to preside over a case;

XIII – settle any conflicts of jurisdiction arising between Regional Chambers;

XIV – ensure compliance with the rules on the recording and monitoring of assets owned by officials

of the High Chamber; and report on the same to the Supreme Court of Justice of the Nation;

XV – approve guidelines for the handling of penalty proceedings in cases of infringements by electoral judges of Regional Chambers or by administrative staff assigned to the Electoral Tribunal;

XVI – exercise the power of the High Chamber, of its own motion or on the application of a party or of a Regional Chamber, to rule on any matters the special significance of which makes this desirable, in accordance with Article 189bis of this Law;

XVII – refer to the Regional Chambers of the Tribunal for decision, in accordance with any general directions given by it, any matters within its competence for which it has established legal precedents, where there is a reasonable probability that such referral will help to ensure the prompt and expeditious administration of electoral justice. Any such general directions shall come into effect when published in the Official Gazette of the Federation. A decision by the High Chamber on whether or not to exercise its power to refer cases shall not be subject to appeal;

XVIII – make rulings within its field of competence that electoral laws which are contrary to the Constitution are, in specific cases, not applicable; and

XIX – any other matters placed within its competence by law and the Internal Regulations of the Tribunal.

Article 189bis

The power of the High Chamber referred to in Paragraph XVI of the preceding Article may be exercised, subject to valid reasons being provided, in the following cases:

a) Where, in the opinion of the High Chamber, the special importance or nature of the case makes this desirable;

b) Where a reasoned application has been submitted in writing by one of the parties, explaining the importance and significance of the case;

c) Where the Regional Chamber dealing with the case has so requested.

In a referral under a) above, where the High Chamber exercises the power of its own motion, it shall inform the Regional Chamber in writing and the Regional Chamber shall, within a time-limit of seventy-two hours, send the original case records to the High Chamber and give notice thereof to the parties.

In a referral under b) above, any party to proceedings arising from a complaint falling within the jurisdiction of a Regional Chamber must move that the case be so referred, at the time of the lodging of the complaint, when making submissions as interested third parties, or when submitting a detailed report giving reasons in support of the motion. The Regional Chamber with competence in the matter shall, under its own strict liability, notify the High Chamber straightaway of the motion, and the High Chamber shall reach a decision within seventy-two hours.

In a referral under c) above, once the motion has been received by the Regional Chamber with competence in the matter, the Regional Chamber shall have seventy-two hours in which to request the High Chamber, by a decision setting out the grounds supporting the request, to agree to the case being referred. The High Chamber shall reach a decision within seventy-two hours of receiving the request.

A determination by the High Chamber as to whether to exercise its right to rule on the case shall not be subject to appeal.

Chapter III – The President of the Electoral Tribunal

Article 190

The judges of the High Chamber shall elect a President from among their number, who shall also act as President of the Tribunal, for a period of four years, for which he/she may be re-elected once only.

If the President should resign from office the High Chamber shall elect a new President who shall remain in office until the end of the term of office for which his/her predecessor was elected. Any such replacement in the office of President of the Tribunal may be re-elected once only.

In the event of the President being absent for a period not exceeding one month, the post shall be filled by the electoral judge ranking highest in seniority or, failing that, who is senior in years. If the absence is more than one month but less than six months, an interim President shall be appointed, and if the absence is longer than six months, a substitute President shall be appointed to hold office until the end of the term.

Article 191

The President of the Electoral Tribunal shall have the following powers and responsibilities:

I – to represent the Electoral Tribunal and to perform any legal or administrative acts required for the efficient operation of the Tribunal;

II – to act as President of the High Chamber and of the Administration Committee;

III – to chair meetings of the High Chamber and to maintain order during meetings. If any persons present fail to act in an orderly manner, the President may order their removal from the Chamber and continue the meeting in private;

IV – to make proposals to the High Chamber for any appointments to official posts for which it is responsible;

V – to appoint senior co-ordination and support personnel assigned directly to the Office of the President, and any other posts created to ensure the efficient operation of the Tribunal;

VI – to ensure that all decisions by the High Chamber are carried into effect;

VII – to deal with all correspondence of the Tribunal and the High Chamber;

VIII – to maintain relations with any other authorities or institutions, whether public or private, domestic or foreign, with which the Tribunal has links;

IX – to submit for the consideration of the Administration Committee a draft budget for the Electoral Tribunal so that once this budget has been approved by the Administration Committee, it can be sent to the President of the Supreme Court of Justice for inclusion in the draft budget of the Federal Judiciary;

X – to ensure that the Chambers are provided with sufficient staff, equipment and funding to allow them to operate effectively;

XI – to convene public sessions or internal meetings of electoral judges and other legal, technical or administrative personnel of the Electoral Tribunal;

XII – *Deleted.*

XIII – to ensure that suitable measures are adopted and carried into effect to co-ordinate the judicial and administrative functions of the Chambers;

XIV – to ensure that all measures decided upon to ensure efficient service and discipline in the offices of the High Chamber are carried into effect and to take any urgent action required for this purpose and notify the same immediately to the Administration Committee;

XV – to grant leave of absence to staff of the High Chamber in accordance with guidelines drawn up by the Administration Committee;

XVI – to report to the President of the Supreme Court of Justice of the Nation any permanent vacancy in the post of electoral judge for appropriate action in accordance with applicable provisions of the Constitution or the law;

XVII – to appoint one or more electoral judges to take charge of any urgent cases brought before the High Chamber during holiday periods;

XVIII – to assign cases to electoral judges in the High Chamber by rotation for the preparation of draft decisions, in accordance with the Tribunal's Internal Regulations;

XIX – to request any report or document in the possession of any department of the Federal Electoral Institute, or of any Federal, State or municipal authority, or of any political party or political grouping or organisation, or of any private individual, that may be of use in hearing or deciding any case, provided that such request would not impede the making of a decision within the legal time-limit;

XX – to order, in exceptional cases, that certain procedural steps be taken or that evidence or further evidence be produced, provided that such procedural steps or production of evidence would not impede the making of a decision within the legal time-limit;

XXI – to submit an annual report to the Plenary Supreme Court of Justice of the Nation and to the members of the Electoral Tribunal and of the Federal Council of Judicature, and to order that the report be published in a special edition. The said report must be completed before the President of the Supreme Court submits a report on the work of the Federal Judiciary and also, in the years when federal elections take place, once the election has ended;

XXII – to provide to the President of the Supreme Court of the Nation any information required by the President for the production of the report referred to in Paragraph XI of Article 14 of this Law;

XXIII – to order the suspension, removal or dismissal of any unit heads or other personnel in co-ordination units within the office of the President of the Electoral Tribunal, or of any personnel directly assigned thereto, and to make recommendations to the Administration Committee for the suspension, removal or dismissal of the Administrative Secretary;

XXIV – to decide, with the heads of co-ordination units attached to the office of the President of the Tribunal, on all matters within their area of responsibility;

XXV – to ensure that the Internal Regulations of the Tribunal are observed;

XXVI – to send reports to the Supreme Court of Justice of the Nation on any judgments on the non-applicability of electoral laws that are contrary to the Constitution, and

XXVII – any other powers and responsibilities established by law or internal regulations, or required for the efficient operation of the Tribunal.

...

Chapter IV – Regional Chambers

Section 1 – Composition and Operation

Article 192

The Electoral Tribunal shall have five Regional Chambers which shall be composed of three electoral judges and be located in the city designated as the administrative centre of each of the multi-member electoral districts into which the country may be divided, in accordance with Article 53 of the Political Constitution of the United Mexican States and applicable law.

Regional Chamber judges shall hold office for nine years and shall not be eligible for re-election, except in elections to posts at a higher level. Elections of judges will be staggered.

If a permanent vacancy arises, a new judge shall be appointed and shall hold office for the remaining period of the original appointment.

If special elections are held, the Regional Chamber with territorial jurisdiction over the place where the elections are to be held shall rule on any complaints or appeals arising in the course thereof.

Article 193

Regional Chambers shall hold meetings with all three electoral judges in attendance and their decisions shall be taken unanimously or by a majority of votes. Judges shall not abstain from voting unless they have disqualified themselves or are subject to a legal impediment.

Where an electoral judge dissents from the majority view or his/her draft decision is rejected, he/she may draw up a dissenting view which shall be inserted at the end of the agreed judgment, provided that it is submitted before the judgment is signed.

Article 194

In the event of the temporary absence of a Regional Chamber judge for a period not exceeding thirty days, his/her post shall be filled by the chief clerk or, failing that, by the clerk to that Chamber ranking highest in seniority, as determined by the President of the Chamber. Where the absence exceeds thirty days, the post shall be filled in a like manner, subject to approval by the High Chamber.

If a judge's post becomes permanently vacant, the President of that Chamber shall immediately notify the High Chamber, which shall proceed to inform the Supreme Court of Justice of the Nation, to enable a nomination to be made to the Chamber of Senators for the election of a replacement judge. In this case, while the election is taking place the vacancy will be filled by the chief clerk or the highest-ranking clerk to the Chamber concerned.

Section 2 – Powers and Responsibilities

Article 195

The Regional Chambers shall, each within its area of jurisdiction, be competent:

I – to hear and determine in single-instance proceedings, by a final decision with no recourse to appeal, all appeals brought against acts or decisions of the federal electoral authorities except for those of central departments of the Federal Electoral Institute, in accordance with the applicable law;

II – to hear and determine any complaint proceedings arising in federal elections for deputies and senators by qualified majority voting in accordance with the applicable law;

III – for electoral constitutional review, in single-instance proceedings and in accordance with the applicable law, of final acts or decisions of authorities competent to organise, assess or rule on complaints in State electoral processes, where such acts and decisions are potentially in breach of provisions of the Political Constitution of the United Mexican States and could be decisive in determining the conduct of the State electoral process or the final outcome of elections for local deputies or for the Legislative Assembly of the Federal District, municipal councils or the heads of political/administrative bodies in territorial divisions of the Federal District.

Any such complaints shall only be admissible where, after all legal remedies and means of defence which might have allowed for the act or decision in question to be amended, revoked or annulled have been exhausted in the proper time and manner, the violation alleged in the case before the Electoral Tribunal is likely to be critical to the conduct of the electoral process or the final result of the election, and the remedy sought is physically and legally possible within the electoral time periods and the process can be completed before the date fixed by the Constitution or by law for the elected bodies to be constituted, or for elected officials to take up their posts;

IV – to hear and determine in single-instance proceedings, by a final decision, not subject to appeal, cases concerning the protection of citizens' political and electoral rights, brought on the grounds of:

a) violation of the right to vote in constitutional elections;

b) violation of the right to be voted for in federal elections of deputies and senators by the qualified majority method, in elections of local deputies and for the Legislative Assembly of the Federal District, municipal councils and heads of political/administrative bodies in territorial divisions of the Federal District, provided that all constitutional and legal requirements for the exercise of the said rights have been met;

c) violation of the right to be voted for in elections of municipal public officials, other than those elected to municipal councils; and

d) violation of political or electoral rights arising from decisions made by political parties in elections of candidates for the office of federal deputy and senator

by the qualified majority method, local deputies and the Legislative Assembly of the Federal District, municipal councils, heads of political/administrative bodies in territorial divisions of the Federal District, and heads of departments of the said bodies other than at national level. The Regional Chamber shall admit any such claims once the complainant has exhausted all remedies within the party concerned.

V. to assess and decide upon any self-disqualifications by electoral judges of a Regional Chamber;

VI – to entrust clerks and legal assistants with any procedural steps which have to be taken outside the Chamber offices;

VII – to fix dates and times of public sessions;

VIII – to elect a member to act as President of the Chamber;

IX – to appoint a chief clerk, assistant and reporting clerks and any other legal and administrative personnel in accordance with general guidelines laid down by the Administration Committee;

X – to make rulings within their sphere of competence on the non-application, in specific cases, of electoral laws that contravene the Constitution;

XI – to decide on all matters concerned with locally-based political parties and political associations and groupings;

XII – to hear and determine by final decisions, not subject to appeal, any labour disputes between the Federal Electoral Institute and public servants assigned to its decentralised agencies;

XIII – to grant leave of absence to electoral judges in the Chamber, provided that such leave of absence is not longer than one month, in accordance with Paragraph d) of Article 227^{bis} of this Law; and

XIV – such other powers and authorities as may be delegated to them by the High Chamber or otherwise by law.

The above powers and responsibilities shall be subject to the general directions issued by the High Chamber, with the proviso that such general directions may not in any circumstances permanently render the said powers or authorities ineffective. Any specific directions given by the High Chamber under its power of delegation shall not be deemed to constitute case-law.

Section 3 – Presidents of Regional Chambers

Article 196

Judges of Regional Chambers shall elect a President from among their number, and such President shall remain in office for three years and may only be re-elected once.

Any vacancy in the office of President not exceeding one month shall be filled by the judge in that Regional Chamber who is senior in rank or, failing that, in years. If the vacancy is for more than one month but less than six months, the Chamber shall appoint an interim President and, for vacancies of more than six months, a replacement President who shall continue in office until the end of the term of office and may only be re-elected once. The provisions of this paragraph shall apply without prejudice to Article 194 of this Law.

Article 197

The Presidents of Regional Chambers shall have the following powers and authorities:

I – to represent the Chamber and deal with all of its correspondence;

II – to chair meetings of the Chamber, lead discussions and maintain order during meetings; the President may remove anybody who fails to act in an orderly fashion from the Chamber and order the meeting to continue in private;

III – to assign cases to judges in the Chamber by rotation;

IV – to ensure that all decisions and rulings of the Chamber are implemented;

V – to inform the Chamber of the appointment of any chief clerk, assistant and reporting clerks or other legal and administrative personnel of the Chamber in accordance with general guidelines laid down by the Administration Committee;

VI – to make arrangements with the Administration Committee regarding the human, financial and material resources required for the efficient operation of the Chamber;

VII – to keep the President of the Administration Committee informed on a regular basis of all business transacted by the Chamber, the number of complaints received and the processing, investigation and outcome of each case;

VIII – to summon electoral judges, the chief clerk, assistant clerks and other legal and administrative personnel of the Chamber to attend public hearings or internal hearings, as the case may be;

IX – to report to the President of the Electoral Tribunal on any permanent vacancies in the posts of electoral judges or chief clerk, assistant clerks and other legal and administrative personnel of the Chamber;

X – to request any report or document in the possession of any department of the Federal Electoral Institute, or of any Federal, State or municipal authority, or of any political party or any private individual, that may be of use in hearing or determining any case, provided that such request would not impede the reaching of a decision within the legal time-limit;

XI – to order, in exceptional cases, that certain procedural steps be taken or that evidence or further evidence be produced, provided that such procedural steps or production of evidence would not impede the reaching of a decision within the legal time-limit;

XII – to request the President of the Electoral Tribunal, for appropriate legal purposes, to suspend, remove or dismiss electoral judges, the chief clerk or any assistant or reporting clerks or other legal or administrative personnel of the Chamber;

XIII – to assist in identifying and classifying any opinions given by the Chamber;

XIV – to ensure compliance with the Internal Regulations of the Electoral Tribunal and with all general directions issued by the High Chamber;

XV – to send reports to the High Chamber concerning the non-applicability of laws on electoral matters that are contrary to the Constitution; and

XVI – any other powers and authorities required for the efficient operation of the Chamber or required by law or Internal Regulations.

Chapter V – Electoral Judges

Section 1 – Election Procedures

Article 198

Any permanent vacancy in the post of a judge belonging to the Electoral Tribunal of the Federal Judiciary shall be filled, following a public

announcement to interested parties, in accordance with the following rules and procedures:

a) the Plenary Supreme Court shall approve, by a simple majority of those present at a public hearing, a shortlist of three candidates put forward by the Chamber of Senators;

b) the President of the Supreme Court of Justice of the Nation shall send to the Chamber of Senators its shortlist of three candidates for each judicial post in any Regional Chamber or the High Chamber of the Electoral Tribunal that is up for election;

c) the Chamber for which each shortlist is being proposed shall be identified;

d) the Chamber of Senators shall, within fifteen days of receiving each proposal, elect electoral judges from among the candidates on each shortlist by a vote of two-thirds of all members present; and

e) if no candidate on the shortlist secures the qualified majority, the Supreme Court shall be notified accordingly so that it can submit a further shortlist, which shall be sent within three days to be voted on within not more than five days of the receipt of such further shortlist. None of the candidates previously shortlisted shall be included.

Section 2 – Powers and Authorities

Article 199

Electoral judges shall have the following powers and responsibilities:

I – to attend, take part in and, when required, to vote at all public sessions and private meetings which they are called to attend by the President of the Electoral Tribunal or by the Presidents of Chambers;

II – to form part of Chambers with a view to reaching collective decisions on matters within their competence;

III – to prepare draft judgments on all cases assigned to them by rotation for decision;

IV – to read out their draft judgments at public hearings, either in person or through a clerk, setting out the legal arguments and rules on which they are based;

V – to discuss and vote on draft judgments submitted for their consideration at public hearings;

VI – to draw up final versions of all decisions approved by the Chamber when designated for that purpose;

VII – to admit claims and written submissions by any interested party or other third parties, in accordance with applicable law;

VIII – to submit to their Chambers draft judgments dismissing claims which are evidently inadmissible or patently frivolous, in accordance with the applicable law;

IX – to submit to their Chambers any draft judgments in which claims are held to be inadmissible or written submissions out of order in failing to meet the requirements stated in the applicable laws;

X – to submit to their Chambers any decisions ordering the closure, as cases that have been fully and finally concluded, of any claims that fall into that category, in accordance with applicable laws;

XI – to submit to their Chambers for consideration, where applicable, any joinder of proceedings and the arguments for treating them as being connected, in accordance with applicable laws;

XII – to set out standard requirements for the contents of case files in accordance with the applicable legislation and to request any report or document that is in the possession of any department of the Federal Electoral Institute or of any Federal, State or municipal authority or of any political party or individual, that may be of use in the hearing of any case, provided that it does not impede the making of a decision within the required periods, in accordance with applicable laws;

XIII – to send written requests to Federal or State Courts entrusting them with any procedural steps within their jurisdiction, or to deal themselves with any procedural steps that have to be taken outside the Chamber's premises;

XIV – to take part in any training programmes, whether organised internally or by the electoral judge training centre; and

XV – to exercise any other powers and authorities vested in them by law or by the Internal Regulations of the Electoral Tribunal, or which are necessary for the efficient operation of the Tribunal.

Each High Chamber and Regional Chamber judge will be supported at all times by such senior and junior clerks as may be required for the processing of cases within their jurisdiction.

Chapter VI – Chief Clerk and Assistant Chief Clerk

Section 1 – Appointment and Role of Clerks in the High Chamber

Article 200

For the performance of its functions the High Chamber shall have a chief clerk and an assistant chief clerk, who shall be appointed in accordance with Article 188 of this Law.

Section 2 – Duties and Responsibilities

Article 201

The chief clerk shall have the following powers and responsibilities:

I – to support the President of the Electoral Tribunal in any task the President requires of him/her;

II – to report on, take votes at and draw up minutes of all meetings or hearings of the High Chamber;

III – to review the final drafts of all decisions of the High Chamber;

IV – to supervise the allocation of tasks to electoral judges by rotation;

V – to supervise the proper functioning of the document registry of the High Chamber;

VI – to ensure that notices issued by the High Chamber are served in the proper time and manner;

VII – to see to the efficient operation of the Jurisdictional Archives of the High Chamber and Regional Chambers and to the consolidation and safekeeping thereof as and when required;

VIII – to establish, by agreement with the President of the Electoral Tribunal, general guidelines for the identification and contents of case files;

IX – to authorise any proceedings of the High Chamber by affixing their signature;

X – to issue any certificates required for evidential purposes;

XI – to keep records of judgments on the non-applicability of laws relating to elections and to assist

the President of the Electoral Tribunal in bringing them to the attention of the Supreme Court of Justice of the Nation; and

XII – any other functions or duties specified by law.

Article 202

The assistant chief clerk shall assist and support the chief clerk in the performance of his/her duties as required by the Internal Regulations of the Electoral Tribunal.

Chapter VII – Chief Clerks of Regional Chambers

Section 1 – Role of Chief Clerk in Regional Chambers

Article 203

In order to carry out its functions, each Regional Chamber shall appoint a chief clerk.

Section 2 – Duties and Responsibilities

Article 204

The chief clerks of the Regional Chambers shall have the following duties and responsibilities:

I – to support the President of the Chamber in all tasks assigned to him/her;

II – to report on, take votes at and draw up minutes of all meetings of the Chamber;

III – to review the final drafts of all decisions of the Chamber;

IV – to oversee the allocation of tasks to electoral judges of the Chamber by rotation;

V – to supervise the proper functioning of the document registry of the Chamber;

VI – to ensure that all notices issued by the Chamber are served in the proper time and manner;

VII – to see to the efficient operation of the Jurisdictional Archive of the High Chamber and to send it to the President of the Tribunal as and when required;

VIII – to authorise any proceedings of the High Chamber by affixing their signature;

IX – to issue any certificates required for evidential purposes;

X – to keep the President of the Chamber regularly informed of progress in all areas within his/her responsibility and on the processing of cases within his/her sphere of competence;

XI – to keep records of judgments on the non-applicability of laws on electoral matters and assist the President of the Chamber in bringing them to the attention of the High Chamber; and

XII – any other responsibilities specified by law.

Chapter VIII – The Administration Committee

Section 1 – Composition and Procedure

Article 205

The Administration Committee shall be responsible for the administration, supervision, disciplinary control and professional development of judges in the Electoral Tribunal.

The Administration Committee of the Electoral Tribunal shall consist of the President of the Tribunal, who shall chair the Committee, an electoral judge of the High Chamber elected by secret ballot, and three members of the Council of Federal Judicature. The Council members on the committee shall be: the circuit judge with the longest service in post; the Council member appointed by the Chamber of Senators of the Congress of the Union with the longest service on the Council, and a Council member appointed by the President of the Republic. The Committee shall be a standing body and shall hold its meetings in premises specially provided for it at the offices of the Electoral Tribunal.

The Administrative Secretary of the Tribunal shall act as secretary to the Committee and attend sessions, at which he/she may speak but not vote.

Article 206

The Administration Committee shall hold valid meetings if three Committee members are present and shall adopt decisions unanimously or by a majority of Committee members present. Committee members shall not abstain from voting unless they have disqualified themselves or are subject to a legal

impediment. In the case of an equality of votes, the President shall have a casting vote.

Where a Committee meeting cannot be held because it is in quorate, the president will convene a new meeting to take place within the following twenty-four hours. In this case the meeting will be validly held regardless of the number of Committee members present.

A Committee member dissenting from the majority view may draw up a dissenting opinion, which shall be added to the minutes of the meeting if submitted within five days of the date on which the minutes are agreed.

Ordinary or extraordinary meetings of the Committee shall be held in private.

Article 207

The Administration Committee shall fix its holiday periods each year having regard to federal and local election schedules.

In recess periods, the Administration Committee shall appoint two of its number to remain on duty in order to deal with any urgent administrative matters that arise. If any other matter arises while the Committee is in recess, upon which a decision cannot be deferred, the Committee members who are on duty may take a decision provisionally until the full Committee is able to meet and give a final decision.

Article 208

Where the Administration Committee considers that its decisions or resolutions may be of general interest, it shall order them to be published in the Official Gazette of the Federation.

Section 2 – Administration Committee – Functions and Responsibilities

Article 209

The Administration Committee shall have the following functions and responsibilities:

I – to draft Internal Regulations for the Electoral Tribunal and submit them to the High Chamber for approval;

II – Deleted.

III – to issue Internal Regulations of an administrative nature and make any general provisions necessary for the induction, career development, promotion by seniority, disciplinary control and removal of any Electoral Tribunal personnel, and also in relation to incentives and training;

IV – to establish rules and principles for the modernisation of organisational structures and internal administrative systems and procedures as well as services to the public;

V – to implement measures required to ensure efficient service and discipline within the Electoral Tribunal;

VI – to give authority, in accordance with this Law, to the Presidents of Regional Chambers to appoint interim replacements in the event of the post of any staff member or employee becoming vacant;

VII – to grant leave of absence to any administrative personnel employed by the Tribunal, in accordance with this Law;

VIII – to take note of any resignations of clerks or other personnel of the Regional Chambers;

IX – to dismiss or suspend judges of Regional Chambers who are guilty of any serious irregularity or misconduct warranting such dismissal, and to inform the Supreme Court of Justice of the Nation immediately for action as necessary. Any judge so dismissed or suspended may appeal against the decision to the High Chamber of the Electoral Tribunal;

X – to suspend from office any electoral judge in a Regional Chamber at the request of any judicial authority responsible for trying a criminal case brought against that judge. In such cases the judgment that is reached in the proceedings should be reported to any authority that has asked to be informed of it. A judge must first have been suspended by the Administration Committee before he/she can be apprehended and put on trial. If any order for the arrest of a judge is made or executed in violation of this provision, action shall be taken as specified in the last part of Paragraph 2, Section X of Article 81 of this Law;

XI – to suspend any electoral judge in a Regional Chamber who is found to be involved in the commission of an offence, and to file a complaint or take criminal proceedings against that judge where appropriate;

XII – to order, on duly substantiated grounds, the suspension, removal or dismissal of chief clerks, assistant clerks or any legal or administrative personnel of a Regional Chamber;

XIII – to consider and rule on administrative complaints and the liability of public servants in accordance with this Law, including any complaints relating to violation of the impediments provided for in Article 101 of the Political Constitution of the United Mexican States by a member or members of the Electoral Tribunal;

XIV – to impose penalties on Tribunal staff for any irregularity or misconduct by them in the performance of their duties, taking into account any opinion given by the Tribunal's Disputes Committee as required by Articles 152 to 161 of the Federal Law on Government Employees implementing Part B) of Article 123 of the Political Constitution of the United Mexican States, where applicable;

XV – to appoint, on the proposal of its President, a person to represent the Tribunal before the Disputes Committee for the purposes of the previous paragraph;

XVI – to appoint, on the proposal of its President, the officers of the auxiliary bodies of the Administration Committee;

XVII – to appoint public servants to other posts in the auxiliary bodies of the Administration Committee and take decisions regarding their promotion, leave of absence, removal or resignation;

XVIII – to establish general rules for the organisation, functioning, co-ordination and supervision of the Administration Committee's auxiliary bodies;

XIX – to decide on resignations of, and leave of absence for, officials from the auxiliary bodies of the Administration Committee, and remove them where there are reasonable grounds to do so, or suspend them in the manner required by applicable laws and agreements, and to file complaints or take criminal proceedings against the said persons as necessary;

XX – to investigate and determine the liability of, and impose penalties on, public servants and employees of the Administration Committee in the manner and following the procedures established by law, regulations and any decisions made by the Administration Committee on disciplinary matters;

XXI – to make unscheduled visits or set up investigating committees where serious misconduct is suspected or at the request of the High Chamber;

XXII – give warnings or admonitions to, or impose fines of up to one hundred and eighty times the general daily minimum wage applicable in the Federal District at the time of the commission of the offence on, all persons failing to show due respect for any office or member of the Electoral Tribunal in any representations made by them to the Administration Committee;

XXIII – to draw up each year a list of persons able to act as expert witnesses to the Chambers of the Electoral Tribunal, classified according to the different branches of knowledge, areas of expertise, multi-member electoral constituencies, States and, if possible, single-candidate federal electoral districts;

XXIV – to provide the President of the Electoral Tribunal with such information and assistance as may be required to prepare a draft annual expenditure budget for the Electoral Tribunal so that, once the budget has been approved by the Committee, it can be submitted to the President of the Supreme Court of Justice for inclusion in the Budget for the Federal Judiciary and sent to the President of the Nation;

XXV – to manage the expenditure budget of the Electoral Tribunal;

XXVI – to establish broad principles in the form of general directions to ensure that the acquisition, rental and disposal of all types of property, the provision of services of any nature and the contracting of works by the Electoral Tribunal in the framework of its expenditure budget comply with the requirements set out in Article 134 of the Political Constitution of the United Mexican States;

XXVII – to manage all real and personal property in use by the Electoral Tribunal and ensure it is fitted out and kept in good repair;

XXVIII – to establish general principles for a policy on IT and statistics for the Electoral Tribunal;

XXIX – to set up, through the Council of Federal Judicature, co-ordination processes between the Institute of Judicature and the Centre for the Training of Electoral Judges;

XXX – to ensure that all officials of the Regional Chambers, the Administration Committee and its auxiliary bodies submit declarations of their assets to the Council of Federal Judicature in a proper and timely manner; and

XXXI – to exercise any other functions assigned to the Committee by law or the Internal Regulations of the Electoral Tribunal.

Section 3 – President of the Administration Committee

Article 210

The President of the Administration Committee shall have the following powers and responsibilities:

I – to represent the Committee;

II – to chair the Committee, lead discussion and maintain order during meetings;

III – to allocate matters, as required, among the members of the Committee by rotation, so that draft decisions may be drawn up;

IV – to deal with the Committee's correspondence and sign decisions or resolutions, and authenticate, in person or through the secretary to the Committee, the signature of any Electoral Tribunal staff member as and when required by law;

V – to supervise the efficient operation of auxiliary bodies of the Administration Committee;

VI – to inform the Council of Federal Judicature of any vacancies among those representing the Council on the Administration Committee so that new appointments can be made;

VII – to appoint the Administrative Secretary and the officers of auxiliary bodies, and a person to represent the Committee in its dealings with the Disputes Committee; and

VIII – any other powers and responsibilities vested in the President of the Committee by law, internal regulations or general directions.

Section 4 – Auxiliary Bodies

Article 211

The Administration Committee shall have an Administrative Secretary and such auxiliary bodies as may be required for the proper performance of its functions. Its structure and functions shall be as determined by the Internal Regulations of the Electoral Tribunal.

Chapter IX – Special Provisions

Section 1 – Requirements to fill posts in the Electoral Tribunal

Article 212

To be elected as an electoral judge in the High Chamber, in addition to satisfying the requirements set out in Article 95 of the Political Constitution of the United Mexican States, candidates must:

I – be in possession of a voting card bearing their photograph;

II – have knowledge of electoral law;

III – not hold, or have held, office as President of the National Executive Committee or any equivalent post within a political party;

IV – not have been registered as a candidate for any popular elective office within the six years immediately preceding their appointment; and

V – not hold, or have held, office in the management of any political party at national, state, district or municipal level within the six years immediately preceding their appointment.

Article 213

An electoral judge of a Regional Chamber, in addition to satisfying the requirements established by Article 106 of this Law, must:

I – be a Mexican citizen fully entitled to exercise his/her political and civil rights and be in possession of a voting card bearing his/her photograph;

II – be at least thirty-five years of age at the time of the election;

III – be of good character and not have been convicted of any deliberate offence punishable with imprisonment for more than one year;

IV – have legitimately obtained a university degree in law and have been in professional practice for at least five years;

V – be able to show knowledge of electoral law;

VI – not hold, or have held, office as President of the National Executive Committee or an equivalent office within any political party;

VII – not have been registered as a candidate for any popular elective office within the last six years preceding their appointment; and

VIII – not hold, or have held, office in the management of any political party at national, state, district or municipal level within the six years immediately preceding their appointment.

Article 214

Applicants for the post of chief clerk to the High Chamber must satisfy all the requirements applicable to candidates for the post of electoral judge of a Regional Chamber as set out in this Chapter, with the exception of the minimum age, which shall be thirty years.

Article 215

The assistant chief clerk to the High Chamber and the chief clerks of Regional Chambers must:

I – be a Mexican citizen with full political and civil rights and be in possession of a voting card bearing his/her photograph;

II – be at least twenty-eight years of age at the time of their appointment;

III – be of good character and not have been convicted of any deliberate offence punishable with imprisonment for more than one year;

IV – have legitimately obtained a university degree in law and have been in professional practice for not less than three years;

V – not hold, or have held, office as President of the National Executive Committee or equivalent office within any political party;

VI. not have been registered as a candidate for any popular elective office within the seven years immediately preceding appointment; and

VII – not hold, or have held, any management post in any political party at national, state, district or municipal level in the six years immediately preceding appointment.

Article 216

Applicants for a post as clerk to any Chamber of the Electoral Tribunal must satisfy the following requirements:

a) for the post of senior clerk:

I – be a Mexican citizen fully entitled to exercise all political and civil rights and be in possession of a voting card bearing his/her photograph;

II – be at least twenty-eight years of age at the time of their appointment;

III – be of good character and not have been convicted of any deliberate offence punishable with imprisonment for more than one year;

IV – have legitimately obtained a university degree in law and have been in professional practice for at least three years; and

V – undergo an assessment process to show the possession of such basic knowledge as the Administration Committee may require;

b) for applicants for posts of junior clerk or equivalent, the requirements set out under a) above shall apply with the exception of the minimum age, which shall be twenty-five years, and the number of years in professional practice and of holding a professional qualification, which shall be two years.

Article 217

Applicants for any post as a junior clerk in any Chamber of the Electoral Tribunal must:

I – be Mexican citizens fully entitled to exercise all political and civil rights and be in possession of a voting card bearing their photograph;

II – be of good character and not have been convicted of any deliberate offence punishable with imprisonment for more than one year;

III – hold, as a minimum, a document showing proof of having worked as an articulated clerk in a legally recognised institution; and

IV – undergo an assessment process to show the possession of such basic knowledge as the Administration Committee may require.

Article 218

The President of the Electoral Tribunal or the Administration Committee may, each within their respective field of competence, create other categories of legal support staff to meet the needs of the High Chamber or the Regional Chambers, taking account of the authorised expenditure items in the budget.

Where unusually heavy workloads so require, the Administration Committee may give authority for the employment of such temporary legal and administrative personnel as may be necessary to handle the extra work, and shall not be required to follow the usual staff employment and induction procedure.

Section 2 – Responsibilities, Impediments and Disqualifications**Article 219**

The responsibilities of all members of the Electoral Tribunal shall be regulated by Title 8 and the special provisions of this Title of this Law. For these purposes and save as otherwise provided, the powers conferred on the Supreme Court of Justice of the Nation and on the Council of Federal Judicature shall be deemed to have been delegated to the High Chamber and to the Administration Committee respectively, and the powers of the President of the Supreme Court shall be deemed to have been delegated to the President of the Electoral Tribunal.

Decisions and rulings of the High Chamber, the President of the Electoral Tribunal or the Administration Committee shall, except in the circumstances provided for at the end of Paragraph IX of Article 209 and in Paragraph 2 of Article 241 of this Law, within their respective areas of competence, be final and not subject to any further trial or appeal.

In the exceptional circumstances referred to in the preceding paragraph, a judge or public servant who is dismissed may appeal, without being required to observe any formalities, to the High Chamber of the Electoral Tribunal within ten working days of the date they are notified of the dismissal decision. The High Chamber shall rule on the appeal within thirty working days of the appeal being lodged.

Judges of the High Chamber of the Electoral Tribunal may only be removed from office in accordance with

Articles 110 and 111 of Title 4 of the Political Constitution of the United Mexican States.

Article 220

Electoral judges cannot preside over any case in which any of the circumstances set out in Article 146 of this Law are present.

Clerks assigned to Chambers are subject to the impediments set out in Article 149 of this Law.

Article 221

If an electoral judge is unable or unwilling to hear a case, by reason of a legal impediment, this shall be assessed and decided upon immediately by the Chamber to which that judge is assigned, in the manner and under the terms set forth in the Internal Regulations.

If an electoral judge declines to act, the quorum required for that judge's Regional Chamber to hold valid sessions shall be made up by the attendance of the General Secretary or, failing that, the secretary who is senior in rank or in age.

Article 222

Electoral judges and public servants in the High Chamber, as well as co-ordinators and other public servants directly assigned to the Office of the President of the Electoral Tribunal, shall, as required by applicable law, comply with their obligation to provide a statement of their assets to the Supreme Court of Justice of the Nation. All other Chamber employees who are under the same obligation shall submit statements to the Council of Federal Judicature.

Section 3 – Holidays, Non-Working Days, Resignation, Vacancies and Leave of Absence

Article 223

Public servants and other employees of Chambers of the Electoral Tribunal shall have two holiday periods each year, subject to workplace requirements.

In years in which federal elections take place, since all days and times are working days and times, the public servant or employee may opt to defer their holidays or receive payment in lieu. In no circumstances may holiday periods be accumulated for more than two years.

Article 224

Public servants and others employees of the Electoral Tribunal shall be entitled to take leave on working days in accordance with Article 163 of this Law, provided that the circumstances referred to in Paragraph 2 of the preceding article are not present and there are no outstanding matters to be attended to as provided for in Paragraph III b) of Article 186 of this Law.

Article 225

Public servants and other employees of the Electoral Tribunal shall be required to work such hours as the Administration Committee shall specify, bearing in mind that during Federal or local elections all days and all times are working days and working times.

Article 226

During electoral processes no overtime will be paid; provision will, however, be made in the budget for additional payments to public servants and other Electoral Tribunal personnel based on the hours worked and the amount of work completed.

Article 227

In accordance with Articles 98 and 99 of the Political Constitution of the United Mexican States, resignations, vacancies and leave of absence of electoral judges of the High Chamber shall be processed, filled or granted in accordance with the following rules:

a) resignation will only be appropriate if justified by serious reasons; any resignation will be notified by the High Chamber to the Supreme Court of Justice and if the Supreme Court accepts the resignation, it will send it to the Chamber of Senators for approval;

b) if a permanent vacancy arises, the High Chamber will inform the national Supreme Court of Justice, which will appoint a new judge for the remaining period of the original term as required by Article 198 of this Law;

c) leave of absence will be granted by the High Chamber; any leave of more than one month's duration will be covered for by the chief clerk or a case management clerk to be determined by the Supreme Court of Justice of the Nation on the proposal of the President of the High Chamber; and

d) no leave of absence shall exceed six months. In no circumstances shall leave of absence be authorised for two judges simultaneously or for more than one month during a Federal election.

Article 227bis

Resignations, vacancies and leave of absence of judges in Regional Chambers shall be processed, filled and granted according to the following rules:

a) resignation will only be appropriate if justified by serious reasons; any resignation will be notified by the respective Regional Chamber to the President of the High Chamber, who will submit it without further proceedings to the Supreme Court of Justice; if the Supreme Court accepts the resignation, it will refer it to the Chamber of Senators for approval;

b) temporary vacancies will be filled by the chief clerk or a case management clerk to be determined by the President of the retiring judge's Regional Chamber, and must be reported to the High Chamber;

c) if a long-term vacancy arises, the relevant Regional Chamber will report the vacancy to the High Chamber, which will inform the Supreme Court of Justice, so that it can appoint a new judge for the remaining period of the original term, as required by Article 198 of this Law;

d) leave of absence for a period not exceeding one month will be authorised by the Regional Chamber itself; any leave of absence in excess of one month will be authorised by the High Chamber. No leave of absence may be granted for more than six months. Leave of absence will not be granted during election times. In no circumstances will leave of absence be granted to more than one judge.

Article 228

Leave of absence will be granted to public servants and others in the employ of the Electoral Tribunal in accordance with Articles 164 to 176 of this Law, as applicable, bearing in mind that during an election all days and all times are working days and working times.

Section 4 – Procedural Steps and Court Archives**Article 229**

For any procedural steps to be carried out outside the premises of the Chambers of the Electoral Tribunal, Articles 156 to 158 of this Law shall apply as and when applicable.

Article 230

The Electoral Tribunal shall keep records of all cases in which final decisions have been made in its court archive for a period of two years from the date on which the case is ordered to be closed.

Article 231

At the end of this two-year period, the Electoral Tribunal may send the case files to the national General Archive, but may retain copies of any cases it requires and avail itself of any system of digitisation, reproduction or reduction.

Section 5 – Case-Law**Article 232**

Case-law is established in the following cases and according to the following rules:

I – where the High Chamber, in three judgments with no intervening judgment to the contrary, upholds the same rule in determining the applicability, interpretation or content of a legal provision;

II – where the Regional Chambers, in five judgments with no intervening judgment to the contrary, uphold the same rule in determining the applicability, interpretation or content of a legal provision and the High Chamber confirms the rule; and

III – where the High Chamber makes a decision contradicting rules upheld by two or more Regional Chambers or by two or more Regional Chambers and the High Chamber.

In case II above, the Regional Chamber concerned shall, through the department responsible, inform the High Chamber of the five judgments containing the rule that it wishes to be declared mandatory, together with the heading and the text of the legal argument, so that the High Chamber may determine whether case-law should be established.

In case III above, a contradiction of rules may be raised at any time by a Chamber, by an electoral judge within a Chamber, or by the parties, and the rule which prevails will become mandatory as soon as a pronouncement has been made to that effect, provided that there are no changes to the effect of any judgment given before that time.

In all the cases provided for in this Article, a formal statement from the High Chamber will be required for the rule of case-law to become mandatory. Once this statement has been made, the rule of case-law will be notified immediately to the Regional Chambers, the Federal Electoral Institute and, if appropriate, to local electoral authorities, and published in the Electoral Tribunal's Official Gazette.

Article 233

Case-law established by the Electoral Tribunal shall be binding at all times on Chambers and on the Federal Electoral Institute. It shall also be binding for local electoral authorities, once it has been declared to be case-law, in cases relating to the political and electoral rights of citizens, or in cases in which acts or decisions of local electoral authorities have been contested, as required by the Political Constitution of the United Mexican States and applicable laws.

Article 234

Case-law established by the Electoral Tribunal shall be suspended and cease to be binding when a contrary decision is made by the members of the High Chamber with a majority of five votes. The High Chamber's ruling must set out the reasons on which the change of rule is based and will constitute case-law in the cases described in Article 232, I and III of this Law.

Article 235

Case-law established by the Plenary Supreme Court of Justice of the Nation shall be binding on the Electoral Tribunal where it relates to the direct interpretation of a provision of the Political Constitution of the United Mexican States, and in cases to which it is precisely applicable.

Section 6 – Claims of Contradictory Arguments used by the Electoral Tribunal

Article 236

As provided for in Paragraph 7 of Article 99 of the Political Constitution of the United Mexican States and Paragraph VIII of Article 10 of this Law, where a Chamber of the Electoral Tribunal, either directly or when deciding between contradictory arguments, upholds an argument on the unconstitutionality of an act or decision or on the interpretation of a provision of the Constitution, and that argument may contradict an argument upheld by a Division of the Supreme Court of Justice or the Plenary Supreme Court of Justice, any Justice or Division of the Supreme Court or any party

may claim the existence of a contradiction, in which case the Plenary Supreme Court of Justice will have a period not exceeding ten days in which to reach a final decision as to which argument should prevail.

Article 237

Decisions of the Plenary Supreme Court of Justice in cases involving use of contradictory arguments by the Electoral Tribunal shall not affect any specific legal situation resulting from a case in which a judgment based on contradictory arguments was given.

Section 7 – Oath to uphold the Constitution

Article 238

Electoral judges shall appear before the Chamber of Senators to take the oath required by the Constitution; members of the Administration Committee who are members of the Council of Federal Judicature shall take the oath in the presence of the Council.

Secretaries and employees of the High Chamber and the Administration Committee shall take their oath in the presence of the President of the Electoral Tribunal.

All other public servants and employees shall take their constitutional oath in the presence of the President of the Chamber to which they are assigned.

The wording of the constitutional oath shall always be as set out in Article 155 of this Law.

Article 239

All Electoral Tribunal public servants and employees shall act impartially and ensure that the principles of constitutionality and legality are applied without restriction in all proceedings in which they take part in the performance of their duties; they shall be under an obligation to keep all matters within the jurisdiction of the Tribunal strictly confidential.

Section 8 – Electoral Tribunal Personnel

Article 240

All public servants and employees of the Electoral Tribunal attached to judges' offices, or having a job category which is the same as, or similar to, those listed in Articles 180 and 181 of this Law, respectively, shall be deemed to be in a position of trust. All other employees shall be deemed to be ordinary employees.

Article 241

The Labour Disputes Committee shall consist of one representative of the High Chamber, who shall chair the Committee, one representative of the Administration Committee, and a third member appointed by the Federal Judiciary Workers' Union. When appointing the person representing the Administration Committee, the members representing the High Chamber and the trade union shall each express an opinion. When enquiring into and reaching a decision on a labour dispute between the Electoral Tribunal and its public servants and employees, the Committee shall, where applicable, follow the procedure described in Articles 152 to 161 of the Federal Law on Government Employees, implementing Part B of Article 123 of the Constitution. For the purposes of the said procedure, the powers of the Plenary Supreme Court of Justice of the Nation shall be deemed to have been delegated to the High Chamber and the powers of the President of the Supreme Court shall be deemed to have been delegated to the President of the Electoral Tribunal.

Public servants who are dismissed from the employ of the Electoral Tribunal may appeal against the decision to the Tribunal's High Chamber.

Amparo: an appeal for relief under the Constitution in a case of violation of civil rights. This is a constitutional remedy aimed at preserving the rights and freedoms established by the Federal Constitution from legislative acts, acts of authority and court decisions, as well as preserving local and federal sovereignty in interstate and federal-state disputes. (Quoted from Thomas L. West, A Spanish-English Dictionary of Law and Business, Atlanta, 1999).



MONTENEGRO

Constitution

19 October 2007

– extracts –

Part One – Basic Provisions

...

Article 9 – Legal Order

The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation.

Article 10 – Limits of Liberties

In Montenegro, anything not prohibited by the Constitution and the law shall be free.

Everybody is obliged to abide by the Constitution and the law.

Article 11 – Division of Powers

The power shall be regulated following the principle of the division of powers into the legislative, executive and judicial.

The legislative power shall be exercised by the Parliament, the executive power by the Government and the judicial by courts.

The power is limited by the Constitution and the law.

The relationship between powers shall be based on balance and mutual control.

Montenegro shall be represented by the President of Montenegro.

Constitutionality and legality shall be protected by the Constitutional Court.

Army and security services shall be under democratic and civil control.

...

Article 16 – Legislation

The law, in accordance with the Constitution, shall regulate:

- 1) the manner of exercise of human rights and liberties, when this is necessary for their exercise;
- 2) the manner of exercise of the special minority rights;
- 3) the manner of establishment, organisation and competences of the authorities and the procedure before those authorities, if so required for their operation;
- 4) the system of local self-government;
- 5) other matters of interest for Montenegro.

...

Part Three – Organisation of Powers

1. Parliament of Montenegro

Article 82 – Responsibility

Parliament shall:

- 1) adopt the Constitution;
- 2) adopt laws;
- 3) adopt other regulations and general acts (decisions, conclusions, resolutions, declarations and recommendations);

...

13) elect and dismiss from duty the President of the Supreme Court, the President and the judges of the Constitutional Court;

14) appoint and dismiss from duty: the Supreme State Prosecutor and State Prosecutors, the Protector of human rights and liberties (Ombudsman), the Governor of the Central Bank and members of the Council of the Central Bank of Montenegro, the President and members of the Senate of the State Audit Institution, and other officials stipulated by the law;

15) decide on immunity rights;

16) grant amnesty;

17) confirm international agreements;

...

5 – The Court

Article 118 – Principles of the Judiciary

The Court is autonomous and independent.

The Court shall rule on the basis of the Constitution, laws and confirmed and published international agreements.

Establishment of court marshal and extraordinary courts shall be prohibited.

Article 119 – Panel of Judges

The Court shall rule in panel, except when the law stipulates that an individual judge shall rule.

Lay-judges shall also participate in the trial in cases stipulated by the law.

Article 120 – Publicity of Trial

The hearing before the Court shall be public and judgments shall be pronounced publicly.

Exceptionally, the Court may exclude the public from the hearing or one part of the hearing for the reasons necessary in a democratic society, only to the extent necessary: in the interest of morality; public order; when minors are tried; in order to protect private life of the parties; in marital disputes; in the proceedings related to guardianship and adoption; in order to protect military, business or official secret; and for the protection of security and defence of Montenegro.

Article 121 – Standing Duty

The judicial duty shall be permanent.

The duty of a judge shall cease at his/her own request, when he/she fulfils the requirements for age pension and if the judge has been sentenced to an unconditional imprisonment sentence.

The judge shall be released from duty if he/she has been convicted for an act that makes him/her unworthy for the position of a judge; performs the judicial duty in an unprofessional or negligent manner or loses permanently the ability to perform the judicial duty.

The judge shall not be transferred or sent to another court against his/her will, except by the decision of the Judicial Council in case of reorganisation of courts.

Article 122 – Functional Immunity¹

The judge and the lay judge shall enjoy functional immunity.

The judge and the lay judge shall not be held responsible for the expressed opinion or vote at the time of adoption of the decision of the court, unless this represents a criminal offense.

In the proceedings initiated because of the criminal offense made in the performance of judicial duty, the judge shall not be detained without the approval of the Judicial Council.

¹Functional immunity is the immunity based on the performance of duty (note by interpreter).

Article 123 – Incompatibility of Duties

The judge shall not discharge duties of a Member of Parliament or other public duties or professionally² perform some other activity.

²Professionally means in this case as a paid job.

Article 124 – Supreme Court

The Supreme Court shall be the highest court in Montenegro.

The Supreme Court shall secure unified enforcement of laws by the courts.

The President of the Supreme Court shall be elected and dismissed from duty by Parliament at the joint proposal of the President of Montenegro, the Speaker of Parliament and the Prime Minister.

If the proposal for the election of the President of the Supreme Court fails to be submitted within thirty days, the President of the Supreme Court shall be elected at the proposal of the responsible working body of Parliament.

Article 125 – Election of Judges

A Judge and a President of the court shall be elected and dismissed from duty by the Judicial Council.

The President of the Court shall be elected for the period of five years.

The President of the Court shall not be a member of the Judicial Council.

Article 126 – Judicial Council

The Judicial Council shall be autonomous and independent authority that secures autonomy and independence of the courts and the judges.

Article 127 – Composition of the Judicial Council

The Judicial Council shall have the president and nine members.

The President of the Judicial Council shall be the President of the Supreme Court.

Members of the Judicial Council shall be as follows:

- 1) four judges elected and dismissed from duty by the Conference of Judges;
- 2) two Members of Parliament elected and dismissed from duty by Parliament from amongst the parliamentary majority and the opposition;
- 3) two renowned lawyers elected and dismissed from duty by the President of Montenegro;
- 4) the Minister of Justice.

The President of Montenegro shall proclaim the composition of the Judicial Council.

The mandate of the Judicial Council shall be four years.

Article 128 – Responsibility of the Judicial Council

The Judicial Council shall:

- 1) elect and dismiss from duty a judge, a president of a court and a lay judge;
- 2) establish the cessation of the judicial duty;
- 3) determine number of judges and lay judges in a court;
- 4) deliberate on the activity report of the court, applications and complaints regarding the work of court and take a standpoint with regard to them;
- 5) decide on the immunity of a judge;
- 6) propose to the Government the amount of funds for the work of courts;
- 7) perform other duties stipulated by the law.

The Judicial Council shall decide by majority vote of all the members.

The Minister of Justice shall not vote in disciplinary proceedings against judges.

...

8. State Prosecution

Article 134 – Status and Responsibility

The State Prosecution shall be a unique and independent state authority that performs the affairs of prosecution of the perpetrators of criminal offenses and other punishable acts who are prosecuted *ex officio*.

Article 135 – Appointment and Mandate

The affairs of the State Prosecution shall be performed by the State Prosecutor.

The State Prosecutor shall have one or more deputies.

The Supreme State Prosecutor and state prosecutors shall be appointed and dismissed from duty by Parliament.

The Supreme State Prosecutor and state prosecutors shall be appointed for the period of five years.

Article 136 – Prosecutorial Council

The Prosecutorial Council shall ensure the independence of state prosecutorial service and state prosecutors.

The Prosecutorial Council shall be elected and dismissed by Parliament.

The election, mandate, competencies, organisation and methods of work of the Prosecutorial Council shall be regulated by law.

Article 137 – Functional Immunity

State Prosecutor and Deputy State Prosecutor shall enjoy functional immunity and shall not be held responsible for the expressed opinion or decision made in the performance of the duties thereof, unless this represents a criminal offense.

Article 138 – Incompatibility of Duties

State Prosecutor and Deputy State Prosecutor shall not discharge duties of a Member of Parliament or other public duties or professionally perform some other activity.

...

Part Five – Constitutionality and Legality

Article 145 – Conformity of Legal Regulations

The law shall be in conformity with the Constitution and confirmed international agreements, and other regulations shall be in conformity with the Constitution and the law.

Article 146 – Publication and coming into effect of the Regulations

The law and other regulation shall be published prior to coming into effect, and shall come into effect no sooner than the eighth day from the day of publication thereof.

Exceptionally, when the reasons for such action exist and have been established in the adoption procedure, law and other regulation may come into effect no sooner than the date of publication thereof.

Article 147 – Prohibition of *Ex Posto Facto* Effect (Retroactive Effect)

Law and other regulation shall not have retroactive effect.

Exceptionally, if required so by the public interest established in the process of law adoption, individual provisions of the law may have retroactive effect.

Provision of the Criminal Code may have retroactive effect only if it is more lenient for the perpetrator of a criminal offense.

Article 148 – Legality of Individual Acts

Individual legal act shall be in conformity with the law.

Final individual legal acts shall enjoy court protection.

Part Six – Constitutional Court of Montenegro

Article 149 – Responsibility

The Constitutional Court shall decide on the following:

- 1) conformity of laws with the Constitution and confirmed and published international agreements;
- 2) conformity of other regulations and general acts with the Constitution and the law;
- 3) constitutional appeal due to the violation of human rights and liberties granted by the Constitution, after all other efficient legal remedies have been exhausted [unless other court protection is prescribed – *deleted*];
- 4) whether the President of Montenegro has violated the Constitution;
- 5) the conflict of responsibilities between courts and other state authorities, between state authorities and local self-government authorities, and between the authorities of the local self-government units;
- 6) prohibition of work of a political party or a non-governmental organisation;
- 7) electoral disputes and disputes related to the referendum, which are not the responsibility of other courts;
- 8) conformity with the Constitution of the measures and actions of state authorities taken during the state of war or the state of emergency;
- 9) performs other tasks stipulated by the Constitution.

If the regulation ceased to be valid during the procedure for the assessment of constitutionality and legality, and the consequences of its enforcement have not been recovered, the Constitutional Court shall establish whether that regulation was in conformity with the Constitution, that is, with the law during its period of validity.

The Constitutional Court shall monitor the enforcement of constitutionality and legality and shall inform Parliament about the noted cases of unconstitutionality and illegality.

Article 150 – Initiation of the Procedure to Assess Constitutionality and Legality

Any person may file an initiative to start the procedure for the assessment of constitutionality and legality.

The procedure before the Constitutional Court for the assessment of constitutionality and legality may be initiated by the court, other state authority, local self-government authority and five Members of Parliament.

The Constitutional Court itself may also initiate the procedure for the assessment of constitutionality and legality.

During the procedure, the Constitutional Court may order to stop the enforcement of an individual act or actions that have been taken on the basis of the law, other regulation or general act, the constitutionality, i.e. legality of which is being assessed, if the enforcement thereof could cause irreparable damage.

Article 151 – Decision of the Constitutional Court

The Constitutional Court shall decide by majority vote of all judges.

The decision of the Constitutional Court shall be published.

The decision of the Constitutional Court shall be generally binding and enforceable.

When necessary, the Government shall secure the enforcement of the decision of the Constitutional Court.

Article 152 – Cessation of validity of a Regulation

When the Constitutional Court establishes that the law is not in conformity with the Constitution and confirmed and published international agreements, that is, that other regulation is not in conformity with the Constitution and the law, that law and other regulation shall cease to be valid on the date of publication of the decision of the Constitutional Court.

The law or other regulation, i.e. their individual provisions that were found inconsistent with the Constitution or the law by the decision of the Constitutional Court, shall not be applied to the relations that have occurred prior to the publication of the Constitutional Court decision, if they have not been solved by an absolute ruling by that date.

Article 153 – Composition and Election

The Constitutional Court shall have seven judges.

The Constitutional Court judge shall be elected for the period of nine years.

The President of the Constitutional Court shall be elected for amongst the judges for the period of three years.

The person enjoying reputation of a renowned legal expert, with minimum fifteen years of experience in this profession may be elected to the position of the Constitutional Court judge.

The President and the judge of the Constitutional Court shall not discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity.

Article 154 – Cessation of Duty

The duty of the President and the judge of the Constitutional Court shall cease prior to the expiry of the period for which he/she was elected, at his/her own request, when he/she fulfils the requirements for age pension or if he/she was sentenced to an unconditional imprisonment sentence.

The President and the judge of the Constitutional Court shall be released from duty if he/she has been found guilty of an offense that makes him/her unworthy of the duty, if he/she permanently loses the ability to perform the duty or if he/she expresses publicly his/her political convictions.

The Constitutional Court shall establish the emergence of reasons for cessation of duty or release from duty, in its session and shall inform Parliament of that case.

The Constitutional Court may decide that the President or the judge of the Constitutional Court that penal action has been initiated against shall not perform the duty for the period of duration of that action.

Part Seven – Change of the Constitution**Article 155 – Proposal for the Change of the Constitution**

The proposal to change the Constitution may be submitted by the President of Montenegro, the

Government or minimum twenty-five Members of Parliament.

With the proposal to change the Constitution it may be proposed to change or amend individual provisions of the Constitution or to adopt the new Constitution.

The proposal to change individual provisions of the Constitution shall contain the indication of the provisions for which change is demanded and the justification.

The proposal to change the Constitution shall be adopted in Parliament if two-thirds of the total number of Members of Parliament vote in favour of it.

If the proposal to change the Constitution has not been adopted, the same proposal shall not be repeated prior to the expiry of one year from the day when the proposal was rejected.

Article 156 – Act on the Change on the Constitution

Change of the individual provisions of the Constitution shall be made through amendments.

Draft act on the change of the Constitution shall be prepared by the responsible working body of Parliament.

Draft act on the change of the Constitution shall be adopted in Parliament if two-thirds of all the Members of Parliaments vote in favour of it.

Parliament shall submit the adopted Draft act on the change of the Constitution for public hearing, which shall not last less than one month.

After the end of the public hearing, the responsible working body of Parliament shall define the proposal of the act on the change of the Constitution.

The act on the change of the Constitution shall be adopted in Parliament if two-thirds of all the Members of Parliament vote in favour of it.

Change of the Constitution shall not take place during the state of war and the state of emergency.

...



MONTENEGRO

Law on the Constitutional Court

27 October 2008

I – General Provisions

Article 1

This Law regulates the organisation of the Constitutional Court of Montenegro (hereinafter, the “Constitutional Court”), the proceeding before the Constitutional Court, legal effect of its decisions and other issues relevant for the work of the Constitutional Court.

Article 2

The Constitutional Court decides independently and impartially upon issues from its jurisdiction determined by the Constitution of Montenegro (hereinafter, the “Constitution”).

No one shall influence the Constitutional Court in occasion of delivering decision upon issues from its jurisdiction.

Article 3

The work of the Constitutional Court is public, unless otherwise prescribed by this Law.

Publicity of the work of the Constitutional Court shall be ensured in accordance with this Law.

Article 4

The resources and conditions for the work of the Constitutional Court shall be provided by the State.

Article 5

The Constitutional Court shall adopt the Rules of Procedure which shall regulate in more detail the method of work and of decision-making of the Constitutional Court, the relationship of the Constitutional Court with public and international legal co-operation, professional advancement, as well as other issues of importance for the performance of its work (hereinafter, the “Rule book”).

The Rule book shall be published in the Official Gazette of Montenegro and on the webpage of the Constitutional Court.

II – Organisation of the Constitutional Court

1. President and Judge of the Constitutional Court

Article 6

The President and a judge of the Constitutional Court shall be elected and dismissed in a manner and under conditions prescribed by the Constitution.

On assuming office, the President and a judge of the Constitutional Court shall take an oath before the Parliament of Montenegro (hereinafter, the “Parliament”).

The wording of the oath shall be as follows: “I swear that I will judge in accordance with the Constitution and law and that I will perform my duty honourably, conscientiously and impartially”.

Article 7

Judge of the Constitutional Court shall submit request for termination of office before the expiry of the term to which he/she has been elected to the President of Montenegro and to Parliament.

If Parliament does not adopt a decision on the request referred to in Paragraph 1 of this Article within thirty days as of the date of its submission, the office of the judge of the Constitutional Court shall terminate upon the expiry of that time-limit.

Article 8

The competent court shall, with no delay, notify the Constitutional Court about the institution of the criminal proceeding against the President or a judge of the Constitutional Court.

In the situation referred to in Paragraph 1 of this Article, the proposal to terminate the office of the President of the Constitutional Court shall be submitted by at least three judges of the Constitutional Court, and the proposal to terminate the office of the judge of the Constitutional Court shall be submitted by the President of the Constitutional Court.

The president or a judge upon whose exercise of office is going to be decided shall not participate in the decision-making.

Article 9

The initiative for determining whether the requirements for the termination of office, because of meeting the conditions for old-age pension or because the conviction on unconditional prison sentence, are fulfilled, or the initiative for determining the reasons for termination of office of the judge of the Constitutional Court, shall be submitted by the President of the Constitutional Court, and for the President of the Constitutional Court shall be submitted by at least three judges of the Constitutional Court.

The competent court shall, with no delay, notify the Constitutional Court about the delivery of the final convicting verdict against the President or the judge of the Constitutional Court.

Article 10

The Constitutional Court shall notify the President of Montenegro and Parliament on the expiry of the term of office of a judge of the Constitutional Court and of the fact that the judge has met the old-age pension requirements, no later than six months before the requirements for termination of office are fulfilled.

Article 11

The President of the Constitutional Court shall represent the Constitutional Court, convene and chair its sessions, co-ordinate the work of the Constitutional Court, and perform other duties laid down by this Law, the Rule book and other acts of the Constitutional Court.

Article 12

The Constitutional Court shall designate a judge who shall substitute the President of the Constitutional Court in instances when he/she is absent or prevented from performing his/her duties.

In case of termination of office of the President of the Constitutional Court, until the new President is elected, the office of the President shall be performed by the judge designated pursuant Paragraph 1 of this Article, which shall have the rights and duties of the President.

Article 13

The President and judges of the Constitutional Court shall have their official attire – a judicial gown.

The design of the gown and the manner of wearing the gown shall be prescribed by the Rules of Procedure.

Article 14

The President and the judges of the Constitutional Court shall have identity cards.

The form and contents of the identity card, as well as the manner of keeping the record on issued identity cards, shall be prescribed by the Ministry of Justice.

2. Secretary General and the Office of the Constitutional Court

Article 15

The Constitutional Court shall have a Secretary General, who shall be appointed by the Constitutional Court for the period of five years with the possibility of re-appointment.

The Secretary General shall prepare and organise the sessions of the Constitutional Court; shall take care and be accountable for the implementation of the Constitutional Court acts; shall perform professional and other duties entrusted by the Constitutional Court; shall prepare proposal for the allocation of budgetary resources for the work of the Constitutional Court and shall take care of spending of budgetary resources; shall take care of professional advancement, as well as international co-operation of the Constitutional Court and shall perform other duties in accordance with this Law and the Rule book.

The Secretary General shall be accountable to the Constitutional Court for his/her work.

Article 16

The Secretary General may have a Deputy, who shall be appointed by the Constitutional Court for a period of five years with the possibility of re-appointment.

The Secretary General and the Deputy Secretary General shall be entitled to the same salary as the Secretary General of Parliament and his/her Deputy.

Article 17

The Constitutional Court shall form the Office of the Constitutional Court to perform specialised and other activities (hereinafter, the "Office"), and the Secretary General shall manage those activities and be accountable for them.

Specialised activities falling within the jurisdiction of the Constitutional Court shall be carried out by the Constitutional Court Advisors who shall be appointed by the Constitutional Court.

The organisation, activities and manner of work of the Office shall be regulated by an act of the Constitutional Court.

Article 18

The rights, duties and responsibilities of the Secretary General, the Deputy Secretary General and of the Constitutional Court Adviser in the Constitutional Court, which are not regulated by this Law, shall be governed by the regulations on government employees and civil servants.

The rights and duties of other employees and civil servants of the Constitutional Court shall be governed by the regulations on government employees and civil servants.

III – Proceedings before the Constitutional Court and Legal Effect of its Decisions

1. Common Provisions

1) Participants in Proceeding

Article 19

Participants in proceedings before the Constitutional Court shall be the following:

1) in proceeding for the review of the compliance of the law with the Constitution and with ratified and published international treaties or of other regulations and general acts (hereinafter referred to as Regulation) with the Constitution and law – court, other state authority, local self-government authority, five Members of Parliament, anyone on whose initiative the proceedings have been initiated and the authority which enacted a law or other regulation which is the subject of review;

2) in constitutional complaint proceedings – the applicant under Article 51 of this Law, state authority or state administration authority, local self-government authority or legal person vested with public authority against whose act the constitutional complaint has been filed;

3) in proceeding for the determination whether the President of Montenegro violated the Constitution – Parliament and the President of Montenegro;

4) in proceedings resolving on conflict of jurisdiction – courts and other state administration authority, local self-government authority accepting or rejecting jurisdiction, as well as any person unable to exercise his/her right as a result of the acceptance or rejection of jurisdiction;

5) in proceedings on the ban on the work of a political party or of a non-governmental organisation – claimant having submitted a proposal under Article 72 of this Law, as well as a political party or non-governmental organisation on which a ban on work is going to be decided;

6) in proceedings on electoral disputes and disputes related to referendums – claimant having submitted a proposal under Article 77 Paragraph 1, Article 82 Paragraph 1 and Article 84 Paragraph 1 of this Law, as well as the authority in charge of the administration of the election or the authority in charge of administration of the referendum, in connection with the electoral activity in respect of which the dispute has been initiated;

7) in proceedings on the compatibility with the Constitution of measures and actions of state authorities undertaken during the state of war and emergency – claimant having submitted a proposal under Article 87 Paragraph 2 of this Law and authority competent to undertake measures and actions during the state of war or emergency.

Article 20

Participants in proceedings and other interested persons may, on the basis of a written request, request access to case files and may copy those files.

Interested persons, referred to in Paragraph 1 of this Article, are those who are capable of proving a legitimate interest in the case and are therefore entitled to have access to the case files.

Persons referred to in Paragraph 1 of this Article shall bear the expenses of copying the case files.

Article 21

Participant in the proceedings shall have the right and duty to give proposals, to provide necessary data and information during the proceedings and hearings, to present and explain their position and reasons during the proceedings, to answer the allegations and reasons of other participants in the proceedings, as well as to submit evidence and take other actions relevant for the determination of the Constitutional Court.

Interested persons under Paragraph 2 of this Article, who were unable to prove a legitimate interest, shall receive a reasoned decision within seventy-two hours from the day of submitting the written request.

Participant in the proceedings may, during the proceedings, withdraw their claim, proposal, constitutional complaint or appeal.

Article 22

Persons duly authorised by a participant in the proceedings, as well as persons summoned by the Constitutional Court to clarify certain disputable issues or for expert opinions, may also participate in the proceedings before the Constitutional Court.

2) Preliminary Procedure

Article 23

Applications initiating or instituting proceedings before the Constitutional Court shall be delivered by regular mail or to the Constitutional Court directly and must be signed.

Applications sent by fax, telegrams addressed to the Constitutional Court, as well as anonymous applications shall not be deemed applications whereby the proceedings before the Constitutional Court are instituted, or whereby the institution of the proceeding before the Constitutional Court is initiated.

Applications and accompanying documents shall be delivered to the Constitutional Court in three copies.

Applications initiating or instituting the proceeding shall be deemed to have been submitted on the date of their delivery to the Constitutional Court.

Where an application initiating or instituting proceedings is sent by registered mail, the date of delivery to the post office shall be deemed to be the date of delivery to the Constitutional Court.

By way of exception, an application concerning an electoral dispute or dispute related to a referendum shall be submitted to the Constitutional Court directly.

Article 24

Proposals, initiatives to institute constitutional and legality review proceedings, constitutional complaints and appeals shall be examined within the preliminary procedure.

Article 25

If the application initiating or instituting proceedings is incomprehensible, incomplete or if it contains deficiencies precluding its processing, the applicant shall be requested to rectify those deficiencies within a specified time-limit.

Article 26

The Constitutional Court shall submit a copy of the proposal, initiative, constitutional complaint or appeal to other participants in the proceeding and it shall specify a period within which they are to submit the contested act or other required documentation, data and information, as well as responses or opinions to allegations and evidences contained in those applications.

With respect to the initiative for review of compliance of the law with the Constitution and with ratified and published international treaties or of other regulations passed by Parliament, with the Constitution and law, the Constitutional Court may request Parliament's opinion.

By way of exception, applications referred to in Paragraph 1 of this Article, the Constitutional Court shall not submit for response or opinion if it finds that procedural preconditions for initiation and/or conduct of the proceedings have not been fulfilled.

Article 27

Participants in the proceeding referred to in Article 26 Paragraph 1 of this Law, shall be obliged to within provide time-limit submit to the Constitutional Court the contested act and/or other required documentation, data and information, as well as responses or opinions to allegations and evidences contained in proposal, initiative, constitutional complaint and appeal.

If the Constitutional Court does not receive a response, opinion and other requested data and information under Paragraph 1 of this Article, within the prescribed time-limit, the proceedings may be resumed.

Article 28

The Constitutional Court shall reject a proposal, initiative, constitutional complaint, appeal, or other application initiating proceedings:

- 1) if it determines that it is not competent to issue a decision;

2) if it was not submitted within the prescribed time-limit;

3) if within the prescribed time-limit the applicant did not rectify deficiencies which preclude processing;

4) if it finds that it made a decision on the same matter previously;

5) if it finds that the application initiating proceedings is manifestly ill-founded or founded on the abuse of rights;

6) if other preconditions for conducting proceedings and decision-making do not exist.

3) Work of the Constitutional Court

Article 29

The Constitutional Court shall decide on matters falling within its jurisdiction at a session.

The sessions of the Constitutional Court shall be convened and chaired by the President of the Constitutional Court.

Session of the constitutional Court shall be public.

The Constitutional Court may exclude the public from a session or a part thereof, if this is necessary in order to protect morals, maintain public order, keep the defence and national security, protect the interest of a minor or respect for private and family life of the participants in proceedings or when the Constitutional Court assesses that the publicity may endanger the interests of the justice.

Exclusion of the public shall not include the participants in proceedings and their attorneys.

The Constitutional Court shall decide upon and vote on closed session, and the decision will be announced publicly.

Article 30

The Constitutional Court shall hold a public hearing when it assesses that the holding of a public hearing is necessary, and especially in the event of complex constitutional and legal issue.

Convening, holding, as well as other issues regarding the public hearing shall be, in more details, regulated by the Rule book.

4) Acts of the Constitutional Court

Article 31

The Constitutional Court shall issue decisions and resolutions.

Decision or resolution of the Constitutional Court shall contain: introduction, dictum and reasons.

Article 32

By a decision, the Constitutional Court shall:

1) determine that the law, or some of its provisions, does not comply with the Constitution and with ratified and published international treaties, or that at the time when it was in force the same did not comply with the Constitution;

2) determine that another regulation, or some of its provisions, does not comply with the Constitution and law, or that at the time when it was in force the same did not comply with the Constitution and law;

3) determine the existence of the violation of human rights and freedoms guaranteed by the Constitution;

4) determine whether the President of Montenegro violated the Constitution;

5) resolve conflicts of jurisdiction;

6) ban the work of a political party or of a non-governmental organisation;

7) adopt an appeal on violation of the rights during the elections or during the referendum;

8) decide upon the compatibility with the Constitution of measures and actions of public authorities undertaken during the state of war and emergency;

9) reject: a proposal for determination of unconstitutionality and illegality; a proposal for determination whether the President of Montenegro violated the Constitution; a proposal for resolution of a conflict of jurisdiction and a proposal for the ban of the work of a political party or of a non-governmental organisation;

10) decide upon the constitutional complaint and appeal.

Article 33

By a resolution, the Constitutional Court shall:

- 1) initiate proceedings;
- 2) discontinue proceedings in cases laid down under this Law;
- 3) suspend the enforcement of an individual act or action, repeal the measure of suspension, or dismiss the request for suspension of enforcement of an individual act or action;
- 4) not accept the initiative to initiate proceedings for review of constitutionality or legality;
- 5) reject a proposal, initiative, constitutional complaint, appeal or other submissions in the cases from the Article 28 of this Law;
- 6) decide on the issues relating to the administration of the procedure.

Article 34

The decisions of the Constitutional Court, except for the decisions on constitutional complaints and appeals, shall be published in the Official Gazette of Montenegro, and in a manner in which was published the act upon which constitutionality and legality the Constitutional Court decided.

A decision on constitutional complaints and appeals, as well as the resolution which is important for the protection of constitutionality and legality may be published in the Official Gazette of Montenegro.

Decisions and resolutions of the Constitutional court shall be published on the webpage of the Constitutional Court.

5) Expenses of the Proceeding and *Mutatis Mutandis* Application of Proceeding Laws**Article 35**

The proceedings before the Constitutional Court shall not be subject to tax.

The participants in proceedings before the Constitutional Court shall bear their own expenses.

Without prejudice to Paragraph 2 above, the Constitutional Court may reimburse expenses of

other persons summoned and determine a fee for their participation in proceedings.

Article 36

If a matter relating to proceedings before the Constitutional Court is not regulated by this Law, the provisions of the relevant proceeding laws shall apply *mutatis mutandis*.

2. Proceedings for Review of Constitutionality and Legality**Article 37**

The proceeding for review of compliance of the law with the Constitution and with ratified and published international treaties or of other regulations shall be initiated:

- 1) by a proposal submitted by the proponent empowered by the Constitution;
- 2) when the Constitutional Court finds the reasons for instituting proceedings, on the basis of an initiative;
- 3) when the Constitutional Court itself finds the reasons, on its own initiative, and especially when, in the course of proceedings of a constitutional complaint, the issue of the constitutionality and legality of a law or other regulation emerge on the basis of which another individual act which is the subject of the constitutional complaint is delivered, as well as when, in the course of the proceedings for review of the constitutionality and legality, the issue of the constitutionality or legality of other provisions or other regulations related to the provisions emerge, which are the subject of the review.

Article 38

The proposal or initiative for the review of compliance of the law with the Constitution and with ratified and published international treaties or of other regulations with the Constitution and law shall contain: the title of the law or other regulation, reference to the provision, title and number of the Official Gazette in which it was published, grounds for the proposal or initiative, as well as other data relevant for the review of constitutionality and legality.

Where the general act, the constitutionality or legality of which has been challenged, was not published in the Official Gazette, a certified copy of the act shall be attached, as a rule, to the proposal or initiative.

Article 39

The proceedings shall be deemed initiated on the date of the submission of the proposal to the Constitutional Court, or on the date of issuance of a resolution of the Constitutional Court initiating proceedings.

Article 40

The Constitutional Court shall not accept the initiative if it finds that there are no grounds to initiate proceedings.

Article 41

In the proceedings for review of constitutionality and legality, the Constitutional Court shall not be limited by the proposal or initiative.

If the applicant or initiator withdraws the proposal or initiative, the Constitutional Court shall continue proceedings if it finds grounds to do so.

Article 42

At the request of the authority which enacted the disputed regulation, the Constitutional Court may, before issuing a decision on the constitutionality or legality, stay the proceedings and allow the authority which enacted the general act to rectify unconstitutionality and illegality found within a specified time-limit.

If the unconstitutionality or illegality is not rectified within a specified time-limit, the Constitutional Court shall resume the proceedings.

Article 43

The Constitutional Court, in the course of the proceeding, may suspend the enforcement of an individual act or action until taking the final decision, at the request of the applicant or initiator if he/she demonstrates that enforcement will cause irreversible detrimental consequences.

Article 44

If the issue of compatibility of the law with the Constitution and ratified and published international treaties or of other regulations with the Constitution and law is raised in proceedings pending before a court, the court shall stay the proceedings and initiate proceedings for review of constitutionality or legality of that act before the Constitutional Court.

Article 45

The Constitutional Court shall discontinue proceedings:

- 1) if, during the proceedings, the law was harmonised with the Constitution and with ratified and published international treaties, and/or if another regulation was harmonised with the Constitution and law, and the Constitutional Court did not find that a decision should be issued because the consequences of the unconstitutionality or illegality have not been rectified;
- 2) if, during the proceedings, the proposal for review of constitutionality or legality of regulation has been withdrawn and the Constitutional Court does not continue the proceedings on its own initiative;
- 3) if the proceedings were initiated based on wrongly established facts;
- 4) if, during the proceedings, the procedural preconditions for conduct of the proceedings cease to exist.

Article 46

Regulations enacted to implement laws and other regulations, which have been found to be incompatible with the Constitution and law, shall not apply as of the date of publication of the decision of the Constitutional Court.

Enforcement of final and legally binding individual acts enacted based on the regulations which are no longer applicable, may not be allowed or implemented, and if the enforcement has already commenced it shall be terminated.

Article 47

Anyone whose right was violated by a final or legally binding individual act, enacted based on law or other regulation which has been, on its own initiative, found, by a decision of the Constitutional Court, to be incompatible with the Constitution, with ratified and published international treaties or law, shall have right to request the competent authority to amend that individual act.

The proposal for the amendment of a final or legally binding individual act enacted based on law or other regulation which has been found, by a decision of the Constitutional Court, to be incompatible with the Constitution, ratified and published international treaties or law, may be submitted within six months as of the date of publication of the decision in the Official Gazette of Montenegro, if between the delivery of the individual act and the submission of the request no more than one year has passed.

3. Constitutional Complaint Proceedings

Article 48

Constitutional complaints may be lodged against an individual act of a state authority, a local self-government authority or a legal person vested with public powers, for the reason of violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted.

Exhaustion of all effective legal remedies, referred to in Paragraph 1 of this Article, imply that the constitutional complainant in the proceeding has exhausted all legal remedies to which is entitled by law.

Article 49

Constitutional complaints may be lodged by anyone who believes that his/her human rights and freedoms guaranteed by the Constitution were violated by an individual act of a state authority, a local self-government authority or a legal person vested with public powers.

Constitutional complaints may also be lodged by another person, on behalf of a person referred to in Paragraph 1 of this Article, with his/her authorisation.

The Protector of human rights and freedoms may, with respect to complaints he/she is working on, lodge a constitutional complaint if the complainant agrees.

Article 50

Constitutional complaints shall be submitted within sixty days from the date of delivery of an individual act against which, in accordance with this Law, constitutional complaints may be submitted.

To the person who, for justified reasons, fails to lodge the constitutional complaint within the time-limit, the Constitutional Court shall grant *restitutio in integrum*, if that person, within fifteen days from the disappearance of reasons which caused him/her to miss the deadline, submits an application for *restitutio in integrum* and simultaneously lodges a constitutional complaint.

Restitutio in integrum cannot be requested after the expiry of a period of three months from the date of the missed deadline referred to in Paragraph 1 of this Article.

Article 51

Constitutional complaints must contain: the name and surname, personal identification number of the citizen, the domicile or temporary residence, or name and registered office of the complainant, the number and date of the act against which the complaint is lodged and the name of the authority which enacted it, human right or freedom guaranteed by the Constitution that is claimed to have been violated, with the quotation of the constitutional provision guaranteeing this right or freedom, the cause of complaint and description of the nature of violation or denial of rights, the request on which the Constitutional Court is to decide and the signature of the complainant.

A certified copy of the challenged act, evidence that legal remedies have been exhausted, as well as other evidence of significance for deciding, shall be enclosed with the constitutional complaint.

Article 52

Constitutional complaint shall not preclude implementation of the individual act against which it was lodged.

The Constitutional Court may order, in exceptional circumstances during the course of proceedings, the suspension of the enforcement of an individual act until it has rendered a final decision, at the request of the complainant, if the complainant demonstrates that enforcement will cause irreversible detrimental consequences.

Article 53

Constitutional complaints shall be delivered to other persons whose rights and obligations have been affected by the challenged individual act, to send their responses thereto within a period specified by the Constitutional Court.

Article 54

The Constitutional Court shall discontinue proceedings:

- 1) if a constitutional complaint was withdrawn;
- 2) if the authority which enacted the challenged individual act has annulled, repealed or amended that act in accordance with the request contained in the constitutional complaint;
- 3) if other procedural preconditions for conduct of the proceedings cease.

Article 55

The Constitutional Court shall decide only on the violation of human right or freedom cited in the constitutional complaint.

Article 56

When the Constitutional Court establishes that a challenged individual act violated a human right or freedom guaranteed by the Constitution, it shall grant the constitutional complaint and repeal that act, entirely or partially, and remand the case for repeat procedure to the authority which enacted the repealed act.

If at the time of the decision of the Constitutional Court, the legal effect of the disputed individual act ended, the Constitutional Court's decision will determine whether there was a violation of human rights or freedoms guaranteed by the Constitution.

Article 57

The competent authority shall be obliged to immediately and, at the latest within thirty days of receipt of the Constitutional Court's decision, deal with the case of the Constitutional Court in which it has repealed an individual act and remand the case for retrial.

When enacting the new act, the competent authority shall be obliged to respect the legal reasons given by the Constitutional Court in the decision and ensure that the retrial decision is made within a reasonable time.

Article 58

The constitutional complaint shall be dismissed as unfounded if the Constitutional Court finds that the grounds on which the act is challenged do not exist.

Article 59

The decision of the Constitutional Court granting the constitutional complaint shall have legal effect from the date of its delivery to the parties in the proceedings.

4. Proceedings for determination whether the President of Montenegro violated the Constitution**Article 60**

The proceedings deciding whether the President of Montenegro violated the Constitution shall be deemed initiated on the date on which the proposal is received by the Constitutional Court.

The proposal referred to in Paragraph 1 of this Article shall contain the statement of reasons and statement of allegations due to which it is considered that the President of Montenegro violated the Constitution.

Article 61

The proposal referred to in Article 60 of this Law, the Constitutional Court shall submit to the president of Montenegro within three days from the day of its receipt.

The President of Montenegro shall have the right to make a statement on the reasons in the proposal, to provide data and information relevant for the conduct of proceedings and for the decision, within fifteen days from the date on which the proposal was submitted.

Article 62

The proceedings deciding whether the President of Montenegro violated the Constitution shall be urgent.

Article 63

In the proceedings deciding whether the President of Montenegro violated the Constitution, the Constitutional Court shall be limited solely to the proposal.

Article 64

The Constitutional Court shall discontinue the proceedings:

- 1) if Parliament withdraws the act of initiation of the proceeding;
- 2) if the office of the President of Montenegro is terminated during the proceedings.

In exceptional circumstances, under paragraph 1 item 2 of this Article, the Constitutional Court shall continue the proceedings if so requested by the President of Montenegro.

Article 65

The Constitutional Court shall issue the decision on whether the President of Montenegro violated the Constitution within forty-five days from the date on which the proposal was submitted.

5. Proceedings resolving a Conflict of Jurisdiction**Article 66**

The proposal to resolve a conflict of jurisdiction may be submitted by one or more conflicting authorities, as well as the person who is unable to exercise his/her rights due to the acceptance or rejection of jurisdiction, within fifteen days from the day of rejection or acceptance of jurisdiction.

Article 67

The proposal to resolve a conflict of jurisdiction shall contain the name of the authority, the subject of dispute and grounds on which jurisdiction has been accepted or rejected.

Article 68

The Constitutional Court shall discontinue the proceedings:

- 1) if the proposal to resolve the conflict of jurisdiction has been withdrawn during the proceedings;
- 2) if the procedural preconditions for conducting the proceedings and making the decision have ceased to exist during the proceedings.

Article 69

The Constitutional Court may order to stay the proceedings before the authorities between which the conflict of jurisdiction occurred, until the decision is made.

Article 70

When the Constitutional Court finds that a conflict of jurisdiction exists, it shall decide which authority is competent to make the decision.

When the Constitutional Court finds that there is no conflict of jurisdiction, it shall reject the proposal to resolve a conflict of jurisdiction.

Article 71

The decision of the Constitutional Court resolving the conflict of jurisdiction shall have legal effect from the date of its publication in the Official Gazette of Montenegro.

6. Proceedings deciding on a ban on the work of a political party or of a non-governmental organisation**Article 72**

The proceedings deciding to ban the work of a political party or of a non-governmental organisation shall be initiated by a proposal which, within their competences, may be submitted by:

- the Protector of human rights and liberties;
- the Council of Defence and Security;
- state administration authority in charge of protection of human and minority rights;
- state administration authority in charge of the entry of a political party or a non-governmental organisation in the registry.

Article 73

The proposal for the ban on the work of a political party or of a non-governmental organisation must quote the prohibited activity, and/or the facts and circumstances of the unconstitutional activity which may be a reason to ban their work.

Article 74

The Constitutional Court may ban the work of a political party or of a non-governmental organisation if their activities are directed or aimed at violent destruction of constitutional order, infringement on the territorial integrity of Montenegro, violation of human rights and freedoms or instigating of racial, religious and other hatred and intolerance.

Article 75

When the Constitutional Court bans the work of a political party or of a non-governmental organisation, that political party or non-governmental organisation shall be deleted from the registry.

The decision banning the work of a political party or of a non-governmental organisation shall be delivered to political party or of a non-governmental organisation in question and shall have legal effect from the date of service of the decision of the Constitutional Court to the

competent authority in charge of entry of a political party or a non-governmental organisation in the registry.

7. Proceedings deciding electoral disputes and disputes related to referendums

1) Proceedings deciding the violation of right during elections of Members of Parliament and Municipal Delegates

Article 76

The proceedings deciding the violation of right during elections for the Members of Parliament and Municipal Delegates shall be initiated by filing an appeal against the resolution of the competent electoral commission dismissing or rejecting the complaint against the decision.

The appeal referred to in Paragraph 1 of this Article shall be filed within twenty-four hours from the hour the resolution was received.

Article 77

The appeal may be filed by a voter, a candidate for a Member of Parliament or a Municipal Delegate, as well as by the party/group that submitted the electoral list.

The appeal shall contain grounds for and evidence of violation of the right during elections.

Article 78

The Constitutional court shall serve one copy of the appeal to the competent electoral commission, with a resolution to deliver a response and necessary electoral acts and/or documentation within a specified period.

Article 79

The Constitutional Court shall render the decision on the appeal referred to in Article 78 of this Law within forty-eight hours from the hour the appeal was received.

Article 80

Where an irregularity in an election procedure was proved, and had a significant influence on the result of the election, the Constitutional Court shall issue a decision annulling the entire electoral procedure or parts thereof which must be precisely specified.

Article 81

The decision of the Constitutional Court to annul the entire electoral procedure or a part of it shall have legal effect from the date of service of the decision of the Constitutional Court to the competent authority.

2) Proceedings deciding the violation of right during elections for the President of Montenegro, Mayors of the Capital City and of the Old Capital and Mayors

Article 82

The proceedings deciding the violation of right during elections for the President of Montenegro, Mayors of the Capital City and of the Old Capital and Mayors shall be initiated by an appeal which may be filed by the candidates for the President of Montenegro, Mayors of the Capital City and of the Old Capital and Mayors, the party/group nominating the candidate or by a voter.

The appeal referred to in Paragraph 1 of this Article shall contain grounds for and evidence of violation of the right during election.

Article 83

The proceedings referred to in Article 82 of this Law are subject to the provisions of this Law relating to the proceedings deciding the violation of rights during elections for the Members of Parliament and Municipal Delegates.

3) Proceedings deciding the violation of rights during a referendum

Article 84

The appeal initiating the proceedings for deciding on violation of right during a referendum may be filed by a voter and authority calling the referendum.

The appeal must be reasoned and contain grounds for violation and evidence.

Article 85

The decision on violation of rights referred to in Article 84 of this Law shall be issued by the Constitutional Court within thirty days from the date of initiation of proceedings.

The decision of the Constitutional Court referred to in Paragraph 1 of this Article shall have legal effect from the date of service of the decision to the competent authority.

Article 86

The provisions of this Law relating to the proceedings deciding on the violation of right during elections of Members of Parliament and Municipal Delegates shall apply to the proceedings deciding on the violation of rights during a referendum.

8. Proceedings deciding the compatibility with the Constitution of measures and actions of public authorities undertaken during the state of war and emergency

Article 87

The proceedings deciding the compatibility with the Constitution of measures and actions of public authorities undertaken during the state of war and emergency shall be initiated by an appeal.

The appeal referred to in Paragraph 1 of this Article may be submitted by a person who considers that these measures and actions limit the exercise of individual freedoms and rights beyond the extent necessary to achieve the purpose for which this limitation has been introduced or limit the rights that cannot be limited or that rights are limited on grounds by which the limit cannot be imposed according to the Constitution.

The appeal referred to in Paragraph 1 of this Article shall be filed within three days from the date of introduction of measures and actions during the state of war and emergency.

The appeal referred to in Paragraph 1 of this Article must contain the statement of reasons and grounds for and evidence of limitations on the exercise of individual freedoms and rights.

Article 88

The Constitutional Court shall issue the decision establishing compatibility or incompatibility with the Constitution of measures and actions referred to in Article 87 of this Law within seven days from the date of receipt of the appeal in the Constitutional Court.

When the Constitutional Court establishes that the measures and actions are incompatible with the

Constitution, it shall repeal the act entirely or partially, and/or ban the action.

Article 89

The decision of the Constitutional Court shall have legal effect from the date of service of the decision to the competent authority.

IV – Financial Resources

Article 90

Financial resources for the work of the Constitutional Court shall be provided from special allocation of the budget of Montenegro.

The Constitutional Court shall propose the allocation of annual budget for the work of the Constitutional Court to the Government of Montenegro.

Article 91

The President of the Constitutional Court has the right to participate in the session of Parliament discussing the budget proposal of the Constitutional Court.

V – Transitional and Final Provisions

Article 92

Proceedings before the Constitutional Court initiated before the effective date of this Law shall be finalised according to the provisions of this Law.

Article 93

Constitutional complaints filed before the entry into force of this Law shall be deemed to be submitted in time, and they shall be allowed against individual acts and actions adopted after the date of entry into force of the Constitution.

Article 94

The Constitutional Court shall adopt its Rule book within ninety days of the entry into force of this Law.

Until the Rule book is adopted, the provisions of the Rule book of the Constitutional Court of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, no. 53/93, 10/97 and 80/05) shall apply, unless they are contrary to this Law.

Article 95

The Law on the Constitutional Court of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, no. 21/93) shall cease to be valid on the date of entry into force of this Law.

...



PERU

Constitution

1993

– extracts –

Chapter VIII – The Judicial Branch

Article 138

The power of administering justice emanates from the people and the Judiciary exercises it through its hierarchical entities in accordance with the Constitution and the laws.

In any proceedings, when incompatibility exists between a constitutional and a legal rule, the judges decide for the first one. Likewise, they choose the legal rule over any other rule of lower rank.

Article 139

Principles and rights of the jurisdictional function are the following:

1. the unity and exclusivity of the Judiciary.

No independent jurisdiction exists nor shall it be established, except the military and arbitration jurisdiction.

There are no judicial proceedings by committing or delegation;

2. the independence in the exercise of the jurisdictional function.

No authority shall take over pending before the jurisdictional body or interfere in the exercise of its functions. Neither shall they invalidate orders in terms of *res judicata*, halt proceedings under way, nor modify sentences or delay their execution. These provisions do not affect the grant to executive clemency or authority of investigation by Congress, the exercise of which must nevertheless not interfere in the jurisdictional proceedings or have any jurisdictional effect;

3. the observance of due proceedings and jurisdictional protection.

No person shall be diverted from the jurisdiction predetermined by the law, nor shall anyone be subjected to proceedings other than those previously established or tried by exceptional jurisdictional bodies or special commissions created for that purpose, whatever the denomination;

4. the publicity of proceedings, unless otherwise provided by law. Judicial proceedings involving the liabilities of public officials, crimes committed through the press, and those relating to fundamental rights guaranteed by the Constitution, are always public.

5. the written explanation of court orders at all levels, except merely procedural decrees, with express mention of the applicable law and the *de facto* grounds on which they are based on;

6. the plurality of the jurisdictional level;

7. compensation, in the manner prescribed by law, for miscarriages of justice in criminal trials and arbitrary arrests, with prejudice to any liability that may be determined;

8. the principle of not failing to administrate justice, despite of legal gap or deficiency. In such case, the general principles of law and customary law must be applied;

9. the principle of the inapplicability by analogy of the criminal law and the laws restricting rights;

10. the principle that no one shall be punished without judicial proceedings;

11. the application of the most favourable law to the defendant in the case of doubt or conflict between criminal laws;

12. the principle that no person shall convicted *in absentia*;

13. the prohibition of the reopening closed cases with a final order of conviction. Amnesty, pardon, stay of execution and prescription produce the effects of *res judicata*;

14. the principle that no person shall be deprived of the right to defence at any Stage of the proceedings.

Every person shall be notified immediately and in writing of the causes or reasons for his/her detention. In addition, he/she has the right to communicate in person with and be advised by the legal counsel of his/her choice upon being summoned or arrested by any authority;

15. the principle that every person must be informed immediately and in writing of the causes or reasons for his/her arrest;

16. the principle of the free administration of justice and free defence for persons of limited means and for everyone in cases stipulated by law;

17. the participation of people in the appointment and removal of judges, in accordance with the law;

18. the obligation of the Executive branch to provide co-operation in trials when required;

19. the prohibition of the exercise of the judicial function by anyone who has not been appointed in the manner prescribed by the Constitution or the law. Jurisdictional bodies may not confer such a office, under penalty of liability;

20. the principle that every person has the right to make analyses and criticisms of court orders and sentences, within the limits of law;

21. the right of inmates and those convicted to be provided properly facilities;

22. the principle that the purpose of the criminal justice system is the re-education, rehabilitation, and reintegration of the convict into society.

Article 140

The death penalty shall only be applied in offense of treason in wartime and of terrorism, in accordance with the laws and the treaties, which Peru is bound.

Article 141

The Supreme Court shall rule in the final instance when the action is filed in a Superior Court or before the Supreme Court itself, as provided for by law. It will also hear annulment appeals for rulings of the Military Court , within the limits as set forth in Article 173.

Article 142

Decisions of the National Election Board concerning election matters are not subject to review before the Court, nor those of the National Judicial Council with regard to evaluation and confirmation of judges.

Article 143

The Judiciary is composed of jurisdictional bodies, which administer justice on the behalf of the Nation, and of bodies that exercise their government and

administration. The jurisdictional bodies are the following: Supreme Court of Justice, and the other courts and tribunals as determined by its Acts.

Article 144

The Chief Justice of the Supreme Court is also the head of the judiciary. The plenary session of the Supreme Court is the highest body of deliberation of the Judiciary.

Article 145

The Judiciary submits its budget draft to the Executive branch and sustains it before Congress.

Article 146

The jurisdictional function is incompatible with any other public or private activity, except university teaching outside the working hours.

Judges receive only the compensation assigned in the budget and revenues earned from teaching or other functions expressly prescribed by law.

The State guarantees judges:

1. their independence. They are subject only to the Constitution and the law;
2. the irremovability of their office. They shall not be transferred without their consent;
3. their continuance in office as long as they show proper conduct and qualification for their function; and
4. compensation ensuring them a decent standard of living in accordance with their office and rank.

Article 147

To become a Justice of the Supreme Court, a person is required:

1. to be Peruvian by birth;
2. to exercise his/her citizenship;
3. to be at least forty-five years of age; and
4. to have held the office of Justice of the Superior Court or Senior Prosecutor for ten years, or to have practiced the law or taught at the university in a legal discipline for fifteen years.

Article 148

Administrative orders which are final are susceptible to challenge through action under administrative law.

Article 149

Authorities of peasant and native communities, in conjunction with the peasant patrols, shall exercise jurisdictional functions at territorial level in accordance with customary law, provided they do not violate the fundamental rights of the individual. The law provides for the way of coordination of such jurisdiction with justice-of-the-peace court and other instances of the Judiciary.

Chapter IX – The National Judicial Council

Article 150

The National Judicial Council is responsible for the selection and appointment of judges and prosecutors, except in case of them are chosen through popular election.

The National Judicial Council is independent and is governed by its Act.

Article 151

The Judicial Academy, which is part of the Judiciary, is responsible for the education and training of judges and prosecutors at all levels, for the purpose of their selection.

Approval of the special studies required by the Academy is a must for promotion.

Article 152

Justices of the Peace are chosen by the popular election.

The election, its requirements, jurisdictional performance, training and continuance in their office are governed by law.

The law may establish the election of trial judges and determine relevant mechanisms.

Article 153

Judges and prosecutors are prohibited to engage in politics, syndicate or declare themselves on strike.

Article 154

The duties of the National Judicial Council are the following:

1. to appoint judges and prosecutors at all levels prior merits-based recruitment and selection process and personal evaluation. Such appointments require the vote of two-thirds of the legal number of its members;
2. to confirm judges and prosecutors at all levels every seven years. Those not confirmed may not be readmitted to the Judiciary or the Office of the Prosecutor General. The confirmation process is independent of the disciplinary measures;
3. to apply the penalty of removal to justices of the Supreme Court and senior prosecutors and, at the request of the Supreme Court or Board of Senior Prosecutors respectively, judges and prosecutors of all instances. The final and detailed order, following a hearing with the party in question, is not challenged;
4. to award to judges and prosecutors the official title accrediting their status.

Article 155

The Members of the National Judicial Council, in accordance with the relevant law, are the following:

1. one elected by the Supreme Court in plenary session by secret ballot;
2. one elected by the Board of Senior Prosecutors by secret ballot;
3. one elected by the members of National Bar Associations by secret ballot;
4. two elected by the members of the other professional associations of the country, by secret ballot, and in accordance with the law;
5. one elected by the rectors of national universities; and
6. one elected by secret ballot by the rectors of private universities.

The membership of the National Judicial Council may be expanded by its own decision to as many as nine members, with two additional members elected by the Council by secret ballot from individual lists presented by institutions representing labour and corporate sectors.

Regular members of the National Judicial Council, together with their substitutes, are elected for a five-year term.

Article 156

Requirements to become a member of the National Judicial Council are the same as those for the Justices of the Supreme Court, except as provided by Article 147, Paragraph 4. A member of the National Judicial Council enjoys the same benefits and rights, and is subject to the same obligations and incompatibilities as a Justice of the Supreme Court.

Article 157

The members of the National Judicial Council may be removed from their offices by a decision of Congress due to a serious misdemeanour, with the affirmative votes of two-thirds of the legal number of Members.

...

Title V – Constitutional Guarantees

...

Article 202

It is the task of the Constitutional Court to hear:

1. without appeal, cases on unconstitutionality;
2. as last and final resort, resolutions denying *habeas corpus*, *amparo*, *habeas data* and compliance;
3. conflicts of jurisdiction or over powers assigned by the Constitution, in conformity with the law.

...



PERU

Organic Law of the Constitutional Court no. 28301

1 July 2004

...

Title I – The Constitutional Court

Chapter I – Organisation and Powers

Article 1 – Definition

The Constitutional Court is the supreme body for the interpretation and control of constitutionality. It is autonomous and independent of other constitutional bodies. It is subject only to the Constitution and to its Organic Law. The Constitutional Court has its headquarters in the city of Arequipa. By majority agreement of its members, it may hold decentralised meetings anywhere else in the Republic.

Article 2 – Jurisdiction

The Constitutional Court has jurisdiction to adjudicate in the cases covered by Article 202 of the Constitution.

The Court may issue rules on its own functioning and on the working conditions of its staff and employees within the scope of the present law. Once approved by the Plenary Court and authorised by its President, they shall be published in the Official Gazette *El Peruano*.

Article 3 – Exclusive power

In no case may the jurisdiction or powers of the Court regarding matters for which it is responsible under the Constitution and under this Law be disputed.

The Court shall rule on its own lack of jurisdiction or power *ex officio*.

Article 4 – Right to initiate legislation

The Constitutional Court has the right to initiate laws in fields for which it is responsible under Article 107 of the Constitution.

Article 5 – Quorum

A quorum of the Constitutional Court consists of five of its members. The Plenary Court shall adjudicate and adopt judgments on a simple majority of the votes cast, except when ruling on the inadmissibility of an action for unconstitutionality or issuing a judgment declaring a norm having the status of a law to be unconstitutional, in which cases five votes in favour are required.

If the qualified majority of five votes in favour of the unconstitutionality of the norm in question is not reached, the Court shall issue a ruling declaring the action for unconstitutionality to be unfounded.

In no case shall the Constitutional Court refrain from giving a ruling. Judges may not be challenged, but they may abstain from adjudicating in a case in which they have a direct or indirect interest or for the sake of propriety. Judges may not refrain from voting, and must vote for or against, on every occasion. The grounds for voting and individual votes are given together with the judgment in accordance with the special law.

When adjudicating, in the final instance, on resolutions rejecting *amparo* appeals (right to protection of fundamental rights), *habeas corpus* (right to a fair trial), *habeas data* (right to protection of personal data) and *cumplimiento* (right to observance of appropriate legislation) initiated in the courts concerned, the Court shall be composed of two Chambers, each comprising three members. Resolutions require three votes in favour.

When the number of votes required for one of the causes of vacancy listed in Article 16 of this Law is not attained, or when any of the members of a Chamber are prevented from attending, or in order to settle a dispute, the members of the other Chamber shall be called upon in ascending order of seniority, from the most junior to the most senior, and, as a last resort, the President of the Court shall be called upon.

Article 6 – Election of the President and Vice-President

The members of the Court in plenary session shall elect the President from among its members by a secret vote.

In order for the President to be elected, a minimum of five votes is required in the first round. If this minimum is not attained, a second round is held in which the person obtaining the greatest number of votes is elected. A final round is held in the event of a tie. In the

event of a second tie, the person with most seniority in the post is elected, and if there is a third tie the person with the most seniority in the profession is elected.

The President of the Court shall hold office for two years, and may be re-elected for one further year only.

Elections for the post of Vice-President shall follow the same procedure. The Vice-President replaces the President in case of the latter's temporary absence or indisposition. In the event of a vacancy, the Vice-President shall complete the President's term of office; in the latter case, if the Vice-President is unavailable, the President will be replaced by the most senior judge in post or, if in the event of a tie, by the oldest judge, in the case of temporary absence or other indisposition.

Article 7 – Powers

The President represents the Court. He/she convenes and chairs it; he/she adopts measures for its functioning; he/she makes vacancies known to the Congress and exercises other powers conferred on him/her by this Law and its regulations.

Chapter II – Constitutional Court Judges

Article 8 – Members

The Court shall comprise seven members with the title of Constitutional Court Judges, appointed by the Congress following a legislative resolution adopted through a vote by two thirds of the legal number of its members.

For this purpose, the Plenary Congress shall appoint a special committee composed of a minimum of five and a maximum of nine Congress members, observing as far as possible each parliamentary group's percentage representation in the Congress. This committee may receive proposals and select candidates whom it considers eligible to stand for election.

The special committee shall publish the call for nominations in the Official Gazette *El Peruano*. Likewise, it shall publish the list of persons nominated so that objections can be formulated, which must be accompanied by supporting documents.

Where one or more candidates have been declared eligible, the Congress shall organise the election by means of ordinary public voting. The Judge (or Judges, depending on the case), who obtains the majority provided for in the last paragraph of Article 201 of the Political Constitution shall be

elected. If the required majority is not attained, a second ballot shall be held.

If insufficient vacancies are filled after the votes have been counted, the Committee shall submit further nominations, within ten days, until all the Judges have been elected.

Furthermore, the relevant provisions of the Congress's rules are applicable.

Article 9 – Duration of the post

Court Judges are appointed for five years. There may be no immediate re-election.

Article 10 – Advance notice

At least six months before the date of expiry of the appointments, the President of the Court shall approach the President of the Congress to ask him/her to initiate the procedure for electing new judges.

The Court Judges shall continue to exercise their functions until their successors have taken over.

Article 11 – Conditions

The following conditions must be fulfilled in order to be a Court Judge:

1. be Peruvian by birth;
2. be a full citizen;
3. be over forty-five years old;
4. have been a Judge of the Supreme Court or Supreme Attorney General's Office, Senior Judge or Senior Public Prosecutor for ten years, have practised law or held a university chair in the legal field for at least fifteen years.

Article 12 – Obstacles to appointment

The following persons may not be elected members of the Court:

1. Judges belonging to the judiciary or the Attorney General's Office who have been dismissed or removed from office as a disciplinary measure;
2. Legal officers who have been disqualified under a judicial ruling or by resolution of the Congress of the Republic;
3. Persons who have been sentenced or who are on trial for an intentional offence;
4. Persons who have been declared insolvent or bankrupt;

5. Persons who have held *de facto* political or responsible government posts.

Article 13 – Full-time post

The post of Court Judge is full-time. Judges may not hold any other public or private post or practise any profession or hold any office, with the exception of university teaching provided it does not affect normal Court functioning.

Court Judges may not provide public or private defence or advice unless they are acting for themselves or their spouse, ascendants or descendants.

The same rules on incompatibility apply to them as to Congress members. They may not join political organisations.

When a conflict of interest arises for someone appointed as a Court Judge he/she must, before taking up his/her duties, abandon the incompatible activity or position. If he/she does not do so within ten days after appointment, he/she is assumed to have rejected the offer of the post in question.

Article 14 – Privileges of the post

Court Judges are not subject to binding mandates or instructions from any authority. They enjoy inviolability. They are not liable for votes or opinions expressed in the exercise of their function. They also enjoy immunity. They may not be detained or prosecuted without the authority of the Plenary Court, except in cases of *flagrante delicto*.

Article 15 – Rights and prerogatives

Court Judges shall enjoy the same rights and prerogatives as Congress members.

Article 16 – Vacancy

The post of Court Judge may fall vacant for any of the following reasons:

1. death;
2. resignation;
3. permanent moral or physical inability inhibiting the exercise of the function;
4. the commission of an inexcusable fault in complying with the duties involved in the post;
5. violation of the discretion appropriate to the function;
6. sentencing for commission of fraud;
7. the emergence of an incompatibility.

A Judge who creates grounds for a vacancy, but still continues in post shall be dismissed by the Court as soon as it is appraised of the situation.

A vacancy for the post of Court Judge in the cases covered by sub-Sections 1, 2 and 6 shall be decreed by the President. The other cases will be decided by the Plenary Court, for which purpose at least four votes in favour are needed.

Article 17 – Election of a new Judge

When a vacancy occurs for a cause other than expiry of the period of appointment, the Congress shall elect a new Constitutional Judge in accordance with the procedure set out in Article 8.

Article 18 – Suspension of Judges

In accordance with the previous procedure, Court Judges may be suspended in cases of *flagrante delicto* by the Congress meeting in plenary session.

Suspension requires at least four votes in favour.

Article 19 – Swearing-in

In order to take up a post of Court Judge, the appointee is required to take an oath before the President of the Court. New Court Presidents must do so in the presence of their predecessors after being elected in a preliminary hearing under the procedure set out in Article 6.

Title II – Staff of the Constitutional Court

Article 20 – Working conditions

Court staff are governed by the rules on working conditions in the private sector. The Court Regulations set out provisions on positions of responsibility.

Article 21 – Consultancy

The Court has a specialist advisers' office composed of legal officers selected by means of a public competition which is valid for three years, in accordance with the rules laid down in the Court Regulations.

Title III – Centre for Constitutional Studies

Article 22 – Centre for Constitutional Studies

The Centre for Constitutional Studies is the academic and technical research body supporting the development of and compliance with Constitutional

Court aims. It organises courses in the constitutional sciences and human rights. It involves no public expenditure other than that mentioned in its budget. Its Regulations are adopted by the Plenary Court.

Final Provisions

One – Judges and Courts shall interpret and apply the laws and all norms having the status of laws, together with the relevant regulations, according to constitutional precepts and principles and in the manner in which those regulations are interpreted in resolutions enacted by the Constitutional Court for all types of proceedings, under their own liability.

Two – Judges and Courts shall not apply provisions which they consider incompatible with the Constitution, where these cannot be adapted to the existing constitutional system by interpretative means.

Three – The draft annual budget of the Constitutional Court shall be submitted to the Executive Authority within the period laid down by law. It shall be included in the draft Budget Law, and be defended by the President of the Court before the Plenary Congress.

Four – This Law shall come into force simultaneously with Law no. 28237, the Constitutional Procedural Code.

Derogatory Provision

The entry into force of this Law repeals Law no. 26435 and any other provisions incompatible with this Law.

...



SERBIA Constitution

8 November 2006

– extracts –

...

Part II – Human and Minority Rights and Freedoms

2. Human Rights and Freedoms

Article 44 – Churches and Religious Communities

...

Constitutional Court may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of child, right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance.

...

Article 55 – Freedom of Association

...

Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred.

...

Part Five – Organisation of Government

1. National Assembly

...

Article 99 – Competences

...

Within its election rights, the National Assembly shall:

...

2. appoint and dismiss judges of the Constitutional Court,

...

Article 101 – Election of Deputies and Constitution of the National Assembly

...

Against the decision made in relation to confirmation of terms of office, an appeal may be lodged before the Constitutional Court, which decides on it within seventy-two hours.

...

2. The President of the Republic**Article 118 – Dismissal**

...

The Constitutional Court shall have the obligation to decide on the violation of the Constitution, upon the initiated procedure for dismissal, not later than within forty-five days.

...

7. Courts**Article 148 – Termination of a Judge’s Tenure of Office**

...

A judge shall have the right to appeal with the Constitutional Court against this decision. The lodged appeal shall not include the right to lodge a Constitutional appeal.

...

8. The High Judicial Council**Article 155 – Legal Remedy**

An appeal may be lodged with the Constitutional Court against a decision of the High Judicial Council, in cases stipulated by the Law.

...

Article 161 – Termination of Public Prosecutor and Deputy Public Prosecutor’s Tenure of Office

A Public Prosecutor and Deputy Public Prosecutor may lodge an appeal with the Constitutional Court against the decision on termination of their tenure of office. The lodged appeal shall not include the right to lodge a Constitutional appeal.

...

Part Six – The Constitutional Court

...

Article 166 – Status

The Constitutional Court shall be an autonomous and independent state body which shall protect constitutionality and legality, as well as human and minority rights and freedoms.

The Constitutional Court decisions are final, enforceable and generally binding.

Article 167 – Jurisdiction

The Constitutional Court shall decide on:

1. compliance of laws and other general acts with the Constitution, generally accepted rules of the international law and ratified international treaties;
2. compliance of ratified international treaties with the Constitution;
3. compliance of other general acts with the Law;
4. compliance of the Statute and general acts of autonomous provinces and local self-government units with the Constitution and the Law;
5. compliance of general acts of organisations with delegated public powers, political parties, trade unions, civic associations and collective agreements with the Constitution and the Law.

The Constitutional Court shall:

1. decide on the conflict of jurisdictions between courts and state bodies;
2. decide on the conflict of jurisdictions between republic and provincial bodies or bodies of local self-government units;
3. decide on the conflict of jurisdictions between provincial bodies and bodies of local self-government units;
4. decide on electoral disputes for which the court jurisdiction has not been specified by the Law;
5. perform other duties stipulated by the Constitution and the Law.

The Constitutional Court shall decide on the banning of a political party, trade union organisation or civic association.

The Constitutional Court shall perform other duties stipulated by the Constitution.

Article 168 – Assessment of Constitutionality and Legality

A proceedings of assessing the constitutionality may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least twenty-five deputies. The procedure may also be instituted by the Constitutional Court.

Any legal or natural person shall have the right to an initiative to institute a proceedings of assessing the constitutionality and legality.

The Law or other general acts which is not in compliance with the Constitution or the Law shall cease to be effective on the day of publication of the Constitutional Court decision in the official journal.

Before passing the final decision and under the terms specified by the Law, the Constitutional Court may suspend the enforcement of an individual general act or action undertaken on the grounds of the Law or other general act whose constitutionality or legality it assesses.

The Constitutional Court may assess the compliance of the Law and other general acts with the Constitution, compliance of general acts with the Law, even when they ceased to be effective, if the proceedings of assessing the constitutionality has

been instituted within no more than six months since they ceased to be effective.

Article 169 – Assessment of Constitutionality of the Law prior to its coming into force

At the request of at least one third of deputies, the Constitutional Court shall be obliged within seven days to assess constitutionality of the law which has been passed, but has still not been promulgated by a decree.

If a law is promulgated prior to adopting the decision on constitutionality, the Constitutional Court shall proceed with the proceedings as requested, according to the regular proceedings of assessing the constitutionality of a law.

If the Constitutional Court passes a decision on non-constitutionality of a law prior to its promulgation, that decision shall come into force on the day of promulgation of the law.

The proceedings of assessing constitutionality may not be instituted against the law whose compliance with the Constitution was established prior to its coming into force.

Article 170 – Constitutional Appeal

A constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.

Article 171 – Ensuring the Enforcement of Decisions

Everyone shall be obliged to observe and enforce the Constitutional Court's decision.

The Constitutional Court shall regulate in its decision the manner of its enforcement, whenever deemed necessary.

Enforcement of the Constitutional Court's decisions shall be regulated by the Law.

Article 172 – Organisation of the Constitutional Court. Election and appointment of the Constitutional Court justices

The Constitutional Court shall have fifteen justices who shall be elected and appointed for the period of nine years.

Five justices of the Constitutional Court shall be appointed by the National Assembly, another five by the President of the Republic, and another five at the general session of the Supreme Court of Cassation.

The National Assembly shall appoint five justices of the Constitutional Court from among ten candidates proposed by the President of the Republic, the President of the Republic shall appoint five justices of the Constitutional Court from among ten candidates proposed by the National Assembly, and the general session of the Supreme Court of Cassation shall appoint five justices from among ten candidates proposed at a general session by the High Judicial Court and the State Prosecutor Council.

On each of the proposed lists of candidates, one of the appointed candidates must come from the territory of autonomous provinces.

A justice of the Constitutional Court shall be elected and appointed from among the prominent lawyers who have at least forty years of experience in practicing the law.

One person may be elected or appointed a justice of the Constitutional Court on two occasions at the most.

Justices of the Constitutional Court shall elect the president from among their representatives for the period of three years, in a secret ballot.

Article 173 – Conflict of Interest. Immunity

A justice of the Constitutional Court may not engage in another public or professional function or action, except for the professorship a law faculty in the Republic of Serbia, in accordance with the Law.

A justice of the Constitutional Court shall enjoy immunity as a deputy. The Constitutional Court shall decide on its immunity.

Article 174 – Termination of the Tenure of Office of the Constitutional Court Justice

Tenure of office of the Constitutional Court justice shall terminate upon expiry of the period for which he/she had been elected or appointed, at his/her own request, after meeting the requirements regulated by the Law for obtaining the old age pension or by relief of duty.

A justice of the Constitutional Court shall be relieved of duty if he/she violates the prohibition of the conflict of interest, permanently loses the ability to discharge the function of a justice of the Constitutional Court, or

is convicted of a penalty of imprisonment or criminal offence which makes him/her ineligible for the post of the Constitutional Court justice.

The National Assembly shall decide on the termination of a justice's tenure of office, on request of movers authorised for election, as well as on appointment for election of a justice of the Constitutional Court. An initiative to institute the proceedings of relieving of duty may be submitted by the Constitutional Court.

Article 175 – The manner of deciding in the Constitutional Court. The Law on the Constitutional Court

The Constitutional Court shall adjudicate by the majority of votes cast by all justices of the Constitutional Court.

A decision to autonomously institute the proceedings of assessing the constitutionality or legality shall be passed by the Constitutional Court by two thirds of the majority votes cast by all justices.

Organisation of the Constitutional Court and the proceedings before the Constitutional Court, as well as the legal effect of its decisions shall be regulated by the Law.

Part VII – Territorial Organisation

2. Autonomous provinces

...

Article 186 – Monitoring the work of Bodies of Autonomous Province

The Government may institute, before the Constitutional Court, the proceedings of assessing the constitutionality and legality of a decision adopted by the autonomous province, prior to its coming into force. In that sense, prior to passing its decision, the Constitutional Court may defer coming into force of the challenged decision of the autonomous province.

Article 187 – Protection of the Provincial Autonomy

A body designated by the Statute of the autonomous province shall have a right to lodge an appeal with the Constitutional Court, if an individual legal act or action of a state body or body of local self-government unit obstructs performing the competences of the autonomous province.

A body designated by the Statute of the autonomous province may institute the proceedings of assessing the constitutionality or legality of the law and other legal act of the Republic of Serbia or the legal act of the local self-government unit which violates the right to the provincial autonomy.

...

Article 193 – Protection of Local Self-Government

The body designated by the Statute of the municipality shall have the right to lodge an appeal with the Constitutional Court if an individual legal act or action by a state body or body of local self-government unit obstructs performing the competences of the municipality.

The body designated by the Statute of the municipality may institute the proceedings of assessing the constitutionality or legality of the Law or other legal act of the Republic of Serbia or autonomous province which violates the right to local self-government.

...



SERBIA

Law on the Constitutional Court

(Official Gazette of the Republic of Serbia no. 109/07)

2008

I – Main Provisions

Article 1

The organisation of the Constitutional Court, the procedure before the Constitutional Court and the legal effect of its decisions are determined by this Law.

Article 2

The Constitutional Court decides on questions from its jurisdiction determined by the Constitution of the Republic of Serbia (hereinafter: the Constitution) and performs other activities determined by the Constitution and by law.

Article 3

The work of the Constitutional Court is public.

Publicity is guaranteed by public hearings in procedures before the Constitutional Court, publication of its decisions, release of communiqués to the public information media and in other manner.

The Constitutional Court may exclude the public, only for the purpose of protecting the interests of national security, public order and morality in a democratic society, as well as for the purpose of protecting the interests of juveniles and the privacy of participants in a procedure.

Exclusion of the public does not pertain to the participants in a procedure, their legal representatives and representatives of the professional public.

Judges may not express publicly their opinions about questions which are the subject matter of a dispute before the Constitutional Court.

Article 4

Everyone is entitled to request insight into the case files and to request that he/she be allowed to copy

the files, in accordance with the law governing free access to information of public importance.

Access to case files shall not be allowed if there are reasons for excluding the public and in other cases, in accordance with law.

Article 5

Procedures before the Constitutional Court are conducted in the Serbian language and with the use of the Cyrillic script.

Official usage of other languages and scripts in procedures before the Constitutional Court is effected in accordance with the law governing the use of those languages and scripts.

Article 6

Procedures before the Constitutional Court are not subject to any duties.

Participants in procedures before the Constitutional Court bear their own expenses, unless the Constitutional Court determines otherwise.

The Constitutional Court may compensate other summoned persons for their expenses and determine a fee for their participation in the procedure.

Article 7

Decisions of the Constitutional Court are final, enforceable and universally binding.

The manner and procedure of enforcing decisions of the Constitutional Court are determined by this Law.

Article 8

Matters of procedure before the Constitutional Court not regulated by this Law shall accordingly be governed by provisions of appropriate procedural laws.

Matters of procedure not regulated by this Law or provisions of other procedural laws shall be decided on in each individual case by the Constitutional Court.

Article 9

Constitutional Court passed general and individual acts, by majority vote of all judges, except in cases prescribed by this Law.

Article 10

The Constitutional Court has the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure), which regulate in detail the organisation, manner and publicity of work and the procedure before the Constitutional Court.

Rules of Procedure are published in the "Official Gazette of the Republic of Serbia".

II – Election, Appointment and Termination of Office of Constitutional Court Judges

Article 11

The Constitutional Court consists of fifteen judges elected and appointed in the manner prescribed by the Constitution.

On assuming office judges take an oath before the Speaker of the National Assembly.

The text of the oath is as follows: "I solemnly swear to abide by the Constitution and laws of the Republic of Serbia in my work and to perform my duty honourably, conscientiously and impartially".

Article 12

Six months before the expiry of the nine-year term of office to which a Constitutional Court judge has been appointed, or elected, the President of the Constitutional Court shall notify thereof the authorised propounder and the National Assembly.

Article 13

Constitutional Court judges files requests for termination of office before the expiry of the term to which they have been elected, or appointed, to the authorised propounder for election, or appointment, to the National Assembly, and the President of the Constitutional Court.

If the National Assembly fails to adopt a decision on the request referred to in Paragraph 1 of this within three months from the day it was filed, the office of the Constitutional Court judge expires by force of law on the expiry of that time-limit, and this is stated by a ruling passed by the President of the Constitutional Court.

In case of death of Constitutional Court judge, the President of the Constitutional Court informs the authorised propounder and the National Assembly thereof.

Article 14

The Constitutional Court notifies the authorised propounder for election, or appointment of a judge, and the National Assembly, that the judge has fulfilled requirements for mandatory retirement, no later than six months before the fulfilment of those requirements.

In the case referred to in Paragraph 1 of this Article, the authorised propounder shall initiate a procedure for termination of office of the Constitutional Court judge concerned.

If the National Assembly fails to adopt a decision on the termination of office of a judge who has fulfilled requirements for retirement, the office of that judge is terminated on the date of fulfilment of those requirements, and this is stated by a ruling passed by the President of the Constitutional Court.

Article 15

A Constitutional Court judge may be dismissed if he/she becomes a member of a political party, violates the prohibition of conflict of interest, suffers permanent loss of ability to perform the duty of a Constitutional Court judge, or is convicted to a prison sentence or convicted for a punishable offence rendering them him/her unworthy to serve as a Constitutional Court judge.

Fulfilment of conditions for dismissal of a Constitutional Court judge of duty is determined by the Constitutional Court.

Procedure for dismissal of Constitutional Court is initiated by the authorised propounders for the election, or appointment, of Constitutional Court judges. Initiative for commencement of dismissal procedure may be filed by the Constitutional Court.

Article 16

Constitutional Court judges may not hold or perform other public or professional office or job, except for professorships at faculties of law in the Republic of Serbia.

Unpaid work in cultural and artistic, humanitarian, sports or other associations shall not within the meaning of this Law be deemed as public or professional office or job.

Constitutional Court judge is under the obligation to inform the Constitutional Court of activities from Paragraph 2 of this Article.

Professorship at faculties of law shall within the meaning of this Law be deemed as conducting teaching activities at faculties as full or associate professor.

Where it is suspected that a conflict of interest may exist, a Constitutional Court judge may approach the Constitutional Court for its opinion.

Article 17

Loss of ability to work as a Constitutional Court judge is determined on the basis of an expert finding and opinion of an authorised healthcare institution.

Article 18

The competent court, or other state authority, has an obligation to serve to the authorised propounder for the election or appointment of a Constitutional Court judge, and to the Constitutional Court, legally binding decisions on convictions of Constitutional Court judges to a prison sentence or conviction for other punishable offence.

Article 19

For the duration of the procedure for determining whether requirements for dismissal a Constitutional Court judge have been fulfilled, the judge may be suspended from duty.

Decision on suspending a Constitutional Court judge is passed at the proposal of the President of the Constitutional Court.

Decision on suspension of the President of the Constitutional Court is passed at the proposal of at least three Constitutional Court judges.

Decision on suspension is passed by the Constitutional Court, by majority vote of all judges, in accordance with the Rules of Procedure.

Article 20

Where the office of a Constitutional Court judge is terminated before the expiry of the term to which that judge has been elected, or appointed, the authorised propounder nominates two candidates for election, or appointment.

The nomination referred to in Paragraph 1 of this Article is submitted to the authority in charge of the election, or appointment, within three months from the date of notification about the termination of a Constitutional Court judge's office.

If the Constitutional Court judge whose office has been terminated was from the territory of an autonomous province, the candidates for election, or appointment, must be from the territory of the autonomous province.

Article 21

Constitutional Court judge whose office has been terminated is entitled to receive a compensation of salary in the duration of six months in the amount equal to the salary of Constitutional Court judge.

The entitlement to compensation of salary shall cease before the expiry of the six months time-limit if a judge whose office is terminated establishes an employment relation or acquires the right to a pension, and can be extended for additional six months if he/she acquires the right to pension within those six months.

Constitutional Court judge whose office was terminated due to fulfilling requirements for retirement, or who has been dismissed due to membership in a political party, violation of the prohibition of conflict of interest, conviction to a prison sentence or conviction for a punishable offence rendering him/her unworthy to serve as a Constitutional Court judge, shall not be entitled to compensation of salary from Paragraphs 1 and 2 of this Article.

III – Organisation of the Constitutional Court

Article 22

The seat of the Constitutional Court is in Belgrade.

Article 23

The Constitutional Court has a President.

The President of the Constitutional Court is elected by the judges of the Constitutional Court from among them, by secret ballot and a majority vote of all the judges, to a term of office of three years, with possibility of re-election.

If the President of the Constitutional Court is not elected, the office of the President, until the election, shall be exercised by the Deputy President, or the oldest judge.

Article 24

The President of the Constitutional Court represents the Constitutional Court, convenes its sessions, proposes the agenda and chairs sessions, harmonises the work of the Constitutional Court, looks after the implementation of Constitutional Court acts and performs other duties determined by this Law, the Rules of Procedure and other acts of the Constitutional Court.

The President of the Constitutional Court also exercises the duty of a judge.

Article 25

The Constitutional Court has a Deputy President, who stands in for the President of the Constitutional Court if the President is absent or otherwise engaged.

Provisions of this Law on election and term of office of the President of the Constitutional Court apply to the election and term of office of Deputy President accordingly.

The Deputy President of the Constitutional Court also exercises the duty of a judge.

Article 26

The Constitutional Court has a Secretary, appointed by a majority vote of all the judges, by secret ballot, to a term of office of five years, with the possibility of reappointment.

The Secretary manages the Professional Service of the Constitutional Court and is accountable to the Constitutional Court for his/her work.

The Secretary of the Constitutional Court may have a deputy, appointed by the Constitutional Court by majority vote of all judges, for a period of five years, with possibility of reappointment.

The Secretary and Deputy Secretary of the Court have the status of civil servant holding a post.

Requirements for the appointment of Secretary and Deputy Secretary are determined by an act of the Constitutional Court.

Article 27

The Constitutional Court shall form a Professional Service for performance of professional and other tasks.

Organisation, tasks and manner of work of the Professional Service shall be governed in more detail by an act of the Constitutional Court.

Rights and obligations of employees in the Professional Service shall be governed by regulations governing the rights and duties of civil servants and appointees.

Article 28

Funds needed for the work and functioning of the Constitutional Court are provided from the Budget of the Republic of Serbia on the proposal of the Constitutional Court.

The Constitutional Court disposes of the funds referred to in Paragraph 1 of this Article independently, in accordance with the law and the Rules of Procedure.

IV – Procedures before the Constitutional Court and Legal Effect of its Decisions

1. General Provisions

A – Participants in Procedures

Article 29

Participants in procedures before the Constitutional Court are the following:

1) state authorities, authorities of the autonomous provinces and local self-government entities, members of Parliament, in procedures for assessing constitutionality and legality (hereinafter: authorised propounder);

2) anyone on whose initiative a procedure for assessing constitutionality and legality has been initiated (hereinafter: the initiator);

3) the enactor of a law, statute of an autonomous province, or local self-government entity and other general act (hereinafter: general act) whose constitutionality and legality are being assessed, as well as parties to a collective contract;

4) political parties, trade union organisations or citizens' associations the constitutionality and legality of statute of other general act of which is being assessed or prohibition of activity of which being decided on;

5) religious communities the prohibition of activity of which is being on;

6) anyone at whose request a procedure for deciding on an electoral dispute for which jurisdiction of a court has not been determined by law is being conducted, as well as the authority in charge of implementing the election in connection with the electoral activity of which the dispute is being initiated;

7) state and other authorities who accept, or disclaim, competence, as well as anyone unable to exercise a right on account of an acceptance or disclaimer of competence;

8) the Government, Republican Public Prosecutor and authority in charge of registering political parties, trade union organisations, citizens' associations or religious communities, in procedures for the prohibition of the activity of political parties, trade union organisations, citizens' associations or religious communities;

9) submitters of constitutional complaints, as well as state authorities or organisations vested with public authority, against the individual acts or actions of which the constitutional complaint has been filed;

10) authorities designated by the statute of an autonomous province or a local self-government unit, in appellate procedures where the exercise of the authority of an autonomous province, or a local self-government unit, is precluded by an individual act or action of a state authority or local self-government authority, as well as the authority against the individual act or action of which the appeal has been filed;

11) the National Assembly and the President of the Republic the existence of a violation of the Constitution in a procedure for his/her impeachment is being decided on;

12) judges, public prosecutors and deputy public prosecutors in procedures on appeals against decisions on termination of office, as well as the authority that passed the decision on termination;

13) other persons, in accordance with the law.

Other persons summoned by the Constitutional Court may also participate in proceedings before the Constitutional Court.

Article 30

Authorities and organisations are represented in procedures before the Constitutional Court by their authorised representatives.

Persons duly authorised by participants in procedures may also participate in procedures before the Constitutional Court.

Article 31

Participant in procedure has the right to file proposals and a duty to provide necessary data and information in the course of procedures and hearings, to submit evidence and to undertake other activities of significance for the decision-making of the Constitutional Court.

Participant in proceedings is entitled to present and explain his/her position and reasons during the procedure, as well as to answer the claims and reasons of other participants in the procedure.

Participants in procedure may, in the course of procedure, abandon their proposal, claim, appeal or initiative.

B – Preliminary Procedure

Article 32

Submissions filed to the Constitutional Court are filed by mail or to the Constitutional Court directly and must be signed.

Proposal, initiative or other submission shall be deemed filed on the day they were received by the Constitutional Court.

If a proposal, initiative or other submission were sent by registered mail, the day of dispatch shall be deemed as the day they were received by the Constitutional Court.

Article 33

At the request of the Constitutional Court, a reply to a proposal, initiative and ruling on the initiation of a procedure to assess constitutionality or legality of a general act is provided by the enactor of that act, or an authority authorised by the enactor.

In respect of initiatives for assessing the constitutionality of a law or constitutionality and legality of other general act adopted by the National Assembly, the Constitutional Court may, before initiating a procedure, request an opinion from the National Assembly.

In respect of initiatives for assessing the constitutionality of the statute of an autonomous province or local self-government unit, the Constitutional Court may, before

initiating a procedure, request an opinion from the Assembly of the autonomous province or of the local self-government unit.

Article 34

The enactor of the contested general act is bound, within a time-limit determined by the Constitutional Court which may not be less than fifteen days, to submit the contested general act and necessary documentation and to provide data and information of significance for the conduct of the procedure and decision-making.

State and other authorities, organisations vested with public authority, legal and natural persons are under the obligation to provide data and information of significance for the procedure and decision-making of the Constitutional Court, at the request of the Constitutional Court, within a time-limit that may not be less than fifteen days.

If the Constitutional Court does not receive a response, opinion, requested data or information within the specified time-limit, the procedure may be resumed.

Article 35

In the proceedings before the Constitutional Court, data, information, opinions and evidence are collected from participants in procedure, and other actions significant for discussion and decision-making on the Constitutional Court session are taken, in particular: whether the Constitutional Court is competent to issue a decision; whether a proposal has been submitted by an authorised propounder, or whether a proposal or an initiative are complete and comprehensible; whether requisite information, documents and attachments have been provided; whether other procedural prerequisites for the conduct of a procedure have been met.

Article 36

The Constitutional Court will dismiss a proposal, initiative, constitutional complaint, request or other act initiating a procedure:

- 1) when it determines that it is not competent to issue a decision;
- 2) if it was not filed within the prescribed time-limit;
- 3) when the submitter had not rectified shortcomings which preclude processing within a designated time-limit;

4) when other legally defined preconditions for conducting a procedure and determination do not exist.

When the Constitutional Court determines that it is not competent to issue a decision, it may refer the proposal, initiative, request, constitutional complaint or other act initiating a procedure to the competent authority.

C – Public Hearing

Article 37

The Constitutional Court shall hold a public hearing in the procedure for assessing constitutionality and legality, in the procedure for deciding on electoral disputes, as well as in proceedings for prohibition of work of a political party, trade union organisation, citizens' association or religious community.

Constitutional court can decide not to hold a public hearing in procedure for assessing the constitutionality and legality: if it deems that the matter was sufficiently clarified in the course of procedure and that, on the basis of evidence collected, it can decide even without holding a public hearing; if it has already decided on the same matter and new evidence for making a different decision on the matter have not been provided, as well as if there are conditions for discontinuation of procedure.

The Constitutional Court can hold a public hearing in other cases where it deems it necessary, in particular when the case concerns a complex constitutional issue or when there is an issue of constitutionality or legality on which the Constitutional Court does not have a position.

Article 38

All participants in proceedings are summoned to public hearing, in order to express their positions and provide necessary information.

If it is in the interest of constitutionality or legality, the Constitutional Court may summon representatives of authorities and organisations responsible for enforcing the given general act.

When necessary, representatives of authorities and organisations, scholars and public officials, as well as other persons, shall be summoned in order to give opinions and explanations.

Article 39

Absence of certain participants in proceedings from a public hearing shall not preclude the Constitutional Court from holding a public hearing and passing a decision.

Article 40

The Constitutional Court may suspend or adjourn the public hearing in order to obtain the necessary data, information and opinions, as well as in other justified cases.

Article 41

Other issues related to public hearing shall be governed in more detail by the Rules of Procedure.

D – Forms of work of Constitutional Court

Article 42

Constitutional Court decides on issues from its competence on a session.

Constitutional Court sessions are convened and chaired by the President of the Constitutional Court.

Minutes are kept of the Constitutional Court sessions.

Manner of work and decision-making on Constitutional Court sessions are governed by the Rules of Procedure.

Constitutional Court may, in order to clarify matters in a case, hold other sessions, in accordance with the Rules of Procedure.

Article 43

The Constitutional Court shall form commissions as permanent working bodies.

Constitutional Court may also form occasional working bodies.

Permanent and occasional working bodies from Paragraphs 1 and 2 of this Article shall be formed in accordance with the Rules of Procedure.

E – Acts of the Constitutional Court

Article 44

The Constitutional Court issues decisions, rulings and conclusions.

Article 45

The Constitutional Court issues decisions:

- 1) establishing that a law, statute of an autonomous province or local self-government unit and other general act does not comply with the Constitution, generally accepted rules of international law and ratified international agreements, or that at the time when it was in force it did not comply with the Constitution;
- 2) establishing that a law which has been adopted, but not enacted by a decree, is not in compliance with the Constitution;
- 3) establishing that a ratified international agreement is not in compliance with the Constitution;
- 4) establishing that a statute of an autonomous province or local self-government unit or other general act is not in compliance with the law, or that it did not comply with the law at the time when it was in force;
- 5) establishing that a collective contract is not in compliance with the Constitution and the law;
- 6) specifying the manner of rectifying consequences that arose due to the implementation of a general act that is not in compliance with the Constitution or a law;
- 7) deciding on electoral disputes for which the jurisdiction of a court is not defined by law;
- 8) prohibiting the activities of a political party, trade union organisation, citizens' association or religious community;
- 9) deciding on constitutional complaints;
- 10) determining on complaints of authorities of an autonomous province or of local self-government unit in procedures where the exercise of the authority of an autonomous province, or a local self-government unit, is precluded by an individual act or action of a state authority or local self-government authority;

11) deciding in procedures for establishing violations of the Constitution by the President of the Republic;

12) deciding in procedures on appeals by judges, public prosecutors and deputy public prosecutors against decisions on termination of office and other decisions of the High Judicial Council;

13) dismissing proposals for establishing unconstitutionality and illegality.

Article 46

The Constitutional Court issues rulings:

- 1) initiating procedures;
- 2) deciding on conflicts of jurisdiction between state and other authorities, in accordance with the Constitution;
- 3) staying enforcement of individual acts, or action, and repealing a stay or dismissing a request for staying the enforcement of an individual act or action;
- 4) delaying the entry into force of a decision of an autonomous province authority;
- 5) not accepting an initiative for initiating a procedure of determining unconstitutionality and illegality;
- 6) determining the manner of enforcement of a Constitutional Court decision or ruling;
- 7) discontinuing procedures in the cases referred to in Articles 57, 88 and 97 of this Law;
- 8) dismissing requests for assessing constitutionality and legality of general acts on which it has already made determination, wherein new claims, reasons and evidence submitted do not provide grounds for a finding that there is reason for new deliberation and determination;
- 9) dismisses constitutional complaints if the procedural preconditions are not satisfied.

Article 47

Constitutional Court decisions and orders contain: an introduction, holding and reasons.

Article 48

When it does not issue other acts, the Constitutional Court issues conclusions.

Article 49

Decisions of the Constitutional Court, except for constitutional complaint decisions, are published in the Official Gazette of the Republic of Serbia, as well as in the official journals in which the statute of an autonomous province, other general acts and collective contracts are published, i.e. in the manner in which the general act on which the Constitutional Court decided was published.

Decisions on constitutional complaints, as well as rulings of broader significance for the protection of constitutionality and legality, may be published in the Official Gazette of the Republic of Serbia.

2 – Procedure for assessing the constitutionality or legality of general acts**Article 50**

Procedure for assessing the constitutionality or legality of general acts is initiated on the basis of a proposal submitted by an authorised propounder or a ruling on initiation of procedure.

Procedure for assessing the constitutionality or legality of general acts may be initiated by the Constitutional Court itself, on the basis of a decision taken by a two-thirds majority of the votes of all its judges.

Article 51

Proposal and/or initiative for assessing the constitutionality or legality of general acts include: the name of the general act, designation of the provision, title and number of the official journal in which it was published, grounds for the proposal, proposal or claim on how to decide, as well as other data of importance for assessing constitutionality or legality.

Where the general act whose constitutionality or legality is being challenged was not published in an official journal, a certified copy of the act shall be attached to the proposal.

Article 52

A procedure is deemed initiated on the date of the submittal of the proposal to the Constitutional Court, or on the date of issuance of a written decision to initiate a procedure.

Article 53

Where the Constitutional Court finds there are grounds to commence a procedure on the basis of an initiative, it shall commence the procedure by a ruling.

Where the constitutionality and legality are being challenged by an initiative, except for the laws and statute of an autonomous province or local self-government unit, or individual provisions of that act regulating questions on which the Constitutional Court has already assumed a position or where during the preliminary procedure the legal situation has been determined in full and the data collected provide a reliable foundation for determination, the Constitutional Court determines the matter without issuing a ruling on commencement of procedure.

Where the Constitutional Court finds there are no grounds to initiate on initiative, it will not accept the initiative.

Article 54

In the procedure of assessing constitutionality and legality, the Constitutional Court is not constrained by the request of the authorised propounder, or initiator.

Where the authorised propounder, or initiator, abandons the request or initiative, the Constitutional Court will continue the procedure of assessing constitutionality or legality if it finds grounds for doing so.

Article 55

During the procedure, and at the request of the enactor of the disputed general act, the Constitutional Court may, before issuing a decision on the constitutionality or legality, suspend the procedure and allow the enactor of the general act to rectify, within a specified time-limit, unconstitutionality or illegalities found.

If the unconstitutionality or illegalities are not rectified within a specified time-limit, the Constitutional Court will continue the procedure.

Article 56

In the course of procedure, until the issuing of a final decision, the Constitutional Court may suspend the enforcement of an individual act or action taken on the basis of the general act whose constitutionality or legality are being assessed, where such enforcement could cause irreversible detrimental consequences.

Where, during a procedure, the Constitutional Court finds that due to altered circumstances the reasons for the suspension have ceased, it will lift the suspension of the enforcement of the individual act or action.

The Constitutional Court will dismiss a request for suspension of the enforcement of an individual act or action when issuing the final decision.

Article 57

The Constitutional Court will discontinue a procedure:

1) where during the procedure the general act was harmonised with the Constitution or law, and the Constitutional Court did not determine that, due to the consequences of the unconstitutionality or illegality, a decision should be issued because the consequences of the unconstitutionality or illegality have not been rectified;

2) where during the procedure the procedural preconditions for conducting the procedure cease to exist.

Article 58

When the Constitutional Court establishes that a law, statute of an autonomous province or local self-government unit, other general act or collective contract do not comply with the Constitution, generally accepted rules of international law and ratified international agreement, such law, statute of autonomous province or local self-government unit, other general act or collective contract shall cease to be valid on the day the Constitutional Court decision is published in the "Official Gazette of the Republic of Serbia".

Provisions of ratified international agreement for which it is established by a Constitutional Court decision that they do not comply with the Constitution, shall cease to be valid in the manner provided by such international agreement or generally accepted rules of international law.

When the Constitutional Court determines that a general act or collective contract is not in compliance with the law, the validity of that general act or collective contract expires on the date of the publication of the Constitutional Court's decision in the Official Gazette of the Republic of Serbia.

Article 59

When the Constitutional Court determines the manner of rectifying the consequences which arose due to the implementation of a general act which is

not in compliance with the Constitution or law, the decision of the Constitutional Court has legal effect from the date of its publication in the Official Gazette of the Republic of Serbia.

Article 60

Laws and other acts for which it has been established by a Constitutional Court decision that they do not comply with the Constitution, generally accepted rules of international law, ratified international agreements or law, cannot apply to relations that arose before the day of publication of the Constitutional Court decisions, if they were not finally resolved by that date.

General act passed for the purpose of enforcement of laws and other general acts for which it is established, by a Constitutional Court decision, that they are not in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law, shall not apply from the day of publication of the Constitutional Court decision, if the decision implies that these general acts are incompatible with the Constitution, generally accepted rules of international law, ratified international agreements or law.

Enforcement of finally binding individual acts passed on the basis of regulations that can no longer apply, cannot be allowed or implemented, and if the enforcement is initiated, it shall be discontinued.

Article 61

Everyone whose right has been violated by a final or legally binding individual act adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law is entitled to demand from the competent authority a revision of that individual act.

Proposals for revision of a final or legally binding individual act adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law may be submitted within six months from the date of the publication of the decision in the Official Gazette.

Article 62

If it is established that revision of an individual act cannot rectify the consequences which arose from the implementation of the general act determined by a decision of the Constitutional Court not to be in

compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law, the Constitutional Court may order the consequences rectified by restitution, indemnification, or otherwise.

Article 63

If during a procedure before a court of general or special jurisdiction the issue of compliance of law or other general act with the Constitution, generally accepted rules of international law, ratified international agreements or law, is raised, such court shall adjourn the procedure and initiate a procedure for assessing the constitutionality or legality of that act before the Constitutional Court.

Article 64

Where during a procedure a general act's validity expired or the act was brought into compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law, but the consequences of unconstitutionality, or illegality, had not been rectified, the Constitutional Court may determine by decision that the general act was not in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law. This decision of the Constitutional Court has an identical legal effect as a decision determining that a general act is not in compliance with the Constitution, generally accepted rules of international law, ratified international agreements, or law.

Article 65

The provisions of Articles 50 through 64 of this Law shall apply accordingly in procedures of deciding on compliance of laws and other general acts with generally accepted rules of international law and ratified international agreements.

3 – Procedure for assessing the constitutionality of a law before its promulgation

Article 66

The text of the adopted law certified by the Secretary of the National Assembly or a person so authorised by him/her shall be attached to the proposal for assessing the constitutionality of a law before its enactment.

The proposal for assessing the constitutionality of a law before its enactment shall not be forwarded for the National Assembly to provide its opinion, nor shall a public hearing regarding it be held.

The Constitutional Court shall inform the President of the Republic that a procedure for assessing the constitutionality of a law before its enactment has been initiated.

The procedure of assessing the constitutionality of a law before its enactment is urgent shall be conducted in accordance with the time-limits prescribed by the Constitution.

A decision establishing that a law that has not been enacted does not comply with the Constitution shall have legal effect from the day the law is enacted.

4 – Procedure for deciding on suspending the entry into force of a decision of an autonomous province authority

Article 67

In a proposal for assessing the constitutionality or legality of a decision of an autonomous province authority that has not yet entered into force, the Government can propose to the Constitutional Court to suspend the entry into force of the contested decision until the Constitutional Court decides on its constitutionality or legality.

The Government is under the obligation to attach the text of the contested decision of an autonomous province authority to the proposal.

The Constitutional Court first decides on the Government proposal to suspend the entry into force of the contested decision, in accordance with the time-limits prescribed by the Rules of Procedure, where it shall not ask for an opinion on the contested decision from the authority that passed it, nor shall it hold a public hearing on the proposal.

If the Constitutional Court passes a ruling to suspend the entry into force of the contested decision of an autonomous province authority, it is under the obligation to conduct the procedure of assessing the constitutionality or legality urgently, in accordance with the time-limits prescribed by the Rules of Procedure.

A ruling whereby the Constitutional Court suspends the entry into force of the contested decision of an autonomous province authority shall have legal effect from the day it is served to the autonomous province authority that has adopted it.

5 – Procedures of resolving conflicts of jurisdiction

Article 68

The Constitutional Court resolves conflicts of jurisdiction from 167 Paragraphs 2 sub-paragraph 1 to 4 of the Constitution.

Motions for resolving conflicts of jurisdiction referred to in Paragraph 1 of this Article are filed by one or both of the conflicting authorities, as well as the person in connection with whose right the conflict of jurisdiction appeared.

Article 69

Motions for resolving conflicts of jurisdiction contain the titles of the authorities which accept or disclaim jurisdiction and their reasons for doing so.

Article 70

If the authorities disclaim jurisdiction, the motion for resolution of conflict of jurisdictions shall be filed within fifteen days from the day the decision of the second authority that declared itself incompetent becomes finally binding.

Article 71

Motions for resolving conflicts of jurisdiction are deemed initiated on the date the motion is received by the Constitutional Court.

Article 72

The time-limit for the reply of authorities in conflict of jurisdiction is eight days from the day of service.

Article 73

The Constitutional Court may order that the procedure before the authorities between which the conflict of jurisdiction appeared is suspended until the conclusion of the procedure of resolving the conflict of jurisdiction by the Constitutional Court.

Article 74

When the Constitutional Court resolves a conflict of jurisdiction between state and other authorities, the order of the Constitutional Court has legal effect from the date of its publication in the Official Gazette of the Republic of Serbia.

6 – Procedure of deciding on electoral disputes

Article 75

Motion for deciding on electoral disputes for which jurisdiction of a court is not defined by law may be submitted by: any elector, candidates for President of the Republic, member of Parliament or council member, as well as those who nominate candidates.

Motion contains the grounds for requesting a decision on the electoral dispute and appropriate evidence.

Requests may be submitted no later than fifteen days from the concluding date of the electoral procedure being challenged.

Article 76

The Constitutional Court serves one copy of the request for deciding on an electoral dispute to the authority in charge of implementing the election in connection with whose activities the electoral dispute was initiated, with an order for a response and requisite electoral acts, i.e. documentation, to be submitted within a specified time-limit.

Article 77

Where an irregularity in an election procedure was proved, and had a significant influence on the result of the election, the Constitutional Court issues a decision annulling the entire electoral procedure or parts thereof, which must be designated precisely.

In the case referred to in Paragraph 1 of this Article the entire electoral procedure or parts thereof will be repeated within ten days of the service of the decision of the Constitutional Court to the competent authority.

Article 78

Decisions of the Constitutional Court on annulling an entire electoral procedure or parts thereof have legal effect from the day a decision of the Constitutional Court is served to the competent authority.

Article 79

Appeals against decision regarding the confirmation of mandate of members of Parliament can be filed by the candidate and by those who have proposed the candidate.

In procedures on appeal against decisions in connection with confirmation of members of Parliament mandates, the authority against whose decision the complaint was submitted shall submit requisite documentation to the Constitutional Court within twenty-four hours of the submittal of the appeal.

The Constitutional Court shall issue a decision within seventy-two hours of the submittal of the appeal.

The provisions of Articles 75 through 78 of this Law shall also apply in procedures on appeal against decisions in connection with confirmation of members' of parliament mandates.

7 – Procedures of deciding on prohibition of the activity of political parties, trade union organisations, citizens' associations or religious communities

Article 80

The Constitutional Court decides on the prohibition of the activity of political parties, trade union organisations, citizens' associations or religious communities on the basis of a proposal of the Government, the Republican Public Prosecutor or authority in charge of the registration of political parties, trade union organisations, citizens' associations or religious communities.

The proposal specifies grounds and provides evidence for requesting a ban on the activity of the political party, trade union organisation, citizens' association or religious community.

Article 81

When the Constitutional Court prohibits the activity of a political party, trade union organisation, citizens' association or religious community, that political party, trade union organisation, citizens' association or religious community is struck from the appropriate register on the date the decision of the Constitutional Court is served to the competent authority.

8 – Constitutional Appeal Procedure

Article 82

Constitutional appeal may be filed against individual acts or actions of state authorities or organisations vested with public authority that violate or deny human and minority rights and freedoms guaranteed by the Constitution, when other legal remedies have been

exhausted or are not prescribed or where the right to their judicial protection has been excluded by law.

Constitutional appeal may also be filed even if all legal remedies have not been exhausted, in cases where the plaintiff's right to a trial within a reasonable time was violated.

Article 83

Constitutional appeal may be filed by everyone who believes that his/her human or minority rights and freedoms guaranteed by the Constitution have been violated or denied by an individual act or action of a state authority or organisation vested with public authority.

A constitutional appeal can be filed on behalf of the persons referred to in Paragraph 1 of this Article, on the basis of their written authorisation, by other natural or legal persons, state and other authorities in charge of the monitoring and exercise of human and minority rights and freedoms.

Article 84

A constitutional appeal may be filed within thirty days of the date of being served an individual act or the date of the action whereby human rights and freedoms guaranteed by the Constitution were violated or denied.

The Constitutional Court will allow restitution to a person who on justified grounds failed to observe the time-limit for submitting a constitutional appeal if such persons, within fifteen days from the cessation of the reasons that caused the failure, files a proposal for restitution and simultaneously submits a constitutional appeal.

Restitution cannot be requested after the expiry of a period of three months from the date of failure to observe the time-limit.

Article 85

A constitutional appeal must contain the name and surname, citizens' identification number, place permanent or temporary residence, or name and seat of person filing the constitutional appeal, name and surname of plaintiff's representative, number and date of the act against which the appeal is being filed the name of the authority that enacted it, specification of human or minority right and freedom guaranteed by the Constitution that is allegedly violated with specification of the Constitutional provision guaranteeing such right or freedom, the motion on which the Constitutional Court is to decide and the

signature of the person filing the constitutional appeal.

A copy of the disputed individual act, evidence that legal remedies have been exhausted, and other evidence of significance for determination shall be attached to the constitutional appeal.

Article 86

A constitutional appeal, as a rule, does not preclude implementation of the individual act or action against which it was filed.

Acting on a proposal of the complainant, the Constitutional Court may suspend the implementation of the individual act or action referred to in Paragraph 1 of this Article if implementation would cause irreparable damage to the complainant, provided that suspension is not contrary to the public interest, and that suspension would not cause considerable damage to a third party.

Article 87

Where a constitutionally guaranteed human or minority right or freedom of several persons was violated or denied by an individual act or action, and only some of them filed the constitutional appeal, the decision of the Constitutional Court also relates to persons who did not file the constitutional appeal, if they are in the same legal position.

Article 88

The Constitutional Court will discontinue the procedure:

1. where a constitutional appeal was withdrawn;
2. where the authority that enacted the disputed individual act annuls, repeals or revises the act in accordance with the request contained in the constitutional appeal or if the action which caused the violation or denial of a constitutionally guaranteed right or freedom has ceased, with the consent of the complainant;
3. where other procedural preconditions for conducting the procedure cease.

Article 89

Constitutional appeal is upheld or denied as unfounded by a decision.

When, in a procedure on a constitutional appeal, the Constitutional Court determines that the challenged

individual act or action violated or denied a human or minority right and liberty guaranteed by the Constitution, it will annul the individual act, or prohibit further performance, or order a certain action to be performed and order the detrimental consequences rectified.

A decision of the Constitutional Court upholding a constitutional appeal constitutes legal grounds for filing a motion for damages or rectification of other detrimental consequences before a competent authority, in accordance with the law.

A decision of the Constitutional Court upholding a constitutional appeal has legal effect from the date when it is served to the participants in the procedure.

Article 90

A person who filed the constitutional appeal can file a motion for damages to the Damages Commission on the basis of Constitutional Court decision from Article 89 Paragraph 3 of this Law, in order to reach an agreement on the amount of damages.

If the motion for damages is not accepted or if the Damages Commission fails to pass a decision on it within thirty days from the day the motion was filed, the complainant can file an action for damages with the competent court. If agreement has been reached only in respect of part of the motion, the action can be filed in respect of the remainder of the motion.

Act of the Minister for Justice shall determine the composition of the Commission from Paragraph 1 of this Article and govern its work in detail.

Article 91

Provisions of Articles 82 to 88 of this Law shall apply accordingly in procedures on appeals of authorities designated by the statute of autonomous province or local self-government unit, if the individual act or action of state authority or local self-government unit precludes the exercise of authority of autonomous province or local self-government.

Article 92

When in a procedure on a appeal of an authority designated by the statute of an autonomous province or a local self-government unit the Constitutional Court establishes that the exercise of the authority of an autonomous province, or of local self-government, is precluded by an individual act or action of a state authority or local self-government authority, it will annul the individual act, or prohibit further performance or

order the performance of a certain action and order the detrimental consequences rectified.

A decision of the Constitutional Court upholding the appeal referred to in Paragraph 1 of this Article has legal effect from the date of its delivery to the participants in the procedure.

9 – Procedure for determining a violation of the Constitution by the President of the Republic

Article 93

Procedures for determining a violation of the Constitution by the President of the Republic are initiated by the National Assembly, at the proposal of one third of the total number of members of Parliament.

The act on the initiation of the procedure referred to in Paragraph 1 of this Article contains the legal grounds, the provisions of the Constitution that were violated and evidence on which the act is based.

The Speaker of the National Assembly submits the act on the initiation of the procedure referred to in Paragraph 1 of this Article to the Constitutional Court.

If the Constitutional Court establishes that the procedure for the impeachment of the President of the Republic was initiated in accordance with the Constitution and the law, the act of the National Assembly initiating the procedure of establishing a violation of the Constitution is served to the President of the Republic for a reply, within a time-limit determined by the Constitutional Court.

Article 94

After the expiry of the time-limit given for the reply, the President of the Constitutional Court will schedule a hearing to which he/she will summon the President of the Republic and the Speaker of the National Assembly.

Article 95

In the procedure for determining a violation of the Constitution by the President of the Republic, the Constitutional Court is limited solely to the establishment of violations of the provisions of the Constitution specified in the act of the National Assembly on initiation of the procedure.

Article 96

The Constitutional Court will determine whether the President of the Republic violated the Constitution and serve its decision thereof to the National Assembly and to the President of the Republic.

The decision referred to in Paragraph 1 of this Article must be issued by the Constitutional Court within forty-five days from the day the act of the National Assembly initiating a procedure for establishing a violation of the Constitution by the President of the Republic was filed.

Article 97

The Constitutional Court will discontinue the procedure:

1. if the National Assembly withdraws the act on the initiation of the procedure;
2. if the office of the President of the Republic is terminated during the procedure.

Article 98

A decision of Constitutional Court on violation of the Constitution by the President of the Republic has legal effect from the date of the service of the decision to the National Assembly.

10 – Procedures on appeals by judges, public prosecutors and deputy public prosecutors against decisions on termination of office

Article 99

Judges, public prosecutors and deputy public prosecutors may lodge appeals to the Constitutional Court against decisions on termination of office within thirty days of the day of being served the decision.

The authority that issued the decision on dismissal is entitled to a reply to the appeal within fifteen days of the day of being served the appeal.

Article 100

After the expiry of the time-limit for submitting a reply, the Constitutional Court schedules a hearing to which it summons the appellant and a representative of the authority that issued the decision on dismissal.

The public may be excluded from the hearing referred to in Paragraph 1 of this Article.

Article 101

The Constitutional Court may issue a decision upholding the appeal and annul the decision on dismissal, or deny the appeal.

Article 102

Decisions of the Constitutional Court in procedures on appeals by judges, public prosecutors and deputy public prosecutors against decisions on dismissal have legal effect from the date of being served to participants in proceedings.

Article 103

The provisions of Articles 99 through 102 shall apply accordingly to procedures on appeals against decisions of the High Judicial Council, in cases prescribed by law.

VI – Enforcement of Constitutional Court Acts**Article 104**

State and other authorities, organisations vested with public authority, political parties, trade union organisations, citizens' associations or religious communities have an obligation to enforce decisions and orders of the Constitutional Court, within their rights and duties.

If necessary, enforcement of decisions and rulings of the Constitutional Court will be secured by the Government, in a manner established by a special Constitutional Court ruling.

VII – Relationship of the Constitutional Court and the National Assembly**Article 105**

The Constitutional Court informs the National Assembly about the situation and problems of exercising constitutionality and legality in the Republic of Serbia, provides opinions and indicates the need for adopting and revising laws and implementing other measures for the purpose of protecting constitutionality and legality.

Article 106

When the Constitutional Court determines that a competent authority has not adopted a general act for the enforcement of provisions of the Constitution, law or other general act, and had had an obligation to adopt such a general act, it will notify the National Assembly thereof.

Article 107

Proposals of authorised propounders and rulings on initiation of procedure for the assessment of the constitutionality of a law, or constitutionality and legality of other general act adopted by the National Assembly are submitted by the Constitutional Court to the National Assembly for its reply.

The Constitutional Court forwards to the National Assembly decisions establishing that a law or other general act adopted by the National Assembly is not in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law.

VII – Co-operation with state and other authorities and organisations and international cooperation**Article 108**

In exercise of its functions, the Constitutional Court co-operates with state and other authorities and organisations, scientific and other institutions, companies and other legal persons, on questions of interest for preservation of constitutionality and legality.

Article 109

The Constitutional Court realises international co-operation with foreign and international courts and international organisations in accordance with its competence.

VIII – Penal Provisions**Article 110**

Organisations or other legal persons shall be punished by a fine ranging from 50,000 RSD to 1,000,000 RSD for the following petty offences:

1) if they fail to forward to the Constitutional Court within the prescribed time-limit the challenged general act and necessary documentation and to provide data

and information of significance for the conduct of the procedure and determination (Article 34.1);

2) if they fail to submit to the Constitutional Court necessary data and information of significance for the conduct of the procedure and determination (Article 34.2);

Entrepreneurs are liable to fines ranging from 20,000 RSD to 500,000 RSD for the minor offences referred to in Paragraph 1 of this Article.

Responsible persons in the organisations or other legal persons are liable to fines of up to 50,000 RSD for the minor offences referred to in Paragraph 1 of this Article.

Responsible officials in state and other authorities are also liable to fines of up to 50,000 RSD for the petty offences referred to in Paragraph 1 of this Article.

IX – Transitional and final provisions

Article 111

First session of the Constitutional Court shall be chaired by the oldest judge.

Article 112

Procedures before the Constitutional Court initiated before the effective date of this Law will be concluded according to the provisions of this Law.

Article 113

Procedures on constitutional appeals filed from the day of enactment of the Constitution to the day this Law enters into force shall be conducted in accordance with the provisions of this Law.

A constitutional appeal may also be filed against an individual act or action of state authority or organisation vested with public authority, which violates or denies a human or minority right or freedom guaranteed by the Constitution, if such act or action was effected from the day of enactment of the Constitution to the day this Law enters into force.

A constitutional appeal in cases referred to in Paragraph 2 of this Article can be filed within thirty days from the day this Law enters into force.

Article 114

Judges of the Constitutional Court elected in accordance with Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, no. 1/90) whose office is terminated are entitled to six months' salary equal to the salary of a Constitutional Court judge.

The pay entitlement referred to in Paragraph 1 of this Article shall cease before the expiry of six months if the judge whose office has been terminated enters into an employment contract or acquires the right to a pension, and may also be extended for additional six months, if the judge acquires the conditions for pension within those six months.

Article 115

Civil servants and employees employed in the Service of the Constitutional Court of Serbia continue to work in the Constitutional Court in positions to which they had been appointed or allocated until the effective date of this Law, pending the adoption of appointment of allocation rulings, or the conclusion of employment contracts, in accordance with a Constitutional Court Act from Article 27 Paragraph 2 of this Law.

Article 116

The Constitutional Court adopts its Rules of Procedure and the Act from Article 27 Paragraph 2 within ninety days of the effective date of this Law.

The Minister for Justice shall pass the Act from Article 90 Paragraph 3 of this Act within ninety days from the effective date of this Law.

Article 117

The validity of the Law on the Procedure before the Constitutional Court and Legal Effect of its Decisions (Official Gazette of the Republic of Serbia, Nos. 32/91, 67/93 and 101/05) expires on the effective date of this Law.

Article 118

This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Republic of Serbia.



SWEDEN

The Administrative Court Procedure Act (1971:291)

1971

Scope of the Act

Section 1

This Act applies to the administration of justice in the Supreme Administrative Court, the administrative courts of appeal and the county administrative courts.

Section 2

Where a provision that differs from this Act has been issued by statute or by an enactment decided by the Government, such provision shall apply. Bringing of cases, etc.

Section 3

Applications, appeals, notifications, submissions and other measure whereby a case is brought, shall be in writing. An application or appeal document by a private party shall be personally signed by him/her or his/her representative. It shall contain details of his/her:

1. profession and civil registration number or organisation number;
2. postal address and the address of his/her workplace and, whenever applicable, any other address where he/she can be found for service by a service officer;
3. telephone number of his/her residence and place of work, though numbers related to secret telephone subscriptions need only be revealed if the court so requests, and
4. such circumstances generally as are of importance for service on him/her. If the action of a private party is brought by a legal representative, the corresponding information shall also be provided concerning him/her. If the private party has engaged a representative to represent him/her, the name of the representative, his/her postal address and telephone number shall be stated. Furthermore, an application or appeal document from a private party shall contain details of a private other party, if there is one,

regarding the matters referred to in the second and third paragraphs. Details of the other party's or his/her legal representative's profession, workplace, telephone number and representative need only be provided if the details are available to the private party without special investigation. If the other party does not have any known address, details shall be provided concerning the investigation conducted to determine this. Details referred to in the second to fourth paragraphs shall apply to the circumstances where the details are provided to the court. If any of these circumstances change or if a detail is incomplete or erroneous, this shall be notified to the court without delay.

Section 4

An application or an appeal or a comparable document shall state what is requested and also the circumstances that are adduced in support of the request. An appeal shall also state the decision appealed against. If leave to appeal is required, the circumstances that are adduced in support of such leave being granted shall also be stated. An applicant or appellant should state the evidence that he/she wishes to adduce and what he/she wishes to prove with each separate item of evidence.

Section 5

If an application or appeal document is so incomplete that it cannot form the basis for considering the matter on its merits, the court shall order the applicant or appellant to rectify the inadequacy within a specified time, on pain of his/her action otherwise not being taken up for consideration. The same also applies if the document does not satisfy the regulations contained in Section 3, unless the inadequacy is of trivial importance for the issue of service.

Section 6

A case shall not be taken up for consideration, provided the application, appeal or other measure, whereby the case is brought, has not taken place within the prescribed period.

Section 6a

An appeal shall be addressed to the authority that has issued the decision appealed against. The appeal shall have been received within three weeks from the date when the appellant received the decision or, if the appellant is a party who represents the public, within three weeks from the date when the county administrative court's or the administrative court of appeal's decision was issued. The authority that has issued the decision considers whether the appeal has

been received in good time. If the appeal has been received too late, the authority shall dismiss it, unless otherwise provided by the third paragraph. The appeal shall not be dismissed if the delay is due to the authority having given the appellant incorrect notice of how to appeal. Nor shall the appeal be dismissed if it has been received by the court that shall consider the appeal within the period for appeals. In such a case, the court shall forward the appeal to the authority that has issued the decision and at the same time provide details of the date on which the appeal was received by the higher instance. If the appeal is not dismissed in accordance with this Section, the authority that has issued the decision shall forward it and other documents in the matter to the court that is to consider the appeal. However, this does not apply when the appeal lapses according to Section 28 of the Administrative Procedure Act (1986:223).

Section 7

If upon the institution of a case the county administrative court or the administrative court of appeal considers that it is not competent to deal with the case but that another corresponding court would be competent, the documents in the case shall be transferred to that court, provided that the party who instituted the case does not have any objection to this and nor is there any other reason against transferring the documents. The documents shall be deemed to have been received by the latter court on the same date as they were received by the court that first received the documents.

Section 7a

If private party appeals against a decision of an administrative authority, the authority that first decided on the matter shall be the private party's other party after the documents in the matter have been transferred to the court. The first paragraph does not apply in matters concerning decisions that are appealed against directly to the administrative court of appeal.

Processing of Cases

Section 8

The court shall ensure that a case is as well investigated as its nature requires. If necessary, the court will direct how the investigation should be supplemented. Superfluous investigation may be dismissed.

Section 9

The procedure shall be in writing. Where it may be assumed to be advantageous for the investigation or promote the expeditious determination of the case, the processing may include an oral hearing regarding certain issues. An oral hearing shall be held in the administrative court of appeal and county administrative court, if a private party bringing an action in the case so requests and the hearing is not unnecessary and nor are there special reasons for not doing so.

Section 10

An application or appeal document or other document, whereby a case is brought, and associated papers shall be presented to the other party or other person against whom a measure may be taken. The recipient shall be ordered to answer within a specified time on pain of the case being determined nonetheless. Notification in accordance with the first paragraph is not required:

1. if there is cause to assume that the action will be granted completely or partially,
2. if notification is otherwise manifestly unnecessary,
3. if the other party is an administrative authority and notification is unnecessary, or
4. if it may be anticipated that notification would materially impede the implementation of a decision in the case.

Section 11

A party ordered to answer shall do so in writing, unless the court orders that the answer may be given at an oral hearing. A party answering shall state whether he/she consents to or contests the applications in the case or, if the case has been brought by notification or submission, whether he/she accepts or opposes the measure in question. If he/she contests the application or opposes the measure in question, he/she shall state the reasons for this and the evidence that he/she wishes to adduce. An answer shall contain details of what case it refers to.

Section 12

The court shall provide the applicant or appellant with an opportunity of seeing an answer and papers associated with the answer and to make a written statement of views on it within a specified period, unless this is unnecessary. The court may order him/her to make a statement of views on the answer on pain of the case being determined nonetheless.

Section 13

If necessary, the court may obtain a statement of views from an administrative authority that has previously decided on the matter.

Section 14

The applicant or the appellant and the person liable to answer in the case shall be summoned to an oral hearing. A private party may be ordered to attend personally subject to a default fine or on pain that his/her absence does not constitute an impediment for the further processing and determination of the case. An administrative authority or other party, which according to provisions contained in a statute represents the public, may be ordered to attend on pain of the absence of the party not constituting an impediment for the further processing and determination of the case. The applicant or appellant and the person liable to answer in the case may participate by telephone in an oral hearing subject to the same conditions as apply according to Chapter 42, Section 10 of the Code of Judicial Procedure. The provisions of this Act on notices and orders and on sanctions for absence do not apply in relation to the applicant or appellant and a person liable to answer in the case who is summoned to participate by telephone at an oral hearing.

Section 15

A private party, who has attended an oral hearing, may be awarded compensation from public funds for expenses of travel and subsistence, provided the court considers that it is reasonable that he should be compensated for his/her attendance. The court may grant an advance payment of compensation. More detailed provisions on compensation and advances shall be issued by the Government.

Section 16

As regards public access to information and order at oral hearings, the relevant parts of the Code of Judicial Procedure, Chapter 5, Sections 1 to 5 and 9 apply. In addition to that prescribed by Chapter 5, Section 1 of the Code of Judicial Procedure, the court may order that negotiations shall be held in camera, if it may be assumed that information will be presented at the hearing for which secrecy applies at the court as referred to in the Secrecy Act (1980:100).

Section 17

Records shall be kept of oral hearings. The record shall contain a report of the course of the hearing and of the investigation presented at the hearing. The

record shall note what occurred at the hearing regarding the applications, consents, contesting, objections and confirmations.

Section 18

Before a case is determined, a party shall have been made aware of what has been presented in the case by anyone other than himself/herself and shall have been given an opportunity to state his/her views on the same, provided there are no reasons against doing so as referred to in Section 10, second paragraph.

Section 19

As regards the duty to give notice in accordance with Section 10, first paragraph, Section 12 or 18, the limitations prescribed by Chapter 14, Section 5 of the Secrecy Act (1980:100) apply.

Certain Evidential Material**Section 20**

A written document that is adduced as evidence shall be presented to the court without delay. As regards such evidence generally, the relevant parts of Chapter 38, Sections 1 to 5 and 7 to 9 of the Code of Judicial Procedure apply. However, compensation to someone other than a party for the provision of written documents is always payable from public funds.

Section 21

If an object is adduced as evidence, which can appropriately be delivered to the court, the object shall be delivered to the court without delay. The relevant parts of Chapter 39, Section 5 of the Code of Judicial Procedure apply as regards such evidence. However, compensation to someone other than a party for the provision of an object is always payable from public funds.

Section 22

If a party refers to a written document or object as evidence, the court may order him/her to present within a specified period the document or object to the court on pain of the case being determined nonetheless.

Section 23

The court may make an order that a view is held at the *locus in quo* for the inspection of real property or a site or an object that cannot be brought conveniently to the court. Upon such view, a business secret may only be disclosed if there is extraordinary reason to do so. The relevant parts of the provisions on oral hearings apply regarding a view at the *locus in quo*.

Section 24

The court may obtain a statement of views on issues requiring expertise from an authority, officer or such person, who should otherwise make a statement on the matter, or engage another expert on the matter. The relevant parts of Chapter 40, Sections 2 to 7 and 12 of the Code of Judicial Procedure apply to matters relating to experts. Compensation for opinions by an authority, officer or such person who should otherwise make a statement is only payable if this is specially prescribed. Other experts are entitled to compensation from public funds for their assignment. The court may grant an advance payment for such compensation.

Section 25

The court may make an order for the questioning of a witness or expert. Such questioning shall be conducted at an oral hearing. The questioning may be held under oath. The relevant parts of Chapter 36, Sections 1 to 18 and 20 to 23 and Chapter 40, Sections 9 to 11, 14, 16 and 20 of the Code of Judicial Procedure apply to a questioning held under oath. A witness and expert may participate by telephone in an oral hearing subject to the same preconditions as apply in accordance with Chapter 43, Section 8, fourth paragraph of the Code of Judicial Procedure. The provisions contained in this Act on notices and orders and on sanctions for absence do not apply as regards witnesses and experts who have been summoned to attend an oral hearing by telephone.

Section 26

A witness or expert is entitled to compensation from public funds for the expense of his/her attendance. The court may grant an advance of the compensation for costs of travel and subsistence. More detailed provisions on compensation and advances shall be issued by the Government. If the witness or the expert has been called at the request of a private party and it transpires that the party did not have acceptable reasons for his/her request, the court may order the party to reimburse the Government for the compensation.

Section 27

If the county administrative court considers that it is appropriate that a questioning of a witness or an expert is held by another county administrative court, the court may, following consultation with such court, decide on this. The relevant parts of Chapter 35, Sections 10 and 11 of the Code of Judicial Procedure apply to matters concerning collection of evidence under the first paragraph.

Decisions**Section 28**

A court that is obliged to consider an appeal may order that the decision appealed against, if it should otherwise be complied with immediately, should not apply until further notice and also make other orders concerning the matter.

Section 29

A determination of the court may not go beyond that claimed in the case. However, if there are special reasons, the court may also without an application decide on something better for a private party, provided this can be done without detriment to an opposing private interest.

Section 30

The determination of a case by a court shall be based on that contained in the documents and what has otherwise been established in the case. The decision shall state the reasons that determined the outcome.

Section 31

A decision whereby the court determines the case shall be presented to a party through a document that states fully the decision, and dissenting opinion, if there is any. A decision that can be appealed against should also contain information about what should be observed by a party who wishes to present an appeal against the decision. If special leave is required for consideration by a superior court, the decision shall contain information about this and about the grounds on which such leave may be granted.

Section 32

If the court considers that a judgment or a decision contains any manifest error as a consequence of the court's or someone else's written error, error of computation or similar oversight, the court may decide on rectification. If the court has by a an

oversight omitted to make a decision that should have been issued in conjunction with a determination, the court may supplement its determination within six months from when the determination entered into final legal force. However, supplementation later than two weeks after when the determination was issued can only take place if a party so requests and no other party opposes the supplementation. Before a decision on rectification or supplementation is made, the parties shall also in other cases than those referred to in the second paragraph, second sentence, be given an opportunity to state their views, unless this is unnecessary. The decision shall, if possible, be noted on every copy of the judgment or the decision that is corrected or supplemented.

Appeals

Section 33

Appeals against decisions of the county administrative court shall be made to the administrative court of appeal. Appeals against decisions of the administrative court of appeal are made to the Supreme Administrative Court. The decision may be appealed against by the party to which it relates, if it has gone against him/her. A decision by the administrative court of appeal to grant leave to appeal may not be appealed against. If an appeal has been dismissed owing to its late submission and a court, following the appeal, has considered this decision or refused leave to appeal as regards such an appeal, the decision of the court may not be appealed against.

Section 34

An action may only be brought against a decision, whereby the case is not determined, in conjunction with an action against the decision in the case itself. However, an action may be brought separately when the court:

1. rejected an objection concerning the disqualification of a member of the court or an objection that there is an impediment to considering the action;
2. dismissed a representative or counsel;
3. made an order concerning the matter pending the determination of the case;
4. ordered someone to participate in another way than by attending before the court and the failure to observe the order may result in a special sanction against him/her;

5. the judicial confirmation of a default fine or other sanction for failure to observe an order or penalty imposed for a procedural offence or imposed on a witness or expert to compensate costs that have been caused by neglect or default;

6. made an order regarding the investigation or taking into custody of a person or property or of other similar measure;

7. made an order regarding compensation for someone's participation in the case;

8. expressed an opinion in a case other than as referred to in item 7 on a matter relating to legal aid under the Legal Aid Act (1996:1619) or in a matter concerning public counsel under the Public Counsel Act (1996:1620); or

9. decided on a matter of extension of a time-limit in accordance with Section 7, first paragraph of the Taxes, Customs Duties and Levies Securities Act (1978:880). An action may only be brought against a decision, whereby a case is remitted to a lower instance, if the decision contains a determination of an issue that affects the outcome of the case.

Leave to Appeal in the Administrative Court of Appeal

Section 34a

For those cases where it is specially prescribed, leave to appeal is required for the administrative court of appeal to be able to consider an appeal against a decision issued in the case by the county administrative court. The same applies to a decision by the county administrative court on a matter that is directly connected with such a case. However, such leave is not required when an action is brought by the Parliamentary Ombudsmen or the Chancellor of Justice. Leave to appeal shall be granted if:

1. it is of importance for the guidance of the application of law that a superior court considers the appeal;
2. reason exists for an amendment of the conclusion made by the county administrative court; or
3. there are otherwise extraordinary reasons to entertain the appeal. If leave to appeal is not granted, the decision of the county administrative court remains in force. Information about this shall be included in the decision of the administrative court of appeal.

Special rules on Appeals to the Supreme Administrative Court

Section 35

An appeal against a decision of the administrative court of appeal in a case that has been instituted at the administrative court of appeal by an appeal, submission or application shall be considered by the Supreme Administrative Court only if the Supreme Administrative Court has granted leave to appeal. If leave to appeal is not granted, the decision of the administrative court of appeal remains in force. Information about this shall be included in the decision of the Supreme Administrative Court. That stated in the first paragraph does not apply:

1. to an action that the Parliamentary Ombudsmen or the Chancellor of Justice brings in a case concerning disciplinary responsibility, or for revocation or limitation of competence to exercise a profession within the health and medical care services, dental care services, or retail trade with pharmaceuticals or concerning revocation of competence to exercise the profession of veterinary surgeon;

2. an action that the Chancellor of Justice brings in a case under the Credit Information Act (1973:1173), the Debt Recovery Act (1974:182) or Public Camera Surveillance Act (1998:150).

Section 36

Leave to appeal shall be granted,

1. if it is of importance for the guidance of the application of law that the action is considered by the Supreme Administrative Court or

2. if there are extraordinary reasons for such consideration, such as grounds for relief for substantive defects exist or that the outcome of the case in the administrative court of appeal obviously results from a grave oversight or a grave mistake. If leave to appeal is granted in one of two or more similar cases, which are pending for consideration at the same time, leave to appeal may also be granted for the other cases. Leave to appeal may be limited to apply to a certain part of the decision to which the action pursued relates.

Section 37

In cases, for which leave to appeal is required, a circumstance or item of evidence that the appellant first adduces in the Supreme Administrative Court shall only be taken into account if there are special reasons. Chapter 10, Section 10 of the Local

Government Act (1991:900) contains regulations concerning impediments to taking into account or presenting new circumstances in certain cases.

Section 37a

Repealed by Act (1995:22).

Relief for substantive defects or restoration of expired time

Section 37b

Relief for substantive defects may be granted in cases or matters if there are extraordinary reasons for reconsidering the matter owing to special circumstances.

Section 37c

If the period for appeal or a measure comparable therewith has been exceeded owing to circumstances that constitute valid excuse, the time may be restored.

Penalties

Section 38

A person who at an oral hearing disturbs the hearing or photographs in the courtroom or breaches a regulation or prohibition that has been issued in accordance with Section 16, and with Chapter 5, Section 9 of the Code of Judicial Procedure, shall be sentenced to monetary fines. A person who verbally before the court or in a document to the court makes unseemly statements shall be sentenced to the same penalty.

Section 39

A person who without valid cause discloses that which according to an order of the court may not be revealed shall be sentenced to fines.

Section 40

Repealed by Act (1987:748).

Other Provisions

Section 41

The provisions contained in Chapter 4 of the Code of Judicial Procedure concerning disqualification of

judges apply to matters of disqualification in relation to the person dealing with a case under this Act.

Section 42

The court shall of its own volition take up issues of liability for neglect during the proceedings and issues of the judicial confirmation of default fines that have been ordered in accordance with this Act.

Section 43

An applicant, appellant or other party is entitled to see that which has been introduced in the case, subject to the limitations prescribed by Chapter 14, Section 5 of the Secrecy Act (1980:100).

Section 44

A document shall be deemed to have been delivered to the court on the date when the document or an advice of paid postal dispatch, in which the document is contained, has arrived at the court or came into the possession of a competent officer. If the court is notified specially that a telegram to the court has been received at a telegraph office, the telegram shall be deemed to have been delivered already when the notification reached a competent officer. If it may be assumed that a document or advice of this has on a certain day been delivered to the court office or put aside for the court at a postal office, it shall be deemed to have been received by the court on that date, provided it reached a competent officer on the immediately following workday. Telegrams or other messages that are not signed shall be confirmed by the person dispatching them by personally signing the document, if the court so requests.

Section 45

If someone who has been summoned to an oral hearing is prevented from attending, he/she shall immediately report this to the court.

Section 46

Chapter 32, Sections 6 and 8 of the Code of Judicial Procedure apply correspondingly to matters of legal excuse.

Section 47

If the court is to notify someone of the content of a document or of anything else, this may be done by service. Service shall be used, where this is specially prescribed or, having regard to the purpose of the provision on notification, it is apparent that service

should take place, but should generally only be used when called for having regard to the circumstances.

Section 48

A person who brings an action in a case may engage a representative or counsel. If the representative or counsel demonstrates incompetence or ignorance or is otherwise unsuitable, the court may dismiss him/her as a representative or counsel in the case. The court may also declare that he/she is incompetent to be used as a representative or counsel at the court, either for a particular period or indefinitely. If the person who is dismissed or declared incompetent in accordance with the second paragraph is an advocate, the measure shall be reported to the board of the Swedish Bar Association.

Section 49

A representative shall prove his/her competence by a power of attorney. The power of attorney shall contain the name of the representative. If the representative may put another person in his/her place, this should be stated. If the representative does not prove his/her competence, the court shall order the representative or the principal to rectify the inadequacy. If in such a case an application or appeal document is signed by the representative, it shall be stated in the order that the action will be taken up for consideration only if this is done. If another measure has been taken by a representative who has not proven his/her competence, the order shall state that the measure shall be taken into account only if the order is observed.

Section 50

If a party, witness or other person to be questioned before the court does not speak Swedish or if he/she has a serious hearing or speech impediment, the court shall, if necessary, engage an interpreter. The court may engage an interpreter in other cases when necessary. The first paragraph shall also apply to issues concerning translation from Braille to ordinary writing and the reverse. A person whose reliability may be deemed impaired owing to his position in relation to anyone bringing an action in the case or owing to another circumstance comparable therewith may not be engaged as an interpreter.

Section 51

A person engaged as an interpreter at an oral hearing shall swear an oath before the court that he/she will fulfil his/her assignment to the best of his/her ability. If there is reason to assume that he/she will receive further such assignments from the court, he/she may swear an oath that also relates to future assignments.

Section 52

A person who performs an assignment as an interpreter other than in service is entitled to reasonable compensation for work, time lost and disbursements required for the assignment. The Government or the authority decided by the Government may decide on a tariff to be applied when determining compensation for interpreters for oral translation. Costs for interpreters shall be paid from public funds.

Section 53

The provisions of this Act concerning a private party also applies in relevant parts to a person who is a legal representative for the party.



SWEDEN

Code of Judicial Procedure

1 January 1948
(amended in 1999: SFS 1998:605)

– extracts –

...

Chapter 3 – The Supreme Court

Section 1

The Supreme Court has jurisdiction in appeals from the courts of appeal.

Section 2

Chapter 8, Section 8 makes provision for appeals in certain cases to the Supreme Court from decisions of the board or another organ of the Swedish Bar Association.

Section 3

The Supreme Court functions as a court of first instance in cases concerning liability or civil claims based on offences committed in the exercise of official authority by a Minister, a Justice of the Supreme Court the Supreme Administrative Court, any of the Parliamentary Ombudsmen, the Chancellor of Justice, the Prosecutor-General, a judge or Attorney-General of the European Court of Justice, a judge of the Court of First Instance of that Court or anyone who discharges the duties of such offices, or by a judge of a court of appeal, or a judge referee of the Supreme Court.

Further, the Supreme Court acts as a court of first instance to determine whether a Justice of the Supreme Court or of the Supreme Administrative Court should be discharged or suspended from office or should be required to submit to medical examination.

The Supreme Court also serves as a court of first instance in cases where such is prescribed by law.

Section 4

The Supreme Court consists of sixteen justices or such higher number as may be necessary. The justices shall be legally qualified.

They may not hold or exercise any other office.

The government appoints one of the justices to be the chairperson of the Court.

The Supreme Court shall be divided in two or more divisions. The divisions have the same competence to deal with cases falling to be dealt with by the Supreme Court.

The chairperson of the Supreme Court is also the chairperson of one division. The government appoints a justice to be chairperson of the other division.

The justices are assigned to serve in the divisions for a certain time period according to principles laid down by the Supreme Court.

When a justice, owing to illness or comparable circumstances, is unable to serve in the Supreme Court, a justice who has retired with an old age pension may be appointed as temporary substitute.

Substitutes are subject to the laws and regulations applicable to justices.

Section 5

During the deliberation concerning a judgment or order, if a division of the Supreme Court finds that the opinion prevailing in the division diverges from a legal principle or a construction of law previously adopted by the Supreme Court, the division may direct that the case in its entirety or, if it is feasible, only a certain issue in the case, shall be adjudicated by the Supreme Court as a full court of judges or by nine members of the Court. Such a decision may also be made in other situations in which it is of special importance for the application of law that the case or a certain issue in the case be decided by the Supreme Court as a full court of judges or by nine members of the Court. When a case is considered by nine members, the case or issue shall be referred to the Court as a full court of judges, if at least three out of the nine members so request.

If in different judgments or decisions known to the division, inconsistent opinions as to a certain legal principle or construction of law have been expressed at different times in the Supreme Court, the rule in the first sentence of the first paragraph shall apply only when the division finds that its prevailing opinion diverges from the judgment or decision pronounced most recently.

The first paragraph does not apply in cases concerning persons in detention and in other cases in which expedited adjudication is required by special provision, if the case cannot be decided by the

Supreme Court as a full court of judges or by nine members without disadvantageous delay.

When a case or an issue is decided by the Supreme Court sitting as a full court of judges, in the absence of legal excuse, all of the justices should take part in the adjudication.

Section 6

Five justices constitute a quorum in a division of the Supreme Court. No more than seven justices may sit in the court.

If the dispute is of a simple character, three justices shall constitute a quorum of the division to determine:

1. issues of remand and travel prohibition referred to in Chapter 55, Section 8, Paragraph 2, third sentence;
2. applications for relief for a substantive defect or for restoration of expired time; or
3. an appeal concerning grave procedural errors.

Where the Supreme Court previously has denied the same applicant's request for relief for a substantive defect in the same determination, and the applicant states nothing new of importance for disposal of the request, one justice of the division constitutes a quorum if the request is rejected or dismissed.

Issues of leave to appeal may be determined by one justice. No more than three justices may take part in the decision. However, issues of leave to appeal that have been stayed pursuant to Chapter 54, Section 11, Paragraph 2, are determined by the justices trying the case.

One justice of constitutes a quorum for a division of the Supreme Court to determine:

1. issues concerning removal from further action of cases after withdrawal;
2. issues concerning removal from further action of an appeal to the Supreme Court;
3. issues of consolidation of cases under Chapter 14, Section 7a; and 4. an appeal from a court of appeal's decision to dismiss referred to in Chapter 54, Section 17; 5. issues referred to in Chapter 55, Section 8, Paragraph 2, first and second sentences.

Section 7

When a division of the Supreme Court deals with an application for relief for a substantive defect, or with an appeal concerning a grave procedural error in a case determined by the Court, no justice who participated in the previous determination may serve in the division, if a sufficient number of justices is nevertheless available in the Court.

Section 8

Special officers shall serve the Court to prepare and report on cases in the Supreme Court.



UNITED KINGDOM

Magna Carta

1297 c. 29

NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor [condemn him]¹ but by lawful judgment of his Peers, or by the Law of the Land.

We will sell to no man, we will not deny or defer to any man either Justice or Right.

[¹ Deal with him[]]



UNITED KINGDOM

Bill of Rights

1688 c. 2

I. The Heads of Declaration of Lords and Commons, recited.

...

And whereas the said late King James the Second haveing Abdicated the Government and the Throne being thereby Vacant His [Hignesse] the Prince of Orange (whome it hath pleased Almighty God to make the glorious Instrument of Delivering this Kingdome from Popery and Arbitrary Power) did (by the Advice of the Lords Spirituall and Temporall and diverse principall Persons of the Commons) cause Letters to be written to the Lords Spirituall and Temporall being Protestants and other Letters to the severall Countyes Cities Universities Burroughs and Cinque Ports for the Choosing of such Persons to represent them as were of right to be sent to Parlyament to meete and sitt at Westminster upon the two and twentyeth day of January in this Yeare one thousand six hundred eighty and eight in order to such an Establishment as that their Religion Lawes and Liberties might not againe be in danger of being Subverted, Upon which Letters Elections haveing beene accordingly made.

And thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and Elections being now assembled in a full and free Representative of this Nation takeing into their most serious Consideration the best means for attaining the Ends aforesaid Doe in the first place (as their Auncestors in like Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties, Declare:

That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlyament is illegal.

That the pretended Power of Dispensing with Laws or the Execution of Laws by Regall Authorities as it hath beene assumed and exercised of late is illegal.



UNITED KINGDOM

Constitutional Reform Act

2005

– extracts –

...

Part 1 – The Rule of Law

Article 1 – The rule of law

This Act does not adversely affect:

- (a) the existing constitutional principle of the rule of law, or
- (b) the Lord Chancellor's existing constitutional role in relation to that principle.

Part 2 – Arrangements to modify the office of Lord Chancellor

Qualifications for Office of Lord Chancellor

Article 2 – Lord Chancellor to be qualified by experience

(1) A person may not be recommended for appointment as Lord Chancellor unless he/she appears to the Prime Minister to be qualified by experience.

(2) The Prime Minister may take into account any of these:

- (a) experience as a Minister of the Crown;
- (b) experience as a member of either House of Parliament;
- (c) experience as a qualifying practitioner;
- (d) experience as a teacher of law in a university;
- (e) other experience that the Prime Minister considers relevant.

(3) In this Section “qualifying practitioner” means any of these:

- (a) a person who has a Senior Courts qualification, within the meaning of Section 71 of the Courts and Legal Services Act 1990 (c. 41);
- (b) an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary;

(c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

Continued Judicial Independence

Article 3 – Guarantee of continued judicial independence

(1) The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.

(2) Subsection (1) does not impose any duty which it would be within the legislative competence of the Scottish Parliament to impose.

(3) A person is not subject to the duty imposed by subsection (1) if he/she is subject to the duty imposed by Section 1(1) of the Justice (Northern Ireland) Act 2002 (c. 26).

(4) The following particular duties are imposed for the purpose of upholding that independence.

(5) The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.

(6) The Lord Chancellor must have regard to:

- (a) the need to defend that independence;
- (b) the need for the judiciary to have the support necessary to enable them to exercise their functions;
- (c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.

(7) In this Section “the judiciary” includes the judiciary of any of the following:

- (a) the Supreme Court;
- (b) any other court established under the law of any part of the United Kingdom;
- (c) any international court.

(8) In subsection (7) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of:

- (a) an agreement to which the United Kingdom or Her Majesty’s Government in the United Kingdom is a party, or
- (b) a resolution of the Security Council or General Assembly of the United Nations.

...

Representations by Senior Judges

Article 5 – Representations to Parliament

(1) The chief justice of any part of the United Kingdom may lay before Parliament written representations on matters that appear to him/her to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in that part of the United Kingdom.

(2) In relation to Scotland those matters do not include matters within the legislative competence of the Scottish Parliament, unless they are matters to which a Bill for an Act of Parliament relates.

(3) In relation to Northern Ireland those matters do not include transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.

(4) In subsection (3) the reference to transferred matters has the meaning given by Section 4(1) of the Northern Ireland Act 1998 (c. 47).

(5) In this Section “chief justice” means:

- (a) in relation to England and Wales or Northern Ireland, the Lord Chief Justice of that part of the United Kingdom;
- (b) in relation to Scotland, the Lord President of the Court of Session.

...

Judiciary and Courts in England and Wales

Article 7 – President of the Courts of England and Wales

(1) The Lord Chief Justice holds the office of President of the Courts of England and Wales and is Head of the Judiciary of England and Wales.

(2) As President of the Courts of England and Wales he/she is responsible:

- (a) for representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally;
- (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor;

(c) for the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts.

(3) The President of the Courts of England and Wales is president of the courts listed in subsection (4) and is entitled to sit in any of those courts.

(4) The courts are:

- * the Court of Appeal
- * the High Court
- * the Crown Court
- * the county courts
- * the magistrates' courts.

(5) In Section 1 of the Supreme Court Act 1981 (c. 54), subsection (2) (Lord Chancellor to be president of the Supreme Court of England and Wales) ceases to have effect.

...

Part 3 – The Supreme Court

The Supreme Court

Article 23 – The Supreme Court

(1) There is to be a Supreme Court of the United Kingdom.

(2) The Court consists of 12 judges appointed by Her Majesty by letters patent.

(3) Her Majesty may from time to time by Order in Council amend subsection (2) so as to increase or further increase the number of judges of the Court.

(4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (3) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

(5) Her Majesty may by letters patent appoint one of the judges to be President and one to be Deputy President of the Court.

(6) The judges other than the President and Deputy President are to be styled "Justices of the Supreme Court".

(7) The Court is to be taken to be duly constituted despite any vacancy among the judges of the Court or in the office of President or Deputy President.

Article 24 – First members of the Court

On the commencement of Section 23:

- (a) the persons who immediately before that commencement are Lords of Appeal in Ordinary become judges of the Supreme Court,
- (b) the person who immediately before that commencement is the senior Lord of Appeal in Ordinary becomes the President of the Court, and
- (c) the person who immediately before that commencement is the second senior Lord of Appeal in Ordinary becomes the Deputy President of the Court.

Appointment of Judges

Article 25 – Qualification for appointment

(1) A person is not qualified to be appointed a judge of the Supreme Court unless he/she has (at any time):

- (a) held high judicial office for a period of at least 2 years, or
- (b) been a qualifying practitioner for a period of at least 15 years.

(2) A person is a qualifying practitioner for the purposes of this Section at any time when:

- (a) he/she has a Senior Courts qualification, within the meaning of Section 71 of the Courts and Legal Services Act 1990 (c. 41),
- (b) he/she is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or
- (c) he/she is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

Article 26 – Selection of members of the Court

(1) This Section applies to a recommendation for an appointment to one of the following offices:

- (a) judge of the Supreme Court;
- (b) President of the Court;
- (c) Deputy President of the Court.

(2) A recommendation may be made only by the Prime Minister.

(3) The Prime Minister:

- (a) must recommend any person whose name is notified to him/her under Section 29;
- (b) may not recommend any other person.

(4) A person who is not a judge of the Court must be recommended for appointment as a judge if his/her name is notified to the Prime Minister for an appointment as President or Deputy President.

(5) If there is a vacancy in one of the offices mentioned in subsection (1), or it appears to him/her that there will soon be such a vacancy, the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.

(6) Schedule 8 is about selection commissions.

(7) Subsection (5) is subject to Part 3 of that Schedule.

(8) Sections 27 to 31 apply where a selection commission is convened under this section.

Article 27 – Selection process

(1) The commission must:

- (a) determine the selection process to be applied,
- (b) apply the selection process, and
- (c) make a selection accordingly.

(2) As part of the selection process the commission must consult each of the following:

- (a) such of the senior judges as are not members of the commission and are not willing to be considered for selection;
- (b) the Lord Chancellor;
- (c) the First Minister in Scotland;
- (d) the Assembly First Secretary in Wales;
- (e) the Secretary of State for Northern Ireland.

(3) If for any part of the United Kingdom no judge of the courts of that part is to be consulted under subsection (2)(a), the commission must consult as part of the selection process the most senior judge of the courts of that part who is not a member of the commission and is not willing to be considered for selection.

(4) Subsections (5) to (10) apply to any selection under this Section or Section 31.

(5) Selection must be on merit.

(6) A person may be selected only if he/she meets the requirements of Section 25.

(7) A person may not be selected if he/she is a member of the commission.

(8) In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and

experience of practice in, the law of each part of the United Kingdom.

(9) The commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision of this Act) in making a selection.

(10) Any selection must be of one person only.

Article 28 – Report

(1) After complying with Section 27 the commission must submit a report to the Lord Chancellor.

(2) The report must:

- (a) state who has been selected;
- (b) state the senior judges consulted under Section 27(2)(a) and any judge consulted under Section 27(3);
- (c) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the commission must provide any further information the Lord Chancellor may require.

(5) When he/she receives the report the Lord Chancellor must consult each of the following:

- (a) the senior judges consulted under Section 27(2)(a);
- (b) any judge consulted under Section 27(3);
- (c) the First Minister in Scotland;
- (d) the Assembly First Secretary in Wales;
- (e) the Secretary of State for Northern Ireland.

Article 29 – The Lord Chancellor's options

(1) This Section refers to the following stages:

Stage 1: where a person has been selected under Section 27

Stage 2: where a person has been selected following a rejection or reconsideration at Stage 1

Stage 3: where a person has been selected following a rejection or reconsideration at Stage 2.

(2) At Stage 1 the Lord Chancellor must do one of the following:

- (a) notify the selection;
- (b) reject the selection;
- (c) require the commission to reconsider the selection.

(3) At Stage 2 the Lord Chancellor must do one of the following:

- (a) notify the selection;
- (b) reject the selection, but only if it was made following a reconsideration at Stage 1;
- (c) require the commission to reconsider the selection, but only if it was made following a rejection at Stage 1.

(4) At Stage 3 the Lord Chancellor must notify the selection, unless subsection (5) applies and he/she makes a notification under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at Stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may at Stage 3 notify that person's name to the Prime Minister.

(6) In this Part references to the Lord Chancellor notifying a selection are references to his/her notifying to the Prime Minister the name of the person selected.

Article 30 – Exercise of powers to reject or require reconsideration

(1) The power of the Lord Chancellor under Section 29 to reject a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.

(2) The power of the Lord Chancellor under Section 29 to require the commission to reconsider a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion:

- (a) there is not enough evidence that the person is suitable for the office concerned,
- (b) there is evidence that the person is not the best candidate on merit, or
- (c) there is not enough evidence that if the person were appointed the judges of the Court would between them have knowledge of, and experience of practice in, the law of each part of the United Kingdom.

(3) The Lord Chancellor must give the commission reasons in writing for rejecting or requiring reconsideration of a selection.

Article 31 – Selection following rejection or requirement to reconsider

(1) If under Section 29 the Lord Chancellor rejects or requires reconsideration of a selection at Stage 1 or 2, the commission must select a person in accordance with this section.

(2) If the Lord Chancellor rejects a selection, the commission:

- (a) may not select the person rejected, and
- (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.

(3) If the Lord Chancellor requires a selection to be reconsidered, the commission:

- (a) may select the same person or a different person, but
- (b) where the requirement is following a rejection, may not select the person rejected.

(4) The commission must inform the Lord Chancellor of the person selected following a rejection or requirement to reconsider.

Terms of Appointment

Article 32 – Oath of allegiance and judicial oath

(1) A person who is appointed as President of the Court must, as soon as may be after accepting office, take the required oaths in the presence of:

- (a) the Deputy President, or
- (b) if there is no Deputy President, the senior ordinary judge.

(2) A person who is appointed as Deputy President of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of:

- (a) the President, or
- (b) if there is no President, the senior ordinary judge.

(3) A person who is appointed as a judge of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of:

- (a) the President, or
- (b) if there is no President, the Deputy President, or
- (c) if there is no President and no Deputy President, the senior ordinary judge.

(4) Subsections (1) and (2) apply whether or not the person appointed as President or Deputy President has previously taken the required oaths in accordance with this Section after accepting another office.

(5) Subsection (3) does not apply where a person is first appointed as a judge of the Court upon appointment to the office of President or Deputy President.

- (6) In this Section “required oaths” means:
- (a) the oath of allegiance, and
 - (b) the judicial oath,
- as set out in the Promissory Oaths Act 1868 (c. 72).

Article 33 – Tenure

A judge of the Supreme Court holds that office during good behaviour, but may be removed from it on the address of both Houses of Parliament.

Article 34 – Salaries and allowances

(1) A judge of the Supreme Court is entitled to a salary.

(2) The amount of the salary is to be determined by the Lord Chancellor with the agreement of the Treasury.

(3) Until otherwise determined under subsection (2), the amount is that of the salary of a Lord of Appeal in Ordinary immediately before the commencement of Section 23.

(4) A determination under subsection (2) may increase but not reduce the amount.

(5) Salaries payable under this Section are to be charged on and paid out of the Consolidated Fund of the United Kingdom.

(6) Any allowance determined by the Lord Chancellor with the agreement of the Treasury may be paid to a judge of the Court out of money provided by Parliament.

Article 35 – Resignation and retirement

(1) A judge of the Supreme Court may at any time resign that office by giving the Lord Chancellor notice in writing to that effect.

(2) The President or Deputy President of the Court may at any time resign that office (whether or not he/she resigns his/her office as a judge) by giving the Lord Chancellor notice in writing to that effect.

(3) In Section 26(4)(a) of and Schedule 5 to the Judicial Pensions and Retirement Act 1993 (c. 8) (retirement), for “Lord of Appeal in Ordinary” substitute “Judge of the Supreme Court”.

Article 36 – Medical retirement

(1) This Section applies if the Lord Chancellor is satisfied by means of a medical certificate that a person holding office as a judge of the Supreme Court:

- (a) is disabled by permanent infirmity from the performance of the duties of his/her office, and
- (b) is for the time being incapacitated from resigning his/her office.

(2) The Lord Chancellor may by instrument under his/her hand declare the person’s office to have been vacated.

(3) A declaration by instrument under subsection (2) has the same effect for all purposes as if the person had, on the date of the instrument, resigned his/her office.

(4) But such a declaration has no effect unless it is made:

- (a) in the case of an ordinary judge, with the agreement of the President and Deputy President of the Court;
- (b) in the case of the President, with the agreement of the Deputy President and the senior ordinary judge;
- (c) in the case of the Deputy President, with the agreement of the President and the senior ordinary judge.

Article 37 – Pensions

(1) In the tables in Sections 1 and 16 of the Judicial Pensions Act 1981 (c. 20) (application and interpretation), for “Lord of Appeal in Ordinary”:

- (a) in the first column, substitute “Judge of the Supreme Court”, and
- (b) in the second column, in each place substitute “judge of the Supreme Court”.

(2) In Part 1 of Schedule 1 to the Judicial Pensions and Retirement Act 1993 (qualifying judicial offices: judges), for “Lord of Appeal in Ordinary” substitute “Judge of the Supreme Court”.

(3) The amendments made by this Section to the 1981 and 1993 Acts do not affect the operation of any provision of or made under those Acts, or anything done under such provision, in relation to the office of, or service as, Lord of Appeal in Ordinary.

Acting Judges

Article 38 – Acting judges

(1) At the request of the President of the Supreme Court any of the following may act as a judge of the Court:

- (a) a person who holds office as a senior territorial judge;
- (b) a member of the supplementary panel under Section 39.

(2) A request under subsection (1) may be made by the Deputy President of the Court if there is no President or the President is unable to make that request.

(3) In Section 26(7) of the Judicial Pensions and Retirement Act 1993 (c. 8) (requirement not to act in certain capacities after the age of 75) for Paragraph (b) substitute:

“(b) act as a judge of the Supreme Court under Section 38 of the Constitutional Reform Act 2005;”

(4) Every person while acting under this Section is, subject to sub-Sections (5) and (6), to be treated for all purposes as a judge of the Supreme Court (and so may perform any of the functions of a judge of the Court).

(5) A person is not to be treated under sub-Section (4) as a judge of the Court for the purposes of any statutory provision relating to:

- (a) the appointment, retirement, removal or disqualification of judges of the Court,
- (b) the tenure of office and oaths to be taken by judges of the Court, or
- (c) the remuneration, allowances or pensions of judges of the Court.

(6) Subject to Section 27 of the Judicial Pensions and Retirement Act 1993, a person is not to be treated under subsection (4) as having been a judge of the Court if he/she has acted in the Court only under this Section.

(7) Such remuneration and allowances as the Lord Chancellor may with the agreement of the Treasury determine may be paid out of money provided by Parliament to any person who acts as a judge of the Court under this section.

(8) In this Section “office as a senior territorial judge” means office as any of the following:

- (a) a judge of the Court of Appeal in England and Wales;

(b) a judge of the Court of Session, but only if the holder of the office is a member of the First or Second Division of the Inner House of that Court;

(c) a judge of the Court of Appeal in Northern Ireland, unless the holder holds the office only by virtue of being a puisne judge of the High Court.

Article 39 – Supplementary panel

(1) There is to be a panel of persons known as the supplementary panel.

(2) On the commencement of this Section any member of the House of Lords who:

- (a) meets one of the conditions in subsection (3),
- (b) does not hold high judicial office,
- (c) has not attained the age of 75, and
- (d) is not a person who was appointed to the office of Lord Chancellor on or after 12 June 2003, becomes a member of the panel.

(3) The conditions are:

- (a) that he/she ceased to hold high judicial office less than 5 years before the commencement of this section;
- (b) that he/she was a member of the Judicial Committee of the Privy Council immediately before that commencement;
- (c) that he/she ceased to be a member of that Committee less than 5 years before that commencement.

(4) A person becomes a member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court or as a senior territorial judge, but only if, while he/she holds such office:

- (a) his/her membership of the panel is approved in writing by the President of the Supreme Court, and
- (b) the President of the Court gives the Lord Chancellor notice in writing of the approval.

(5) Subsection (4) does not apply to a person who ceases to hold office as a judge of the Supreme Court when he/she ceases to be President of the Court.

(6) Such a person becomes a member of the supplementary panel on ceasing to be President of the Court, unless:

- (a) while President, he/she gives the Lord Chancellor notice that he/she is not to become a member of the panel,
- (b) he/she ceases to be President on being removed from office as a judge of the Court on the address of both Houses of Parliament, or
- (c) his/her office is declared vacant under Section 36.

(7) A person does not become a member of the supplementary panel under subsection (4) or (6) if:

(a) on ceasing to hold office as a judge of the Supreme Court he/she takes office as a senior territorial judge, or

(b) on ceasing to hold office as a senior territorial judge he/she takes office as a judge of the Supreme Court.

(8) A member of the supplementary panel may resign by notice in writing to the President of the Court.

(9) Unless he/she resigns (and subject to Sections 26(7)(b) and 27 of the Judicial Pensions and Retirement Act 1993 (c. 8)), a person ceases to be a member of the supplementary panel:

(a) at the end of 5 years after the last day on which he/she holds his/her qualifying office, or

(b) if earlier, at the end of the day on which he/she attains the age of 75.

(10) In this section:

(a) "office as a senior territorial judge" has the same meaning as in Section 38;

(b) a person's "qualifying office" is the office (that is, high judicial office, membership of the Judicial Committee of the Privy Council, office as a judge of the Supreme Court or office as a senior territorial judge) that he/she held before becoming a member of the supplementary panel.

Jurisdiction, Relation to Other Courts, etc.

Article 40 – Jurisdiction

(1) The Supreme Court is a superior court of record.

(2) An appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings.

(3) An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of this section.

(4) Schedule 9:

(a) transfers other jurisdiction from the House of Lords to the Court,

(b) transfers devolution jurisdiction from the Judicial Committee of the Privy Council to the Court, and

(c) makes other amendments relating to jurisdiction.

(5) The Court has power to determine any question necessary to be determined for the purposes of doing justice in an appeal to it under any enactment.

(6) An appeal under subsection (2) lies only with the permission of the Court of Appeal or the Supreme Court; but this is subject to provision under any other enactment restricting such an appeal.

Article 41 – Relation to other courts, etc.

(1) Nothing in this Part is to affect the distinctions between the separate legal systems of the parts of the United Kingdom.

(2) A decision of the Supreme Court on appeal from a court of any part of the United Kingdom, other than a decision on a devolution matter, is to be regarded as the decision of a court of that part of the United Kingdom.

(3) A decision of the Supreme Court on a devolution matter:

(a) is not binding on that Court when making such a decision;

(b) otherwise, is binding in all legal proceedings.

(4) In this Section "devolution matter" means:

(a) a question referred to the Supreme Court under Section 33 of the Scotland Act 1998 (c. 46) or Section 11 of the Northern Ireland Act 1998 (c. 47);

(b) a devolution issue as defined in Schedule 8 to the Government of Wales Act 1998 (c. 38), Schedule 6 to the Scotland Act 1998 or Schedule 10 to the Northern Ireland Act 1998.

Composition for Proceedings

Article 42 – Composition

(1) The Supreme Court is duly constituted in any proceedings only if all of the following conditions are met:

(a) the Court consists of an uneven number of judges;

(b) the Court consists of at least three judges;

(c) more than half of those judges are permanent judges.

(2) Paragraphs and of subsection are subject to any directions that in specified proceedings the Court is to consist of a specified number of judges that is both uneven and greater than three.

(3) Paragraph of subsection is subject to any directions that in specified descriptions of proceedings the Court is to consist of a specified minimum number of judges that is greater than three.

(4) This Section is subject to Section 43.

(5) In this section:

- (a) “directions” means directions given by the President of the Court;
- (b) “specified”, in relation to directions, means specified in those directions;
- (c) references to permanent judges are references to those judges of the Court who are not acting judges under Section 38.

(6) This Section and Section 43 apply to the constitution of the Court in any proceedings from the time judges are designated to hear the proceedings.

Article 43 – Changes in composition

(1) This Section applies if in any proceedings the Court ceases to be duly constituted in accordance with Section 42, or in accordance with a direction under this section, because one or more members of the Court are unable to continue.

(2) The presiding judge may direct that the Court is still duly constituted in the proceedings.

(3) The presiding judge may give a direction under this Section only if:

- (a) the parties agree;
- (b) the Court still consists of at least three judges (whether the number of judges is even or uneven);
- (c) at least half of those judges are permanent judges.

(4) Subsections (2) and (3) are subject to directions given by the President of the Court.

(5) If in any proceedings the Court is duly constituted under this Section with an even number of judges, and those judges are evenly divided, the case is to be re-argued in a Court which is constituted in accordance with Section 42.

(6) In this section:

- (a) “presiding judge” means the judge who is to preside, or is presiding, over proceedings;
- (b) references to permanent judges have the same meaning as in Section 42.

Practice and Procedure

Article 44 – Specially qualified advisers

(1) If the Supreme Court thinks it expedient in any proceedings, it may hear and dispose of the proceedings wholly or partly with the assistance of one or more specially qualified advisers appointed by it.

(2) Any remuneration payable to such an adviser is to be determined by the Court unless agreed between the adviser and the parties to the proceedings.

(3) Any remuneration forms part of the costs of the proceedings.

Article 45 – Making of rules

(1) The President of the Supreme Court may make rules (to be known as “Supreme Court Rules”) governing the practice and procedure to be followed in the Court.

(2) The power to make Supreme Court Rules includes power to make different provision for different cases, including different provision:

- (a) for different descriptions of proceedings, or
- (b) for different jurisdiction of the Supreme Court.

(3) The President must exercise the power to make Supreme Court Rules with a view to securing that:

- (a) the Court is accessible, fair and efficient, and
- (b) the rules are both simple and simply expressed.

(4) Before making Supreme Court Rules the President must consult all of the following:

- (a) the Lord Chancellor;
- (b) the bodies listed in subsection (5);
- (c) such other bodies that represent persons likely to be affected by the Rules as the President considers it appropriate to consult.

(5) The bodies referred to in subsection (4)(b) are:

- * The General Council of the Bar of England and Wales;
- * The Law Society of England and Wales;
- * The Faculty of Advocates of Scotland;
- * The Law Society of Scotland;
- * The General Council of the Bar of Northern Ireland;
- * The Law Society of Northern Ireland.

Article 46 – Procedure after rules made

(1) Supreme Court Rules made by the President of the Supreme Court must be submitted by him/her to the Lord Chancellor.

(2) Supreme Court Rules submitted to the Lord Chancellor:

- (a) come into force on such day as the Lord Chancellor directs, and
- (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the instrument contained rules made by a Minister of the Crown.

(3) A statutory instrument containing Supreme Court Rules is subject to annulment in pursuance of a resolution of either House of Parliament.

Article 47 – Photography, etc.

(1) In Section 41 of the Criminal Justice Act 1925 (c. 86) (prohibition on taking photographs, etc in court), for subsection (2)(a) substitute:

“(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.

(2) In Section 29 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 N.I.) (prohibition on taking photographs, etc in court), for subsection (2)(a) substitute:

“(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.

Staff and Resources

Article 48 – Chief executive

(1) The Supreme Court is to have a chief executive.

(2) The Lord Chancellor must appoint the chief executive, after consulting the President of the Court.

(3) The President of the Court may delegate to the chief executive any of these functions:

- (a) functions of the President under Section 49(1);
- (b) non-judicial functions of the Court.

(4) The chief executive must carry out his/her functions (under subsection (3) or otherwise) in accordance with any directions given by the President of the Court.

Article 49 – Officers and staff

(1) The President of the Supreme Court may appoint officers and staff of the Court.

(2) It is for the chief executive of the Supreme Court to determine these matters with the agreement of the Lord Chancellor:

- (a) the number of officers and staff of the Court;
- (b) subject to subsection (3), the terms on which officers and staff are to be appointed.

(3) The civil service pension arrangements for the time being in force apply (with any necessary adaptations) to the chief executive of the Court, and to persons appointed under subsection (1), as they

apply to other persons employed in the civil service of the State.

(4) In subsection (3) “the civil service pension arrangements” means:

- (a) the principal civil service pension scheme (within the meaning of Section 2 of the Superannuation Act 1972 (c. 11), and
- (b) any other superannuation benefits for which provision is made under or by virtue of Section 1 of that Act for or in respect of persons in employment in the civil service of the State.

Article 50 – Accommodation and other resources

(1) The Lord Chancellor must ensure that the Supreme Court is provided with the following:

- (a) such court-houses, offices and other accommodation as the Lord Chancellor thinks are appropriate for the Court to carry on its business;
- (b) such other resources as the Lord Chancellor thinks are appropriate for the Court to carry on its business.

(2) The Lord Chancellor may discharge the duty under subsection (1) by:

- (a) providing accommodation or other resources, or
- (b) entering into arrangements with any other person for the provision of accommodation or other resources.

(3) The powers to acquire land for the public service conferred by:

- (a) Section 2 of the Commissioners of Works Act 1852 (c. 28) (acquisition by agreement), and
 - (b) Section 228(1) of the Town and Country Planning Act 1990 (c. 8) (compulsory acquisition),
- are to be treated as including power to acquire land for the purpose of its provision under arrangements under subsection (2)(b).

(4) The Scottish Ministers may make payments by way of contribution to the costs incurred by the Lord Chancellor in providing the Court with resources in accordance with subsection (1)(b).

(5) In this Section “court-house” means any place where the Court sits, including the precincts of any building in which it sits.

Article 51 – System to support Court in carrying on business

(1) The chief executive of the Supreme Court must ensure that the Court’s resources are used to provide an efficient and effective system to support the Court in carrying on its business.

- (2) In particular:
- (a) appropriate services must be provided for the Court;
 - (b) the accommodation provided under Section 50 must be appropriately equipped, maintained and managed.

Fees

Article 52 – Fees

(1) The Lord Chancellor may, with the agreement of the Treasury, by order prescribe fees payable in respect of anything dealt with by the Supreme Court.

(2) An order under this Section may, in particular, contain provision about:

- (a) scales or rates of fees;
- (b) exemptions from fees;
- (c) reductions in fees;
- (d) whole or partial remission of fees.

(3) When including any provision in an order under this section, the Lord Chancellor must have regard to the principle that access to the courts must not be denied.

(4) Before making an order under this section, the Lord Chancellor must consult all of the following:

- (a) the persons listed in subsection (5);
- (b) the bodies listed in subsection (6).

(5) The persons referred to in subsection (4)(a) are:

- (a) the President of the Supreme Court;
- (b) the Lord Chief Justice of England and Wales;
- (c) the Master of the Rolls;
- (d) the Lord President of the Court of Session;
- (e) the Lord Chief Justice of Northern Ireland;
- (f) the Lord Justice Clerk;
- (g) the President of the Queen’s Bench Division;
- (h) the President of the Family Division;
- (i) the Chancellor of the High Court.

(6) The bodies referred to in subsection (4)(b) are:

- (a) the General Council of the Bar of England and Wales;
- (b) the Law Society of England and Wales;
- (c) the Faculty of Advocates of Scotland;
- (d) the Law Society of Scotland;
- (e) the General Council of the Bar of Northern Ireland;
- (f) the Law Society of Northern Ireland.

Article 53 – Fees: supplementary

(1) Supreme Court fees are recoverable summarily as a civil debt.

(2) The Lord Chancellor must take such steps as are reasonably practicable to bring information about Supreme Court fees to the attention of persons likely to have to pay them.

(3) In this Section “Supreme Court fees” means fees prescribed in an order under Section 52.

Annual Report

Article 54 – Annual report

(1) As soon as practicable after each financial year, the chief executive of the Supreme Court must prepare a report about the business of the Supreme Court during that year and give a copy of that report to the following persons:

- (a) the Lord Chancellor;
- (b) the First Minister in Scotland;
- (c) the First Minister and the deputy First Minister in Northern Ireland;
- (d) the Assembly First Secretary in Wales.

(2) The Lord Chancellor must lay a copy of any report of which a copy is given under subsection (1)(a) before each House of Parliament.

(3) Each of the following is a “financial year” for the purposes of this section:

- (a) the period which begins with the date on which this Section comes into force and ends with the following 31 March;
- (b) each successive period of 12 months.

Supplementary

Article 55 – Seal

(1) The Supreme Court is to have an official seal.

(2) Every document purporting to be sealed with the official seal of the Supreme Court is to be received in evidence in all parts of the United Kingdom without further proof.

Article 56 – Records of the Supreme Court

(1) The Public Records Act 1958 (c. 51) is amended as follows.

(2) In Section 8 (court records):

- (a) in subsection (1) after “such records” insert “other than records of the Supreme Court,”;
- (b) after subsection (1) insert:

“(1A) Records of the Supreme Court for which the Lord Chancellor is responsible under subsection (1) shall be in the custody of the chief executive of that court.”

(3) In Schedule 1 (definition of public records), in Paragraph 4 (records of courts and tribunals), before sub-paragraph (1)(a) insert:

“(za) records of the Supreme Court;”.

Article 57 – Proceedings under jurisdiction transferred to the Supreme Court

Schedule 10 contains transitional provision relating to proceedings under jurisdiction which is transferred to the Supreme Court by this Act from the House of Lords or the Judicial Committee of the Privy Council.

...

Article 59 – Renaming of Supreme Courts of England and Wales and Northern Ireland

(1) The Supreme Court of England and Wales is renamed the Senior Courts of England and Wales.

(2) The Supreme Court of Judicature of Northern Ireland is renamed the Court of Judicature of Northern Ireland.

(3) The Northern Ireland Supreme Court Rules Committee is renamed the Northern Ireland Court of Judicature Rules Committee.

(4) Any reference in an enactment, instrument or other document to a court or committee renamed by this Section is to be read, so far as necessary for continuing its effect, as a reference to the Senior Courts, the Court of Judicature or the Northern Ireland Court of Judicature Rules Committee (as the case may be).

(5) Schedule 11 (which makes amendments in connection with the renaming) has effect.

(6) Unless otherwise provided, amendments made by an enactment (A) (whether or not in force) to another enactment (B):

(a) are not included in references in that Schedule to enactment A;

(b) are included in references in that Schedule to enactment B.

Article 60 – Interpretation of Part 3

(1) In this Part:

* “part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;

* “the senior judges” means:

(a) the judges of the Supreme Court;

(b) the Lord Chief Justice of England and Wales;

(c) the Master of the Rolls;

(d) the Lord President of the Court of Session;

(e) the Lord Chief Justice of Northern Ireland;

(f) the Lord Justice Clerk;

(g) the President of the Queen’s Bench Division;

(h) the President of the Family Division;

(i) the Chancellor of the High Court;

* “the Supreme Court” means the Supreme Court of the United Kingdom.

(2) In this Part:

(a) “high judicial office” means office as a judge of any of the following courts:

(i) the Supreme Court;

(ii) the Court of Appeal in England and Wales;

(iii) the High Court in England and Wales;

(iv) the Court of Session;

(v) the Court of Appeal in Northern Ireland;

(vi) the High Court in Northern Ireland;

or as a Lord of Appeal in Ordinary;

(b) a person appointed to the office of Lord Chancellor on or after 12 June 2003 who holds, or held, office of a kind referred to in Paragraph (a) (“the qualifying office”) is to be regarded as holding, or having held, high judicial office only if:

(i) he/she has ceased to be Lord Chancellor by virtue of that appointment, and

(ii) he/she holds, or held, the qualifying office otherwise than by virtue of that appointment as Lord Chancellor.

(3) In this Part:

(a) “ordinary judge” means a judge of the Supreme Court who is not the President or the Deputy President of the Court;

(b) the senior ordinary judge at any time is, of the ordinary judges at that time, the one who has served longest as a judge of the Court (whether over one or more periods and whether or not including one or more previous periods as President or Deputy President).

(4) Service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for the purposes of subsection (3)(b).

(5) In this Part references to the Lord Chancellor notifying a selection are to be read in accordance with Section 29(6).

Part 4 – Judicial Appointments and Discipline

Chapter 1 – Commission and Ombudsman

Article 61 – The Judicial Appointments Commission

(1) There is to be a body corporate called the Judicial Appointments Commission.

(2) Schedule 12 is about the Commission.

Article 62 – Judicial Appointments and Conduct Ombudsman

(1) There is to be a Judicial Appointments and Conduct Ombudsman.

(2) Schedule 13 is about the Ombudsman.

Chapter 2 – Appointments

General Provisions

Article 63 – Merit and good character

(1) Subsections (2) and (3) apply to any selection under this Part by the Commission or a selection panel (“the selecting body”).

(2) Selection must be solely on merit.

(3) A person must not be selected unless the selecting body is satisfied that he/she is of good character.

Article 64 – Encouragement of diversity

(1) The Commission, in performing its functions under this Part, must have regard to the need to encourage diversity in the range of persons available for selection for appointments.

(2) This Section is subject to Section 63.

Article 65 – Guidance about procedures

(1) The Lord Chancellor may issue guidance about procedures for the performance by the Commission or a selection panel of its functions of:

(a) identifying persons willing to be considered for selection under this Part, and

(b) assessing such persons for the purposes of selection.

(2) The guidance may, among other things, relate to consultation or other steps in determining such procedures.

(3) The purposes for which guidance may be issued under this Section include the encouragement of diversity in the range of persons available for selection.

(4) The Commission and any selection panel must have regard to the guidance in matters to which it relates.

Article 66 – Guidance: supplementary

(1) Before issuing any guidance the Lord Chancellor must:

(a) consult the Lord Chief Justice;

(b) after doing so, lay a draft of the proposed guidance before each House of Parliament.

(2) If the draft is approved by a resolution of each House of Parliament within the 40-day period the Lord Chancellor must issue the guidance in the form of the draft.

(3) In any other case the Lord Chancellor must take no further steps in relation to the proposed guidance.

(4) Subsection (3) does not prevent a new draft of the proposed guidance from being laid before each House of Parliament after consultation with the Lord Chief Justice.

(5) Guidance comes into force on such date as the Lord Chancellor may appoint by order.

(6) The Lord Chancellor may:

(a) from time to time revise the whole or part of any guidance and re-issue it;

(b) after consulting the Lord Chief Justice, by order revoke any guidance.

(7) In this section:

* “40-day period” in relation to the draft of any proposed guidance means:

(a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later day, and

(b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days;

* “guidance” means guidance issued by the Lord Chancellor under Section 65 and includes guidance which has been revised and re-issued.

Lord Chief Justice and Heads of Division

Article 67 – Selection of Lord Chief Justice and Heads of Division

(1) Sections 68 to 75 apply to a recommendation for an appointment to one of the following offices:

- (a) Lord Chief Justice;
- (b) Master of the Rolls;
- (c) President of the Queen’s Bench Division;
- (d) President of the Family Division;
- (e) Chancellor of the High Court.

(2) Any such recommendation must be made in accordance with those sections and Section 96.

Article 68 – Duty to fill vacancies

(1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Chief Justice.

(2) The Lord Chancellor must make a recommendation to fill any vacancy in any other office listed in Section 67(1).

(3) Subsection (2) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

Article 69 – Request for selection

(1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation to which this Section applies.

(2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.

(3) Subsection (2) does not apply where the office of Lord Chief Justice is vacant or where the Lord Chief Justice is incapacitated for the purposes of Section 16 (functions during vacancy or incapacity).

(4) Sections 70 to 75 apply where the Lord Chancellor makes a request under this section.

(5) Those sections are subject to Section 95 (withdrawal and modification of requests).

Article 70 – Selection process

(1) On receiving a request the Commission must appoint a selection panel.

(2) The panel must:

- (a) determine the selection process to be applied,
- (b) apply the selection process, and
- (c) make a selection accordingly.

(3) One person only must be selected for each recommendation to which a request relates.

(4) Subsection (3) applies to selection under this Section and to selection under Section 75.

(5) If practicable the panel must consult, about the exercise of its functions under this section, the current holder of the office for which a selection is to be made.

(6) A selection panel is a committee of the Commission.

Article 71 – Selection panel

(1) The selection panel must consist of four members.

(2) The first member is the most senior England and Wales Supreme Court judge who is not disqualified, or his/her nominee.

(3) Unless subsection (7) applies, the second member is the Lord Chief Justice or his/her nominee.

(4) Unless subsection (9) applies, the third member is the chairman of the Commission or his/her nominee.

(5) The fourth member is a lay member of the Commission designated by the third member.

(6) Subsection (7) applies if:

- (a) the Lord Chief Justice is disqualified, or
- (b) there is no Lord Chief Justice.

(7) In those cases the most senior England and Wales Supreme Court judge who is not disqualified must designate a person (but not a person who is disqualified) as the second member.

(8) Subsection (9) applies if:

- (a) there is no chairman of the Commission, or
- (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).

(9) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.

(10) Only the following may be a nominee under subsection (2) or (3) or designated under subsection (7):

- (a) an England and Wales Supreme Court judge,
- (b) a Head of Division, or
- (c) a Lord Justice of Appeal.

(11) The following also apply to nominees under this section:

- (a) a person may not be a nominee if he/she is disqualified;
- (b) a person may not be appointed to the panel as the nominee of more than one person;
- (c) a person appointed to the panel otherwise than as a nominee may not be a nominee.

(12) The first member is the chairman of the panel.

(13) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.

(14) A person is disqualified for the purposes of this Section if:

- (a) he/she is the current holder of the office for which a selection is to be made, or
- (b) he/she is willing to be considered for selection.

(15) In this Section “England and Wales Supreme Court judge” means a judge of the Supreme Court who has held high judicial office in England and Wales before appointment to the Court.

Article 72 – Report

(1) After complying with Section 70(2) the selection panel must submit a report to the Lord Chancellor.

(2) The report must:

- (a) state who has been selected;
- (b) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

Article 73 – The Lord Chancellor’s options

(1) This Section refers to the following stages:

Stage 1: where a person has been selected under Section 70

Stage 2: where a person has been selected following a rejection or reconsideration at Stage 1

Stage 3: where a person has been selected following a rejection or reconsideration at Stage 2.

(2) At Stage 1 the Lord Chancellor must do one of the following:

- (a) accept the selection;
- (b) reject the selection;
- (c) require the selection panel to reconsider the selection.

(3) At Stage 2 the Lord Chancellor must do one of the following:

- (a) accept the selection;
- (b) reject the selection, but only if it was made following a reconsideration at Stage 1;
- (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at Stage 1.

(4) At Stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he/she accepts a selection under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at Stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at Stage 3, accept the selection made at that earlier stage.

Article 74 – Exercise of powers to reject or require reconsideration

(1) The power of the Lord Chancellor under Section 73 to reject a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion, the person selected is not suitable for the office concerned.

(2) The power of the Lord Chancellor under Section 73 to require the selection panel to reconsider a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion:

- (a) there is not enough evidence that the person is suitable for the office concerned, or
- (b) there is evidence that the person is not the best candidate on merit.

(3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

Article 75 – Selection following rejection or requirement to reconsider

(1) If under Section 73 the Lord Chancellor rejects or requires reconsideration of a selection at Stage 1 or

2, the selection panel must select a person in accordance with this section.

(2) If the Lord Chancellor rejects a selection, the selection panel:

- (a) may not select the person rejected, and
- (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.

(3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel:

- (a) may select the same person or a different person, but
- (b) where the requirement is following a rejection, may not select the person rejected.

(4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.

(5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under Section 69.

Lords Justices of Appeal

Article 76 – Selection of Lords Justices of Appeal

(1) Sections 77 to 84 apply to a recommendation for appointment as a Lord Justice of Appeal.

(2) Any such recommendation must be made in accordance with those sections and Section 96.

Article 77 – Duty to fill vacancies

(1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Justice of Appeal.

(2) Subsection (1) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

Article 78 – Request for selection

(1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation for appointment as a Lord Justice of Appeal.

(2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.

(3) A request may relate to more than one recommendation.

(4) Sections 79 to 84 apply where the Lord Chancellor makes a request under this section.

(5) Those sections are subject to Section 95 (withdrawal and modification of requests).

Article 79 – Selection process

(1) On receiving a request the Commission must appoint a selection panel.

(2) The panel must:

- (a) determine the selection process to be applied,
- (b) apply the selection process, and
- (c) make a selection accordingly.

(3) One person only must be selected for each recommendation to which a request relates.

(4) Subsection (3) applies to selection under this Section and to selection under Section 84.

(5) A selection panel is a committee of the Commission.

Article 80 – Selection panel

(1) The selection panel must consist of four members.

(2) The first member is the Lord Chief Justice, or his/her nominee.

(3) The second member is a Head of Division or Lord Justice of Appeal designated by the Lord Chief Justice.

(4) Unless subsection (7) applies, the third member is the chairman of the Commission or his/her nominee.

(5) The fourth member is a lay member of the Commission designated by the third member.

(6) Subsection (7) applies if:

- (a) there is no chairman of the Commission, or
- (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).

(7) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.

(8) A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal.

(9) A person may not be appointed to the panel if he/she is willing to be considered for selection.

(10) A person may not be appointed to the panel as the nominee of more than one person.

(11) A person appointed to the panel otherwise than as a nominee may not be a nominee.

(12) The first member is the chairman of the panel.

(13) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.

Article 81 – Report

(1) After complying with Section 79(2) the selection panel must submit a report to the Lord Chancellor.

(2) The report must:

- (a) state who has been selected;
- (b) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

Article 82 – The Lord Chancellor’s options

(1) This Section refers to the following stages:

Stage 1: where a person has been selected under Section 79

Stage 2: where a person has been selected following a rejection or reconsideration at Stage 1

Stage 3: where a person has been selected following a rejection or reconsideration at Stage 2.

(2) At Stage 1 the Lord Chancellor must do one of the following:

- (a) accept the selection;
- (b) reject the selection;
- (c) require the selection panel to reconsider the selection.

(3) At Stage 2 the Lord Chancellor must do one of the following:

- (a) accept the selection;
- (b) reject the selection, but only if it was made following a reconsideration at Stage 1;
- (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at Stage 1.

(4) At Stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he/she accepts a selection under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at Stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at Stage 3, accept the selection made at that earlier stage.

Article 83 – Exercise of powers to reject or require reconsideration

(1) The power of the Lord Chancellor under Section 82 to reject a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion, the person selected is not suitable for the office concerned.

(2) The power of the Lord Chancellor under Section 82 to require the selection panel to reconsider a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion:

- (a) there is not enough evidence that the person is suitable for the office concerned, or
- (b) there is evidence that the person is not the best candidate on merit.

(3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

Article 84 – Selection following rejection or requirement to reconsider

(1) If under Section 82 the Lord Chancellor rejects or requires reconsideration of a selection at Stage 1 or 2, the selection panel must select a person in accordance with this section.

(2) If the Lord Chancellor rejects a selection, the selection panel:

- (a) may not select the person rejected, and
- (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.

(3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel:

- (a) may select the same person or a different person, but
- (b) where the requirement is following a rejection, may not select the person rejected.

(4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.

(5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under Section 78.

Puisne Judges and Other Office Holders

Article 85 – Selection of puisne judges and other office holders

(1) Sections 86 to 93 apply to:

- (a) a recommendation for an appointment to the office of puisne judge of the High Court;
- (b) a recommendation for an appointment to an office listed in Part 1 of Schedule 14 in exercise of Her Majesty's function under the enactment listed opposite that office;
- (c) an appointment to an office listed in Part 2 or 3 of that Schedule in exercise of the Lord Chancellor's function under the enactment listed opposite that office.

(2) Any such recommendation or appointment must be made in accordance with those sections and Section 96.

(3) The Lord Chancellor may by order make any of the following amendments to Schedule 14:

- (a) an Amendment which adds a reference to an enactment under which appointments are made to an office;
- (b) an Amendment which adds a reference to an office to which appointments are made under an enactment;
- (c) an Amendment consequential on the abolition or change of name of an office;
- (d) an Amendment consequential on the substitution of one or more enactments for an enactment under which appointments are made to an office.

Article 86 – Duty to fill vacancies

(1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of puisne judge of the High Court or in an office listed in Part 1 of Schedule 14.

(2) The Lord Chancellor must make an appointment to fill any vacancy in an office listed in Part 2 or 3 of that Schedule.

(3) Subsections (1) and (2) do not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

Article 87 – Request for selection

(1) The Lord Chancellor may request the Commission to select a person for a recommendation or appointment to which this Section applies.

(2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.

(3) A request may relate to more than one recommendation or appointment.

(4) Sections 88 to 93 apply where the Lord Chancellor makes a request under this section.

(5) Those sections are subject to Section 95 (withdrawal and modification of requests).

Article 88 – Selection process

(1) On receiving a request the Commission must:

- (a) determine the selection process to be applied,
- (b) apply the selection process, and
- (c) make a selection accordingly.

(2) But if or so far as the Commission decides that the selection process has not identified candidates of sufficient merit for it to comply with subsection (1)(c), Section 93 applies and subsection (1)(c) does not apply.

(3) As part of the selection process the Commission must consult:

- (a) the Lord Chief Justice; and
- (b) a person (other than the Lord Chief Justice) who has held the office for which a selection is to be made or has other relevant experience.

(4) One person only may be selected for each recommendation or appointment to which a request relates.

(5) Subsection (4) applies to selection under this Section and to selection under Section 92 or 93.

Article 89 – Report

(1) After complying with Section 88 the Commission must submit a report to the Lord Chancellor.

(2) The report must:

- (a) describe the selection process;
- (b) state any selection made;
- (c) state any decision under Section 88(2);
- (d) state any recommendation made in consultation under Section 88(3) by a person consulted;

(e) give reasons in any case where the Commission has not followed such a recommendation;
 (f) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the Commission must provide any further information the Lord Chancellor may require.

Article 90 – The Lord Chancellor’s options

(1) This Section refers to the following stages:

Stage 1: where a person has been selected under Section 88

Stage 2: where a person has been selected following a rejection or reconsideration at Stage 1

Stage 3: where a person has been selected following a rejection or reconsideration at Stage 2.

(2) At Stage 1 the Lord Chancellor must do one of the following:

- (a) accept the selection;
- (b) reject the selection;
- (c) require the Commission to reconsider the selection.

(3) At Stage 2 the Lord Chancellor must do one of the following:

- (a) accept the selection;
- (b) reject the selection, but only if it was made following a reconsideration at Stage 1;
- (c) require the Commission to reconsider the selection, but only if it was made following a rejection at Stage 1.

(4) At Stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he/she accepts a selection under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at Stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at Stage 3, accept the selection made at that earlier stage.

(6) Before exercising his/her powers under this Section at any Stage in relation to a selection for an appointment or recommendation, the Lord Chancellor must:

- (a) consult any person whom he/she is required by any enactment to consult before making the appointment or recommendation, and
- (b) consult the Scottish Ministers if it appears to him/her to be an appointment, or a recommendation

for the appointment, of a person to exercise functions wholly or mainly in Scotland.

Article 91 – Exercise of powers to reject or require reconsideration

(1) The power of the Lord Chancellor under Section 90 to reject a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion, the person selected is not suitable for the office concerned or particular functions of that office.

(2) The power of the Lord Chancellor under Section 90 to require the Commission to reconsider a selection at Stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion:

- (a) there is not enough evidence that the person is suitable for the office concerned or particular functions of that office, or
- (b) there is evidence that the person is not the best candidate on merit.

(3) The Lord Chancellor must give the Commission reasons in writing for rejecting or requiring reconsideration of a selection.

Article 92 – Selection following rejection or requirement to reconsider

(1) If under Section 90 the Lord Chancellor rejects or requires reconsideration of a selection at Stage 1 or 2, the Commission must select a person in accordance with this section.

(2) If the Lord Chancellor rejects a selection, the Commission:

- (a) may not select the person rejected, and
- (b) where the rejection is following a requirement to reconsider, may not select the person (if different) whose selection it reconsidered.

(3) If the Lord Chancellor requires a selection to be reconsidered, the Commission:

- (a) may select the same person or a different person, but
- (b) where the requirement is following a rejection, may not select the person rejected.

(4) But if the Commission decides that the selection process has not identified a candidate of sufficient merit for it to make a selection under this section:

- (a) Section 93 applies;
- (b) sub-Section (1) does not apply, but sub-Sections (2) and (3) apply to any selection under Section 93.

(5) The Commission must inform the Lord Chancellor of any person selected following a rejection or a requirement to reconsider.

(6) Sub-Sections (2) and (3) do not prevent a person being selected on a subsequent request under Section 87.

Article 93 – Reconsideration of decision not to select

(1) The Lord Chancellor may require the Commission to reconsider a decision that the selection process has not identified candidates of sufficient merit for it to make a selection.

(2) The Commission must inform the Lord Chancellor of any person selected on reconsideration under this section.

(3) Sections 90 to 92 apply to such a person as if the Commission had selected him/her instead of making the decision reconsidered.

Article 94 – Duty to identify persons for future requests

(1) If the Lord Chancellor gives the Commission notice of a request he/she expects to make under Section 87 the Commission must:

- (a) seek to identify persons it considers would be suitable for selection on the request, and
- (b) submit a report to the Lord Chancellor containing any information it considers appropriate about:
 - (i) the extent to which it has identified suitable persons, and
 - (ii) other matters likely to assist the Lord Chancellor in exercising his/her functions relating to appointments and recommendations.

(2) For the purposes of subsection (1)(a) and (b)(ii), the Commission must in particular have regard to:

- (a) the number of recommendations and appointments the Lord Chancellor expects to request selections for;
- (b) the powers of the Lord Chancellor to reject or require reconsideration of a selection.

(3) As part of the process of identifying persons under subsection (1)(a), the Commission must consult:

- (a) the Lord Chief Justice, and
- (b) a person or persons, other than the Lord Chief Justice, with experience in the office or offices to which requests specified in the notice relate, or with other relevant experience.

(4) A report under subsection (1)(b) must:

- (a) state any recommendation made in consultation under subsection (3) by a person consulted;
- (b) give reasons in any case where the Commission has not followed such a recommendation.

(5) Where the Lord Chancellor makes a request for the purposes of which the Commission has identified persons under subsection (1)(a), the Commission must, in determining the selection process to be applied, consider whether selection should be from among those persons.

Supplementary Provisions about Selection

Article 95 – Withdrawal and modification of requests

(1) This Section applies to a request under Section 69, 78 or 87.

(2) The Lord Chancellor may withdraw or modify a request only as follows:

- (a) so far as a request relates to any recommendation or appointment to fill a vacancy, he/she may withdraw or modify it with the agreement of the Lord Chief Justice;
- (b) so far as a request relates to any recommendation or appointment otherwise than to fill a vacancy, he/she may withdraw or modify it after consulting the Lord Chief Justice;
- (c) he/she may withdraw a request as respects all recommendations or appointments to which it relates if, after consulting the Lord Chief Justice, he/she considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.

(3) If a request is withdrawn in part or modified, the Commission or selection panel may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request, except a selection already accepted.

(4) The Lord Chancellor may not withdraw a request under subsection (2)(c) if he/she has exercised any of his/her powers under Section 73(2), 82(2) or 90(2) in relation to a selection made pursuant to the request.

(5) Any withdrawal or modification of a request must be by notice in writing to the Commission.

(6) The notice must state whether the withdrawal or modification is under subsection (2)(a), (b) or (c).

(7) In the case of a withdrawal under subsection (2)(c), the notice must state why the Lord Chancellor considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.

(8) If or to the extent that a request is withdrawn:
 (a) the preceding provisions of this Part cease to apply in relation to it, and
 (b) any selection made on it is to be disregarded.

(9) Withdrawal of a request to any extent does not affect the power of the Lord Chancellor to make another request in the same or different terms.

Article 96 – Effect of acceptance of selection

(1) This Section applies where the Lord Chancellor accepts a selection under this Chapter.

(2) Subject to the following provisions of this section, the Lord Chancellor:

(a) must make the appointment, or recommendation, for which the selection has been made, and
 (b) must appoint, or recommend, the person selected.

(3) Before making the appointment or recommendation the Lord Chancellor may direct the Commission to make arrangements in accordance with the direction:

(a) for any assessment of the health of the person selected that the Lord Chancellor considers appropriate, and
 (b) for a report of the assessment to be made to the Lord Chancellor.

(4) Subsection (5) applies in any of the following circumstances:

(a) the Lord Chancellor notifies the Commission that he/she is not satisfied on the basis of a report under subsection (3)(b), having consulted the Lord Chief Justice, that the health of the person selected is satisfactory for the purposes of the appointment or recommendation;
 (b) the person selected declines to be appointed or recommended, or does not agree within a time specified to him/her for that purpose;
 (c) the person selected is otherwise not available within a reasonable time to be appointed or recommended.

(5) Where this subsection applies:

(a) the selection accepted and any previous selection for the same appointment or recommendation are to be disregarded;
 (b) the request pursuant to which the selection was made continues to have effect;

(c) any subsequent selection pursuant to that request may be made in accordance with the same or a different selection process.

...

Assistance in Connection with Other Appointments

Article 98 – Assistance in connection with other appointments

(1) The Commission must provide any assistance requested by the Lord Chancellor under this Section.

(2) The Lord Chancellor may request assistance for the making by him/her or by another Minister of the Crown of an appointment or recommendation for appointment, other than one to which Section 26 or a provision of this Part applies.

(3) The Lord Chancellor may only request assistance under this Section if it appears to him/her appropriate because of the Commission's other functions under this Part and the nature of the appointment concerned.

(4) Without limiting the assistance that may be requested, it may include:

(a) determining a selection process;
 (b) applying a selection process;
 (c) selecting a person;
 (d) selecting a short list;
 (e) advice on any of those matters.

(5) Before making a request the Lord Chancellor must consult:

(a) the Lord Chief Justice, and
 (b) the Commission.

(6) In this Section "appointment" includes the conferring of any public function.

(7) In this Part references to selection under this Part include references to selection by the Commission pursuant to a request under this Section (and references to a person selected under this Part are to be read accordingly).

Complaints and References

Article 99 – Complaints: interpretation

(1) This Section applies for the purposes of this Article.

(2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.

(3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or his/her department in connection with any of the following:

- (a) selection under this Part;
- (b) recommendation for or appointment to an office listed in Schedule 14.

(4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.

Article 100 – Complaints to the Commission or the Lord Chancellor

(1) The Commission must make arrangements for investigating any Commission complaint made to it.

(2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him/her.

(3) Arrangements under this Section need not apply to a complaint made more than 28 days after the matter complained of.

Article 101 – Complaints to the Ombudsman

(1) Subsections (2) and (3) apply to a complaint which the complainant:

- (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under Section 100, and
- (b) makes to the Ombudsman not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint.

(2) If the Ombudsman considers that investigation of the complaint is not necessary, he/she must inform the complainant.

(3) Otherwise he/she must investigate the complaint.

(4) The Ombudsman may investigate a complaint which the complainant:

- (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under Section 100, and
- (b) makes to the Ombudsman at any time.

(5) The Ombudsman may investigate a transferred complaint made to him/her, and no such complaint

may be made under the Judicial Appointments Order after the commencement of this Section.

(6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.

(7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of appointment procedures before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.

(8) Any complaint to the Ombudsman under this Section must be in a form approved by him/her.

Article 102 – Report and recommendations

(1) The Ombudsman must prepare a report on any complaint he/she has investigated under Section 101.

(2) The report must state:

- (a) what findings the Ombudsman has made;
- (b) whether he/she considers the complaint should be upheld in whole or part;
- (c) if he/she does, what if any action he/she recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint.

(3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.

(4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related.

Article 103 – Report procedure

(1) This Section applies to a report under Section 102.

(2) The Ombudsman must submit a draft of the report:

- (a) to the Lord Chancellor, and
- (b) if the complaint was a Commission complaint, to the Commission.

(3) In finalising the report the Ombudsman:

- (a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;
- (b) must include in the report a statement of any such proposal not given effect to.

(4) The report must be signed by the Ombudsman.

(5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.

(6) Otherwise the Ombudsman must send the report to the Lord Chancellor.

(7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information:

- (a) which relates to an identified or identifiable individual other than the complainant, and
- (b) whose disclosure by the Ombudsman to the complainant would (apart from this sub-Section) be contrary to Section 139.

Article 104 – References by the Lord Chancellor

(1) If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.

(2) The matter may relate to such procedures generally or in a particular case.

(3) The Ombudsman must report to the Lord Chancellor on any investigation under this Section.

(4) The report must state:

- (a) what findings the Ombudsman has made;
- (b) what if any action he/she recommends should be taken by any person in relation to the matter.

(5) The report must be signed by the Ombudsman.

Article 105 – Information

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he/she may reasonably require relating to the subject matter of any investigation by him/her under Section 101 or 104.

Miscellaneous

Article 106 – Consultation on appointment of lay justices

In Section 10 of the Courts Act 2003 (c. 39) (appointment of lay justices, etc.) after subsection (2) insert:

“(2A) The Lord Chancellor must ensure that arrangements for the exercise, so far as affecting any

local justice area, of functions under sub-Sections (1) and (2) include arrangements for consulting persons appearing to him/her to have special knowledge of matters relevant to the exercise of those functions in relation to that area.”

Article 107 – Disclosure of information to the Commission

(1) Information which is held by or on behalf of a permitted person (whether obtained before or after this Section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under this Article.

(2) A disclosure under this Section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(3) But nothing in this Section authorises the making of a disclosure:

- (a) which contravenes the Data Protection Act 1998 (c. 29), or
- (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).

(4) This Section does not affect a power to disclose which exists apart from this section.

(5) The following are permitted persons:

- (a) a chief officer of police of a police force in England and Wales;
- (b) a chief constable of a police force in Scotland;
- (c) the Chief Constable of the Police Service of Northern Ireland;
- (d) the Director General of the National Criminal Intelligence Service;
- (e) the Director General of the National Crime Squad;
- (f) the Commissioners of Inland Revenue;
- (g) the Commissioners of Customs and Excise.

(6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he/she considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

(7) Information must not be disclosed under this Section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.

(8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose):

(a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,

(b) in the case of the Commissioners of Customs and Excise, to a customs officer.

(9) For the purposes of this Section a customs officer is a person commissioned by the Commissioners of Customs and Excise under Section 6(3) of the Customs and Excise Management Act 1979 (c. 2).

Chapter 3 – Discipline

Disciplinary Powers

Article 108 – Disciplinary powers

(1) Any power of the Lord Chancellor to remove a person from an office listed in Schedule 14 is exercisable only after the Lord Chancellor has complied with prescribed procedures (as well as any other requirements to which the power is subject).

(2) The Lord Chief Justice may exercise any of the following powers but only with the agreement of the Lord Chancellor and only after complying with prescribed procedures.

(3) The Lord Chief Justice may give a judicial office holder formal advice, or a formal warning or reprimand, for disciplinary purposes (but this Section does not restrict what he/she may do informally or for other purposes or where any advice or warning is not addressed to a particular office holder).

(4) He/she may suspend a person from a judicial office for any period during which any of the following applies:

- (a) the person is subject to criminal proceedings;
- (b) the person is serving a sentence imposed in criminal proceedings;
- (c) the person has been convicted of an offence and is subject to prescribed procedures in relation to the conduct constituting the offence.

(5) He/she may suspend a person from a judicial office for any period if:

- (a) the person has been convicted of a criminal offence,
- (b) it has been determined under prescribed procedures that the person should not be removed from office, and
- (c) it appears to the Lord Chief Justice with the agreement of the Lord Chancellor that the suspension is necessary for maintaining confidence in the judiciary.

(6) He/she may suspend a person from office as a senior judge for any period during which the person is subject to proceedings for an Address.

(7) He/she may suspend the holder of an office listed in Schedule 14 for any period during which the person:

- (a) is under investigation for an offence, or
- (b) is subject to prescribed procedures.

(8) While a person is suspended under this Section from any office he/she may not perform any of the functions of the office (but his/her other rights as holder of the office are not affected).

Article 109 – Disciplinary powers: interpretation

(1) This Section has effect for the purposes of Section 108.

(2) A person is subject to criminal proceedings if in any part of the United Kingdom proceedings against him/her for an offence have been begun and have not come to an end, and the times when proceedings are begun and come to an end for the purposes of this subsection are such as may be prescribed.

(3) A person is subject to proceedings for an Address from the time when notice of a motion is given in each House of Parliament for an Address for the removal of the person from office, until the earliest of the following events:

- (a) either notice is withdrawn;
- (b) either motion is amended so that it is no longer a motion for an address for removal of the person from office;
- (c) either motion is withdrawn, lapses or is disagreed to;
- (d) where an Address is presented by each House, a message is brought to each House from Her Majesty in answer to the Address.

(4) “Judicial office” means:

- (a) office as a senior judge, or
 - (b) an office listed in Schedule 14;
- and “judicial office holder” means the holder of a judicial office.

(5) “Senior judge” means any of these:

- (a) Master of the Rolls;
- (b) President of the Queen’s Bench Division;
- (c) President of the Family Division;
- (d) Chancellor of the High Court;
- (e) Lord Justice of Appeal;
- (f) puisne judge of the High Court.

(6) “Sentence” includes any sentence other than a fine (and “serving” is to be read accordingly).

(7) The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of Section 108(4) or (7) are such as may be prescribed.

(8) “Under investigation for an offence” has such meaning as may be prescribed.

Applications for Review and References

Article 110 – Applications to the Ombudsman

(1) This Section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been:

- (a) a failure to comply with prescribed procedures, or
- (b) some other maladministration.

(2) The Ombudsman must carry out a review if the following three conditions are met.

(3) The first condition is that the Ombudsman considers that a review is necessary.

(4) The second condition is that:

- (a) the application is made within the permitted period,
- (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
- (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.

(5) The third condition is that the application is made in a form approved by the Ombudsman.

(6) But the Ombudsman may not review the merits of a decision made by any person.

(7) If any of the conditions in sub-Sections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman:

- (a) may not carry out a review, and
- (b) must inform the applicant accordingly.

(8) In this Section and Sections 111 to 113, “regulated disciplinary function” means any of the following:

- (a) any function of the Lord Chancellor that falls within Section 108(1);
- (b) any function conferred on the Lord Chief Justice by Section 108(3) to (7);
- (c) any function exercised under prescribed procedures in connection with a function falling within Paragraph (a) or (b).

(9) In this section, in relation to an application under this Section for a review of the exercise of a regulated disciplinary function:

* “interested party” means:

- (a) the judicial office holder in relation to whose conduct the function is exercised, or
 - (b) any person who has made a complaint about that conduct in accordance with prescribed procedures;
- * “permitted period” means the period of 28 days beginning with the latest of:
- (a) the failure or other maladministration alleged by the applicant;
 - (b) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;
 - (c) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.

(10) References in this Section and Section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

Article 111 – Review by the Ombudsman

(1) Where the Ombudsman is under a duty to carry out a review on an application under Section 110, he/she must:

- (a) on the basis of any findings he/she makes about the grounds for the application, decide to what extent the grounds are established;
- (b) decide what if any action to take under sub-Sections (2) to (7).

(2) If he/she decides that the grounds are established to any extent, he/she may make recommendations to the Lord Chancellor and Lord Chief Justice.

(3) A recommendation under subsection (2) may be for the payment of compensation.

(4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.

(5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he/she may set aside the determination.

(6) If a determination is set aside under subsection (5):

- (a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and

(b) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.

(7) Subsection (6) is subject to any direction given by the Ombudsman under this sub-Section:

(a) for a previous investigation or review to be taken into account to any extent, or

(b) for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again.

(8) This Section is subject to Section 112.

Article 112 – Reports on reviews

(1) In this Section references to the Ombudsman's response to an application are references to the findings and decisions referred to in Section 111(1).

(2) Before determining his/her response to an application the Ombudsman must prepare a draft of a report of the review carried out on the application.

(3) The draft report must state the Ombudsman's proposed response.

(4) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.

(5) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.

(6) The Ombudsman must produce a final report that sets out:

(a) the Ombudsman's response to the application, including any changes made to it to give effect to a proposal under subsection (5);

(b) a statement of any proposal under subsection (5) that is not given effect to.

(7) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.

(8) The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information:

(a) which relates to an identified or identifiable individual other than the applicant, and

(b) whose disclosure by the Ombudsman to the applicant would (apart from this sub-Section) be contrary to Section 139.

(9) Each copy must be signed by the Ombudsman.

(10) No part of the Ombudsman's response to an application has effect until he/she has complied with sub-Sections (2) to (9).

Article 113 – References to the Ombudsman relating to conduct

(1) The Ombudsman must investigate any matter referred to him/her by the Lord Chancellor or the Lord Chief Justice that relates to the exercise of one or more regulated disciplinary functions.

(2) A matter referred to the Ombudsman under subsection (1) may relate to the particular exercise of a regulated disciplinary function or to specified descriptions of the exercise of such functions.

Article 114 – Reports on references

(1) Where the Ombudsman carries out an investigation under Section 113 he/she must prepare a draft of a report of the investigation.

(2) If the investigation relates to a matter which is the subject of a review on an application under Section 110, sub-Section (1) applies only when the Ombudsman has sent a copy of the final report on that review to the Lord Chancellor, the Lord Chief Justice and the applicant.

(3) The draft report must state the Ombudsman's proposals as to:

(a) the findings he/she will make;

(b) any recommendations he/she will make for action to be taken by any person in relation to the matter subject to investigation.

(4) Those findings and recommendations are referred to in this Section as the Ombudsman's response on the investigation.

(5) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.

(6) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response on the investigation should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.

(7) The Ombudsman must produce a final report that sets out:

(a) the Ombudsman's response on the investigation, including any changes made to it to give effect to a proposal under subsection (6);

(b) a statement of any proposal under subsection (6) that is not given effect to.

(8) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.

(9) Each copy must be signed by the Ombudsman.

General

Article 115 – Regulations about procedures

The Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in:

- (a) the investigation and determination of allegations by any person of misconduct by judicial office holders;
- (b) reviews and investigations (including the making of applications or references) under Sections 110 to 112.

Article 116 – Contents of regulations

(1) Regulations under Section 115(a) may include provision as to any of the following:

- (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
- (b) steps to be taken by a complainant before a complaint is to be investigated;
- (c) the conduct of an investigation, including steps to be taken by the office holder under investigation or by a complainant or other person;
- (d) time-limits for taking any step and procedures for extending time-limits;
- (e) persons by whom an investigation or part of an investigation is to be conducted;
- (f) matters to be determined by the Lord Chief Justice, the Lord Chancellor, the office holder under investigation or any other person;
- (g) requirements as to records of investigations;
- (h) requirements as to confidentiality of communications or proceedings;
- (i) requirements as to the publication of information or its provision to any person.

(2) The regulations:

- (a) may require a decision as to the exercise of functions under Section 108, or functions mentioned in subsection (1) of that section, to be taken in accordance with findings made pursuant to prescribed procedures;

(b) may require that prescribed steps be taken by the Lord Chief Justice or the Lord Chancellor in exercising those functions or before exercising them.

(3) Where regulations under Section 115(a) impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint):

- (a) as may be prescribed by the regulations, or
- (b) as may be determined by the Lord Chief Justice and the Lord Chancellor or either of them in accordance with provisions so prescribed.

(4) Regulations under Section 115 may:

- (a) provide for any prescribed requirement not to apply if the Lord Chief Justice and the Lord Chancellor so agree;
- (b) make different provision for different purposes.

(5) Nothing in this Section limits the generality of Section 115.

Article 117 – Procedural rules

(1) Regulations under Section 115 may provide for provision of a prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor.

(2) But the provision that may be made by rules does not include:

- (a) provision within Section 116(2);
- (b) provision made for the purposes of Section 108(7) or (8) or 116(3).

(3) The rules are to be published in such manner as the Lord Chief Justice may determine with the agreement of the Lord Chancellor.

Article 118 – Extension of discipline provisions to other offices

(1) This Chapter applies in relation to an office designated by the Lord Chancellor under this Section as it would apply if the office were listed in Schedule 14.

(2) The Lord Chancellor may by order designate any office, not listed in Schedule 14, the holder of which he/she has power to remove from office.

(3) An order under this Section may be made only with the agreement of the Lord Chief Justice.

Article 119 – Delegation of functions

(1) The Lord Chief Justice may nominate a judicial office holder (as defined in Section 109(4)) to exercise any of his/her functions under the relevant sections.

(2) The relevant sections are:

- (a) Section 108(3) to (7);
- (b) Section 111(2);
- (c) Section 112;
- (d) Section 116(3)(b).

...

Part 6 – Other Provisions Relating to the Judiciary**Article 137 – Parliamentary disqualification**

(1) In Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (judicial offices disqualifying for membership) at the beginning insert: “Judge of the Supreme Court.”

(2) In Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (judicial offices disqualifying for membership) at the beginning insert: “Judge of the Supreme Court.”

(3) A member of the House of Lords is, while he/she holds any disqualifying judicial office, disqualified for sitting or voting in:

- (a) the House of Lords,
- (b) a committee of that House, or
- (c) a joint committee of both Houses.

(4) In subsection (3) “disqualifying judicial office” means any of the judicial offices specified in:

- (a) Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975, or
- (b) Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

(5) A member of the House of Lords who is disqualified under subsection (3) is not for that reason disqualified for receiving a writ of summons to attend that House, but any such writ is subject to that subsection.

Article 138 – Judicial Committee of the Privy Council

Schedule 16 contains amendments about the Judicial Committee of the Privy Council.

...

Schedule 8 – Supreme Court Selection Commissions**Part 1 – Membership****General Rules****Article 1**

(1) A selection commission consists of the following members:

- (a) the President of the Supreme Court;
- (b) the Deputy President of the Supreme Court;
- (c) one member of each of the following bodies:
 - (i) the Judicial Appointments Commission;
 - (ii) the Judicial Appointments Board for Scotland;
 - (iii) the Northern Ireland Judicial Appointments Commission.

(2) Sub-paragraph (1)(a) does not apply if:

- (a) the office of President is vacant, or
- (b) the President is disqualified under Paragraph 5.

(3) References in this Part of this Schedule to the President’s place on a selection commission being unfilled are references to a case falling within Paragraph (a) or (b) of sub-paragraph (2).

(4) Sub-paragraph (1)(b) does not apply if:

- (a) the office of Deputy President is vacant, or
- (b) the Deputy President is disqualified under Paragraph 5.

(5) References in this Part of this Schedule to the Deputy President’s place on a selection commission being unfilled are references to a case falling within Paragraph (a) or (b) of sub-paragraph (4).

Special rules where President’s or Deputy President’s place unfilled

Article 2

(1) This paragraph applies if one (but not both) of the following conditions is met:

- (a) the President’s place on a selection commission is unfilled;
- (b) the Deputy President’s place on a selection commission is unfilled.

(2) The unfilled place on the selection commission is to be taken by the most senior ordinary judge of the Supreme Court.

(3) If the unfilled place on the selection commission is not taken in accordance with sub-paragraph (2), the following are to be members of the commission instead:

- (a) the most senior judge of the courts of England and Wales, unless that jurisdiction is already represented;
- (b) the most senior judge of the courts of Scotland, unless that jurisdiction is already represented;
- (c) the most senior judge of the courts of Northern Ireland, unless that jurisdiction is already represented.

(4) For the purposes of this paragraph a jurisdiction is already represented if:

- (a) in a case where the President's place on the commission is unfilled, that jurisdiction is the home jurisdiction of the Deputy President;
- (b) in a case where the Deputy President's place on the commission is unfilled, that jurisdiction is the home jurisdiction of the President.

(5) Any person disqualified under Paragraph 5 is to be disregarded in determining the most senior judge for the purposes of any provision of this paragraph.

Article 3

(1) This paragraph applies if both of the following conditions are met:

- (a) the President's place on a selection commission is unfilled;
- (b) the Deputy President's place on a selection commission is unfilled.

(2) The unfilled places on the commission are to be taken by the following persons:

- (a) the most senior ordinary judge of the Supreme Court;
- (b) the second most senior ordinary judge.

(3) If neither of the unfilled places on the selection commission is taken in accordance with sub-paragraph (2), the following are to be members of the commission instead:

- (a) the most senior judge of the courts of England and Wales;
- (b) the most senior judge of the courts of Scotland;
- (c) the most senior judge of the courts of Northern Ireland.

(4) If only one of the unfilled places on the selection commission is taken in accordance with sub-paragraph (2), the following are also to be members of the commission:

- (a) the most senior judge of the courts of England and Wales, unless that jurisdiction is already represented;
- (b) the most senior judge of the courts of Scotland, unless that jurisdiction is already represented;

(c) the most senior judge of the courts of Northern Ireland, unless that jurisdiction is already represented.

(5) For the purposes of sub-paragraph (4) a jurisdiction is already represented if it is the home jurisdiction of the judge who has taken a place on the selection commission in accordance with sub-paragraph (2).

(6) Any person disqualified under Paragraph 5 is to be disregarded in determining the most senior or second most senior judge for the purposes of any provision of this paragraph.

Article 4

(1) The home jurisdiction of a judge of the Supreme Court is determined for the purposes of Paragraphs 2 and 3 in accordance with this paragraph.

(2) If the judge became, or first became, a member of the Supreme Court by virtue of Section 24, his/her home jurisdiction is:

- (a) the jurisdiction in which he/she held (or last held) any high judicial office by which he/she was qualified for appointment as a Lord of Appeal in Ordinary;
- (b) if he/she was qualified for that appointment only by a qualification listed in Section 6(a) to (c) of the Appellate Jurisdiction Act 1876 (c. 59), the jurisdiction in which he/she held that qualification;
- (c) if he/she held such a qualification in more than one jurisdiction, the jurisdiction with which he/she was, as the holder of such a qualification, most closely associated.

(3) Sub-paragraph (4) applies if the following conditions are met:

- (a) the judge became, or first became, a member of the Supreme Court by virtue of Sections 25 to 31;
- (b) he/she qualified for appointment, or first appointment, to the Supreme Court by virtue:
 - (i) only of Section 25(1)(a), or
 - (ii) of Section 25(1)(a) and (b).

(4) In such a case the judge's home jurisdiction is:

- (a) if he/she was qualified for appointment, or first appointment, by virtue of holding high judicial office in one jurisdiction, that jurisdiction;
- (b) if he/she was so qualified by virtue of holding high judicial office in more than one jurisdiction, the jurisdiction in which he/she was appointed to high judicial office most recently.

(5) Sub-paragraph (6) applies if the following conditions are met:

- (a) the judge became, or first became, a member of the Supreme Court by virtue of Sections 25 to 31;

(b) he/she qualified for appointment, or first appointment, to the Supreme Court by virtue only of Section 25(1)(b).

(6) In such a case the judge's home jurisdiction is:

(a) if he/she was qualified for appointment, or first appointment, by virtue of being a qualifying practitioner in one jurisdiction, that jurisdiction;

(b) if he/she was so qualified by virtue of being a qualifying practitioner in more than one jurisdiction, the jurisdiction with which he/she was, as a qualifying practitioner, most closely associated.

Disqualification

Article 5

(1) The President, the Deputy President, an ordinary judge of the Court or a territorial judge is disqualified for the purposes of membership of a selection commission if it appears to the Lord Chancellor that that person is for the time being incapacitated from serving as a member of that commission.

(2) The Deputy President is disqualified for the purposes of membership of a selection commission for the office of President unless he/she gives the Lord Chancellor notice that he/she is not willing to be appointed to the current vacancy.

(3) An ordinary judge of the Court is disqualified for the purposes of membership of a selection commission for the office of President or Deputy President unless he/she gives the Lord Chancellor notice that he/she is not willing to be appointed to the current vacancy.

(4) A territorial judge is disqualified for the purposes of membership of any selection commission unless he/she gives the Lord Chancellor notice that he/she is not willing to be appointed to the current vacancy.

Non-Judicial Members of Selection Commissions

Article 6

(1) This paragraph applies in relation to those persons who are to be members of a selection commission by virtue of Paragraph 1(1)(c).

(2) The Lord Chancellor must nominate one member of each Commission or Board referred to in that provision to be a member of the selection commission.

(3) At least one of the persons nominated under sub-paragraph (2) to be a member of the selection commission must be non-legally qualified.

(4) The Lord Chancellor may nominate a person under sub-paragraph (2) only on the recommendation of the Commission or Board of which the person is a member.

(5) The Lord Chancellor may, out of money provided by Parliament, pay to any person nominated under sub-paragraph (2) such allowances as the Lord Chancellor may determine.

(6) For the purposes of this paragraph a person is non-legally qualified if:

(a) he/she does not hold, and has never held, any of the offices listed in Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (judicial offices disqualifying for membership of the House of Commons), and

(b) he/she is not, and has never been, a practising lawyer.

(7) In sub-paragraph (6) "practising lawyer" has the same meaning as in Paragraph 6 of Schedule 12 to this Act.

Chairing of Selection Commissions

Article 7

A selection commission is to be chaired:

(a) by the President of the Supreme Court, or

(b) by the Deputy President of the Supreme Court, if the President is not a member of the commission, or

(c) by the senior judge of the Supreme Court who is a member of the commission, if neither the President nor the Deputy President is a member, or

(d) by the most senior of the territorial judges who are members of the commission, if no judges of the Supreme Court are members.

Interpretation

Article 8

In this Schedule:

(a) "selection commission for the office of President" means a selection commission convened in the case of a vacancy in the office of President;

(b) "selection commission for the office of Deputy President" means a selection commission convened in the case of a vacancy in the office of Deputy President;

(c) “selection commission for the office of judge” means a selection commission convened in the case of a vacancy among the ordinary judges;

(d) “current vacancy”, in relation to a selection commission, means the vacancy in relation to which that commission has been convened.

Article 9

(1) In this Part of this Schedule:

* “Judicial Appointments Board for Scotland” means the body of persons known collectively by that name (being persons appointed by the Scottish Ministers to carry out in Scotland functions corresponding to those of the Judicial Appointments Commission);

* “territorial judge”, in relation to a selection commission, means a judge of the courts of England and Wales, of Scotland or of Northern Ireland who is, or would be, a member of the commission by virtue of Paragraph 2(3), 3(3) or 3(4).

(2) For the purposes of this Part of this Schedule:

(a) the seniority of the judges of the Supreme Court is to be determined according to length of service as a judge of the Court (including for this purpose service over one or more periods);

(b) in relation to a selection commission, the seniority of the territorial judges is to be determined according to length of service in the office by virtue of which each is, or would be, a member of the commission (including for this purpose service over one or more periods).

(3) Service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for the purposes of sub-paragraph (2).

Part 2 – Dissolution

Article 10

A selection commission is dissolved if the Lord Chancellor notifies a selection made by the commission.

Article 11

(1) A selection commission is dissolved if:

(a) a member of the commission dies,

(b) a person nominated in accordance with Paragraph 6 resigns his/her membership of the commission, or

(c) the Lord Chancellor gives the commission notice that it appears to him/her that a member of the commission is incapacitated from continuing to serve as a member.

(2) Where sub-paragraph (1) applies, the Lord Chancellor must convene a new selection commission as soon as practicable after dissolution.

Article 12

(1) A selection commission is dissolved if:

(a) a person who is a member of that commission by virtue of holding judicial office ceases to hold that office,

(b) a person nominated in accordance with Paragraph 6 ceases to be a member of a Commission or Board referred to in Paragraph 1(1)(c), or

(c) every person nominated in accordance with Paragraph 6 who was non-legally qualified at the time of his/her nomination ceases to be non-legally qualified.

(2) Where sub-paragraph (1) applies, the Lord Chancellor must convene a new selection commission as soon as practicable after dissolution.

Part 3 – Duty to Convene Commission: Special Rules

Selection Commission for the Office of Deputy President

Article 13

(1) Any duty imposed on the Lord Chancellor under this Act to convene a selection commission for the office of Deputy President does not apply if any of the following conditions are met at the time when the Lord Chancellor should convene that commission:

(a) a selection commission for the office of President has been convened and not dissolved;

(b) the Lord Chancellor is under a duty to convene such a selection commission.

(2) Where sub-paragraph (1) applies, the Lord Chancellor must convene a selection commission for the office of Deputy President as soon as practicable after the Lord Chancellor notifies a selection made by a selection commission in respect of the vacancy in the office of President.

(3) Sub-paragraph (1) applies to the duty under sub-paragraph (2) to convene a commission as it applies to all other such duties.

Selection Commission for the Office of Judge

Article 14

(1) Any duty imposed on the Lord Chancellor under this Act to convene a selection commission for the office of judge does not apply if any of the following conditions are met at the time when the Lord Chancellor should convene that commission:

- (a) a selection commission for the office of President has been convened and not dissolved;
- (b) the Lord Chancellor is under a duty to convene such a selection commission;
- (c) a selection commission for the office of Deputy President has been convened and not dissolved;
- (d) the Lord Chancellor is under a duty to convene such a selection commission.

(2) Where sub-paragraph (1) applies, the Lord Chancellor must convene a selection commission for the office of judge as soon as practicable after the Lord Chancellor notifies a selection made by a selection commission in respect of the vacancy in the office of President or Deputy President.

(3) Sub-paragraph (1) applies to the duty under sub-paragraph (2) to convene a commission as it applies to all other such duties.

...

Schedule 12 – The Judicial Appointments Commission

Part 1 – The Commissioners

The Commissioners

Article 1

The Commission consists of:

- (a) a chairman, and
- (b) 14 other Commissioners, appointed by Her Majesty on the recommendation of the Lord Chancellor.

Article 2

(1) The chairman must be a lay member.

(2) Of the other Commissioners:

- (a) 5 must be judicial members,
- (b) 2 must be professional members,
- (c) 5 must be lay members,

- (d) 1 other must be the holder of an office listed in Part 3 of Schedule 14, and
- (e) 1 other must be a lay justice member.

(3) Of the Commissioners appointed as judicial members:

- (a) 1 must be a Lord Justice of Appeal;
- (b) 1 must be a puisne judge of the High Court;
- (c) 1 other must be either a Lord Justice of Appeal or a puisne judge of the High Court;
- (d) 1 must be a circuit judge;
- (e) 1 must be a district judge of a county court, a District Judge (Magistrates' Courts) or a person appointed to an office under Section 89 of the Supreme Court Act 1981 (c. 54).

(4) Of the Commissioners appointed as professional members:

- (a) 1 must be a practising barrister in England and Wales;
- (b) 1 must be a practising solicitor of the Senior Courts of England and Wales.

(5) A Commissioner is not to be taken into account for the purposes of any paragraph of sub-paragraph (2) unless he/she was appointed for the purposes of that paragraph.

Article 3

A person must not be appointed as a Commissioner if he/she is employed in the civil service of the State.

Article 4

(1) A judicial member is a person who holds an office listed in Paragraph 2(3) and who is not a practising lawyer.

(2) A professional member is a person who is:

- (a) a practising barrister in England and Wales, or
- (b) a practising solicitor of the Senior Courts of England and Wales.

(3) A lay member is a person resident in England or Wales who has never held a listed judicial office or been a practising lawyer.

(4) A lay justice member is a justice of the peace who:

- (a) holds no other listed judicial office, or no other except that of General Commissioner,
- (b) is not a practising barrister in England and Wales, and
- (c) is not a practising solicitor of the Senior Courts of England and Wales.

Article 5

(1) The Lord Chancellor may by order amend any of the following provisions by substituting a number for the number of Commissioners for the time being specified there:

- (a) Paragraph 1(b);
- (b) any paragraph of Paragraph 2(2);
- (c) any paragraph of Paragraph 2(3);
- (d) any paragraph of Paragraph 2(4).

(2) That is subject to the following:

- (a) the total of the numbers in Paragraph 2(2) must be the number in Paragraph 1(b);
- (b) the total of the numbers in Paragraph 2(3) must be the number in Paragraph 2(2)(a);
- (c) the total of the numbers in Paragraph 2(4) must be the number in Paragraph 2(2)(b);
- (d) the number substituted in any provision must not be less than the number specified in that provision as originally enacted.

(3) The Lord Chancellor may not make an order under this paragraph without the agreement of the Lord Chief Justice.

Article 6

(1) In this Schedule:

* “judicial member” has the meaning given by Paragraph 4(1);

* “lay member” has the meaning given by Paragraph 4(3);

* “listed judicial office” means an office listed in Schedule 14;

* “practising” is to be read in accordance with sub-Paragraphs (2) and (3);

* “practising lawyer” means:

- (a) a practising barrister in England and Wales;
- (b) a practising solicitor of the Senior Courts of England and Wales;
- (c) a practising advocate in Scotland;
- (d) a practising solicitor in Scotland;
- (e) a practising member of the Bar of Northern Ireland;
- (f) a practising solicitor of the Court of Judicature of Northern Ireland;

* “professional member” has the meaning given by Paragraph 4(2);

* “senior Head of Division” means:

- (a) the Master of the Rolls;
- (b) if that office is vacant, the President of the Queen’s Bench Division;
- (c) if both of those offices are vacant, the President of the Family Division;
- (d) if all of those offices are vacant, the Chancellor of the High Court.

(2) A barrister in England and Wales, an advocate in Scotland or a member of the Bar of Northern Ireland is practising if he/she is:

- (a) practising as such,
- (b) employed to give legal advice, or
- (c) providing legal advice under a contract for services.

(3) A solicitor of the Senior Courts of England and Wales, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland is practising if he/she is:

- (a) acting as such,
- (b) employed to give legal advice, or
- (c) providing legal advice under a contract for services.

Selection of commissioners

Article 7

(1) The Lord Chancellor may recommend a person for appointment as a Commissioner for the purposes of paragraph (a), (b) or (c) of Paragraph 2(3) only if:

- (a) he/she has requested the Judges’ Council to select a person to be appointed for the purposes of that paragraph;
- (b) the person has been selected by the Judges’ Council in accordance with that request, and
- (c) the requirements of sub-paragraph (7) have been complied with.

(2) The Lord Chancellor may recommend a person for appointment as a Commissioner for the purposes of Paragraph 1(a), any other paragraph of Paragraph 2(3), any paragraph of Paragraph 2(4) or any of paragraphs (c) to (e) of Paragraph 2(2) only if:

- (a) he/she has requested a panel appointed by him/her to select a person or (as the panel may determine) more than one person for the purposes of such a recommendation, and
- (b) the person he/she recommends is the person or one of the persons selected.

(3) Subject to sub-paragraph (1), the Lord Chancellor must recommend for appointment any person selected by the Judges’ Council.

(4) A request under this paragraph must specify the provision for the purposes of which the appointment is to be made.

(5) A request may specify the time within which a person is to be selected.

(6) The Lord Chancellor may appoint different panels for the purposes of different requests.

(7) A selection by the Judges' Council must be notified to the Lord Chancellor in a report which gives reasons for the selection.

(8) In this paragraph references to the Judges' Council are to be read as references to a body designated for the purposes of this Schedule by the Lord Chief Justice.

Panels

Article 8

(1) A panel appointed under Paragraph 7(2) must have four members (subject to sub-paragraph (7)).

(2) The first member must be a person selected by the Lord Chancellor with the agreement of the Lord Chief Justice (or, if the office of Lord Chief Justice is vacant, with the agreement of the senior Head of Division).

(3) That member is to be chairman of the panel.

(4) The second member must be the Lord Chief Justice or his/her nominee, unless the office of Lord Chief Justice is vacant.

(5) If that office is vacant, the second member must be the senior Head of Division or his/her nominee.

(6) The third member must be a person nominated by the first member.

(7) The chairman of the Commission must also be a member of the panel unless his/her office is vacant or is the office for which a recommendation is to be made.

(8) A person must not be a member of the panel if he/she is employed in the civil service of the State.

(9) A person must not be the first member if he/she is one of the following:

- (a) a Commissioner;
- (b) a member of the staff of the Commission;
- (c) a practising lawyer;
- (d) the holder of a listed judicial office;
- (e) a member of the House of Commons.

(10) A person must not be the third member if he/she is a member of the House of Commons.

(11) The Lord Chancellor before selecting a person to be appointed as the first member, and the Lord Chief Justice or Head of Division before agreeing to the selection, must consider these questions:

- (a) whether the person has exercised functions that appear to him/her to be of a judicial nature and such as to make the person inappropriate for the appointment;
- (b) whether any past service in a capacity listed in sub-paragraph (8) or (9) appears to him/her to make the person inappropriate for the appointment;
- (c) whether the extent of any present or past party political activity or affiliations appears to him/her to make the person inappropriate for the appointment.

(12) The first member must consider the same questions before nominating a person to be appointed as the third member.

Article 9

The Lord Chancellor may pay to a member of a panel appointed under Paragraph 7(2) such remuneration, fees or expenses as he/she may determine.

Selection by a Panel

Article 10

(1) This paragraph applies to selection by a panel appointed under Paragraph 7(2).

(2) Before selecting a person the panel must consider:

- (a) in the case of a selection for the purposes of Paragraph 2(4)(a), any views expressed by the General Council of the Bar;
- (b) in the case of a selection for the purposes of Paragraph 2(4)(b), any views expressed by the Law Society.

(3) Before selecting a person for appointment as the chairman or one of the other lay members, the panel must consider:

- (a) whether the person has exercised functions that appear to the panel to be of a judicial nature and such as to make the person inappropriate for the appointment;
- (b) whether any past service in a capacity listed in Paragraph 8(9) or as a person employed in the civil service of the State appears to the panel to make the person inappropriate for the appointment;
- (c) whether the extent of any present or past party political activity or affiliations appears to the panel to make the person inappropriate for the appointment.

(4) The panel must select persons for appointment as lay members (including the chairman) with a view to securing, so far as practicable, that the persons so appointed include at any time at least one who appears to the panel to have special knowledge of Wales.

Vice-Chairman

Article 11

(1) The Commissioner who is the most senior of the persons appointed as judicial members is vice-chairman of the Commission.

(2) For the purposes of sub-paragraph (1):

(a) seniority is by office held at the time (first Lord Justice of Appeal, then puisne judge, then circuit judge, then the offices mentioned in Paragraph 2(3)(e));

(b) between two holders of one of those offices, the person who has served longest in the office (over one or more periods) is the senior.

(3) In the absence of the chairman, the vice-chairman may exercise the chairman's functions other than under the following provisions:

(a) Paragraph 8(7);

(b) Section 71;

(c) Section 80.

Term of Office, etc. of Commissioners

Article 12

(1) A Commissioner must be appointed for a fixed period.

(2) But an appointment is subject to Paragraphs 13 to 15.

Article 13

A person:

(a) may not be appointed as a Commissioner for more than 5 years at a time, and

(b) may not hold office as a Commissioner for periods (whether or not consecutive) totalling more than 10 years.

Article 14

(1) A Commissioner:

(a) in the case of the chairman, ceases to be a Commissioner (and chairman) on ceasing to be a lay member;

(b) in the case of a judicial or professional member, ceases to be a Commissioner on the earlier of ceasing to be such a member, and ceasing to fall within the paragraph of Paragraph 2(3) or 2(4) for the purposes of which he/she was appointed;

(c) in any other case, ceases to be a Commissioner on ceasing to fall within the paragraph of Paragraph 2(2) for the purposes of which he/she was appointed.

(2) But if (before or after an event within Paragraph (a) or (b) of sub-paragraph (1)) the Lord Chancellor directs in a particular case that that paragraph is to be disregarded for a period specified in the direction, the person continues to be a Commissioner until the end of that period, subject to the terms of his/her appointment and the other provisions of this Schedule.

(4) A Commissioner ceases to be a Commissioner if he/she becomes employed in the civil service of the State.

Article 15

(1) A Commissioner may at any time:

(a) resign his/her office by notice in writing addressed to Her Majesty;

(b) be removed from office by Her Majesty on the recommendation of the Lord Chancellor.

(2) The Lord Chancellor may not under sub-paragraph (1) recommend that a Commissioner be removed from office unless he/she is satisfied that the Commissioner:

(a) has failed without reasonable excuse to discharge the functions of his/her office for a continuous period of at least six months,

(b) has been convicted of an offence,

(c) is an undischarged bankrupt, or

(d) is otherwise unfit to hold his/her office or unable to discharge its functions.

(3) A recommendation on the ground mentioned in sub-paragraph (2)(a) may not be made more than 3 months after the end of the period mentioned there.

Salary, Allowances and Expenses

Article 16

(1) The Commission may:

(a) pay to each Commissioner such remuneration, fees or expenses as the Lord Chancellor may determine;

(b) pay, or make provision for the payment of, such pension, allowance or gratuity as the Lord Chancellor may determine to or in respect of a person who is or has been a Commissioner.

(2) If:

(a) a person ceases to hold office as a Commissioner other than on the expiry of his/her term of appointment, and

(b) it appears to the Lord Chancellor that there are special circumstances that would warrant the payment of compensation to him/her, the Lord Chancellor may direct the Commission to make to or in respect of that person a payment of such amount as the Lord Chancellor may determine.

Code of Conduct

Article 17

The Lord Chancellor may issue and from time to time revise a code of conduct to be observed by the Commissioners.

Part 2 – The Commission

Status of the Commission and its Property

Article 18

(1) The Commission is not to be regarded:

(a) as the servant or agent of the Crown, or
(b) as enjoying any status, immunity or privilege of the Crown.

(2) The property of the Commission is not to be regarded as property of, or property held on behalf of, the Crown.

Powers

Article 19

(1) The Commission may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.

(2) But the Commission may not borrow money except with the agreement of the Lord Chancellor.

(3) Nothing in this Schedule is to be read as limiting the generality of sub-paragraph (1).

Committees

Article 20

(1) The Commission may establish committees.

(2) A committee of the Commission may establish sub-committees.

(3) A person may not be a member of a committee or sub-committee unless he/she is a Commissioner.

(4) The Commission may delegate functions to a committee, and a committee may delegate functions (including functions delegated to them) to a sub-committee.

(5) The function of making a selection under this Part of this Act may be delegated only to a committee or sub-committee whose members include at least one judicial member and one lay member.

(6) In sub-paragraphs (2) to (5) references to a committee do not include references to a selection panel appointed under Section 70 or 79.

Procedure and Proceedings

Article 21

(1) The Commission may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum.

(2) But the quorum of a committee or sub-committee to which the Commission's function of making a selection under this Part of this Act has been delegated must not be less than 3.

(3) The validity of proceedings of the Commission or a committee or sub-committee is not affected by:

(a) a vacancy among the members, or
(b) a defect in the appointment of a member.

Staff

Article 22

(1) The Commission:

(a) must appoint a chief executive, and
(b) may appoint such other staff as it considers necessary to assist in the performance of its functions.

(2) The Commission must not appoint a person as chief executive unless the Lord Chancellor approves the appointment.

(3) Staff are to be:

(a) appointed on terms and conditions determined by the Commission, and approved by the Lord Chancellor, and

(b) paid by the Commission in accordance with provision made by or under the terms of appointment.

(4) In determining the terms and conditions the Commission must have regard to the desirability of keeping remuneration and the other terms and conditions broadly in line with those applying to employment in the civil service of the State.

(5) In Schedule 1 to the Superannuation Act 1972 (c. 11) (kinds of employment to which a scheme under Section 1 of the Act may apply), at the end of the list of "Royal Commissions and other Commissions" insert:
"Judicial Appointments Commission."

(6) The Commission must pay to the Minister for the Civil Service, at such times as he/she may direct, such sums as he/she may determine in respect of any increase attributable to sub-paragraph (5) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

(7) Staff of the Commission are not to be regarded as:

(a) servants or agents of the Crown, or

(b) enjoying any status, immunity or privilege of the Crown.

Arrangements for Assistance

Article 23

(1) The Commission may make arrangements with such persons as it considers appropriate for assistance to be provided to it.

(2) Arrangements may include the paying of fees to such persons.

(3) No arrangements may be made under this paragraph unless approved by the Lord Chancellor.

Appointments and Arrangements by the Lord Chancellor

Article 24

(1) The Lord Chancellor may appoint a person to serve as chief executive until the first appointment under Paragraph 22(1)(a) takes effect.

(2) A chief executive serving under sub-paragraph (1) may incur expenditure and do other things (including appointing staff and making arrangements for assistance under Paragraph 23) in the name and on behalf of the Commission:

(a) before the membership of the Commission is first constituted in accordance with Paragraph 1, and

(b) thereafter, until the Commission determines otherwise.

(3) A chief executive's powers under sub-paragraph (2) are exercisable subject to any directions given to him/her by the Lord Chancellor.

Article 25

(1) The Lord Chancellor may:

(a) appoint persons to serve as members of the Commission's staff;

(b) make arrangements in the name and on behalf of the Commission for other assistance to be provided to the Commission.

(2) The Lord Chancellor may not exercise his/her powers under sub-paragraph (1) later than:

(a) the end of 3 years after the day on which the Commission is first constituted in accordance with Paragraph 1, or

(b) such earlier time as the Commission may determine.

(3) If there is a chief executive of the Commission the Lord Chancellor may not exercise his/her powers under sub-paragraph (1) without the agreement of the chief executive.

Power to Transfer Staff to Employment of the Commission

Article 26

(1) The Lord Chancellor may by regulations provide for the employment of any relevant person to be transferred to the Commission.

(2) A relevant person is any person who, immediately before the date prescribed in regulations under sub-paragraph (1), is:

- (a) employed in the civil service of the State, and
- (b) providing assistance to the Commission in pursuance of arrangements made under Paragraph 23 or 25.

(3) But a person is not a relevant person if:

- (a) his/her employment in the civil service ends on the day immediately before the date referred to in sub-paragraph (2), or
- (b) he/she is withdrawn from work with the Commission with effect from that date.

(4) Before making any regulations under this paragraph the Lord Chancellor must consult such organisations as appear to him/her to represent the interests of persons likely to be affected by the regulations.

(5) The Lord Chancellor may only exercise his/her power under sub-paragraph (1):

- (a) before the membership of the Commission is first constituted in accordance with paragraph 1, and
- (b) with the agreement of the Commission, during the period of 3 years beginning with the day on which the Commission is first constituted in accordance with that paragraph.

Delegation

Article 27

(1) The Commission may delegate functions to:

- (a) any of its staff,
- (b) any person with whom arrangements are made under paragraph 23 or 25, or
- (c) any person providing assistance to the Commission in pursuance of such arrangements.

(2) A committee, a sub-committee or the chief executive may delegate functions (including functions delegated to them or him/her) to any of the persons listed at sub-paragraph (1).

(3) Sub-paragraphs (1) and (2) do not apply to the functions of the Commission, or of a selection panel appointed under Section 70 or 79, of making a selection under this Part of this Act.

Delegation and Contracting out of Superannuation Functions

Article 28

(1) Section 1(2) of the Superannuation Act 1972 (c. 11) (delegation of functions relating to civil service superannuation schemes by Minister for the Civil Service to another officer of the Crown, etc.) has effect as if the reference to an officer of the Crown other than a Minister included a reference to the Commission's chief executive.

(2) Any administration function conferred on the chief executive under Section 1(2) of that Act (in accordance with sub-paragraph (1)) may be exercised by, or by employees of, any person authorised by the chief executive.

(3) "Administration function" means a function of administering schemes:

- (a) made under Section 1 of that Act, and
- (b) from time to time in force.

(4) The chief executive may, under sub-paragraph (2), authorise a person to exercise administrative functions:

- (a) to their full extent or to a specified extent;
- (b) in all cases or in specified cases;
- (c) unconditionally or subject to specified conditions.

(5) An authorisation under sub-paragraph (2):

- (a) is to be treated for all purposes as given by virtue of an order under Section 69 of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out of functions of Ministers and office-holders);
- (b) may be revoked at any time by the Commission or the chief executive.

Inspection of Documents

Article 29

(1) The Commission must permit any person authorised by the Lord Chancellor to inspect or make copies of accounts or other documents which in the opinion of the Lord Chancellor relate to costs and expenditure of the Commission.

(2) The Commission must provide such explanation of accounts or documents inspected or copied by any person under this paragraph as that person or the Lord Chancellor may require.

Financial Provisions and Directions

Article 30

(1) The Lord Chancellor must pay to the Commission such sums as he/she may determine are appropriate for, or in connection with, the exercise by it of its functions.

(2) The Lord Chancellor may by direction require the Commission:

- (a) not to incur costs and expenditure in excess of a specified amount without his/her consent;
- (b) to follow specified procedures in relation to its costs and expenditure.

(3) A direction under sub-paragraph (2) may relate to all of the Commission's costs and expenditure, or to costs and expenditure of a specified description.

Accounts and Audit

Article 31

(1) The Commission must keep proper accounts and proper records in relation to them.

(2) The Commission must prepare a statement of accounts in respect of each financial year.

(3) The statement must give a true and fair view of the state of the Commission's affairs at the end of the financial year, and of its income and expenditure and cash flows in the financial year.

(4) The statement must be in compliance with any directions given by the Lord Chancellor with the Treasury's consent as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.

(5) The Commission must send the statement to the Lord Chancellor at such time as he/she may direct.

(6) The Lord Chancellor must, on or before 31 August in any year, send to the Comptroller and Auditor General the statement prepared by the Commission for the financial year last ended.

(7) The Comptroller and Auditor General must examine, certify and report on the statement sent to him/her under sub-paragraph (6) and must lay copies of it and of his/her report before each House of Parliament.

Reports

Article 32

(1) The Commission must, as soon as practicable after the end of each financial year, provide to the Lord Chancellor a report about the performance of its functions during that year.

(2) After consulting the Lord Chief Justice, the Lord Chancellor may by direction require the Commission to deal, in reports or a particular report under sub-paragraph (1), with matters specified in the direction.

(3) The Commission must, as soon as practicable after a direction by the Lord Chancellor under this sub-paragraph, provide to the Lord Chancellor a report about any matter or matters specified in the direction.

(4) The Lord Chancellor must lay before each House of Parliament a copy of any report provided to him/her under sub-paragraph (1).

(5) The Commission must publish any report once copies of it have been laid under sub-paragraph (4).

Documentary Evidence

Article 33

The application of the seal of the Commission is to be authenticated by the signature of any Commissioner or member of staff of the Commission who has been authorised (whether generally or specifically) for the purpose.

Article 34

Any contract or instrument which, if entered into or executed by an individual, would not need to be under seal, may be entered into or executed on behalf of the Commission by any person who has been authorised (whether generally or specifically) for the purpose.

Article 35

A document purporting to be:

- (a) duly executed under the seal of the Commission, or
 - (b) signed on behalf of the Commission,
- is to be received in evidence and, unless the contrary is proved, taken to be executed or signed in that way.

General

Article 36

(1) "Financial year" in this Schedule, means:

- (a) the period beginning with the date on which Section 61 comes into force and ending with the following 31 March, and
- (b) each successive period of twelve months.

(2) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate place insert:

"The Judicial Appointments Commission."

(3) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices which are public authorities) at the appropriate place insert:

"The Judicial Appointments Commission."

Schedule 13 – The Judicial Appointments and Conduct Ombudsman

The Ombudsman

Article 1

(1) The Ombudsman is appointed by Her Majesty on the recommendation of the Lord Chancellor.

(2) A person must not be appointed as the Ombudsman if he/she is employed in the civil service of the State or if he/she has ever been any of these:

- (a) a practising barrister in England and Wales;
- (b) a practising solicitor of the Senior Courts of England and Wales;
- (c) a practising advocate in Scotland;
- (d) a practising solicitor in Scotland;
- (e) a practising member of the Bar of Northern Ireland;
- (f) a practising solicitor of the Court of Judicature of Northern Ireland;
- (g) the holder of an office listed in Schedule 14.

(3) Before recommending a person for appointment as the Ombudsman the Lord Chancellor must consider:

- (a) whether the person has exercised functions that appear to the Lord Chancellor to be of a judicial nature and such as to make the person inappropriate for the appointment;
- (b) whether any past service in a capacity mentioned in sub-paragraph (4) appears to the Lord Chancellor to make the person inappropriate for the appointment;

(c) whether the extent of any present or past party political activity or affiliations appears to the Lord Chancellor to make the person inappropriate for the appointment.

(4) The service referred to in sub-paragraph (3)(b) is service as any of these:

- (a) a Commissioner;
- (b) a member of the staff of the Commission;
- (c) a member of the House of Commons;
- (d) a person employed in the civil service of the State.

Article 2

(1) In this Schedule "practising" is to be read in accordance with sub-paragraphs (2) and (3).

(2) A barrister in England and Wales, an advocate in Scotland or a member of the Bar of Northern Ireland is practising if he/she is:

- (a) practising as such,
- (b) employed to give legal advice, or
- (c) providing legal advice under a contract for services.

(3) A solicitor of the Senior Courts, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland is practising if he/she is:

- (a) acting as such,
- (b) employed to give legal advice, or
- (c) providing legal advice under a contract for services.

Term of office, etc. of Ombudsman

Article 3

(1) The Ombudsman must be appointed for a fixed period.

(2) But an appointment is subject to Paragraphs 4 and 5.

Article 4

1) A person:

- (a) may not be appointed as the Ombudsman for more than 5 years at a time, and
- (b) may not hold office as the Ombudsman for periods (whether or not consecutive) totalling more than 10 years.

Article 5

(1) The Ombudsman may at any time:

- (a) resign his/her office by notice in writing addressed to Her Majesty;

(b) be removed from office by the Lord Chancellor.

(2) The Lord Chancellor may not remove the Ombudsman from office unless he/she is satisfied that the Ombudsman:

- (a) has become disqualified for appointment under Paragraph 1(2),
- (b) has ceased to be appropriate for the appointment because of considerations listed in Paragraph 1(3),
- (c) has, within the preceding nine months, failed to discharge the functions of his/her office for a continuous period of at least six months,
- (d) has been convicted of an offence,
- (e) is an undischarged bankrupt, or
- (f) is otherwise unfit to hold his/her office or unable to discharge its functions.

Salary, Allowances and Expenses

Article 6

(1) The Lord Chancellor may:

- (a) pay to the Ombudsman such remuneration, fees or expenses as the Lord Chancellor may determine;
- (b) pay, or make provision for the payment of, such pension, allowance or gratuity as the Lord Chancellor may determine to or in respect of a person who is or has been the Ombudsman.

(2) If:

- (a) the Ombudsman ceases to hold office other than on the expiry of his/her term of appointment, and
- (b) it appears to the Lord Chancellor that there are special circumstances that would warrant the payment of compensation to him/her, the Lord Chancellor may make to or in respect of him/her a payment of such amount as the Lord Chancellor may determine.

Acting Ombudsman

Article 7

(1) The Lord Chancellor may appoint a person to exercise the functions of the Ombudsman if:

- (a) the Ombudsman's office becomes vacant,
- (b) the Lord Chancellor determines that the Ombudsman is incapable of exercising his/her functions, or
- (c) the Ombudsman notifies the Lord Chancellor that it would be inappropriate for him/her to exercise any of his/her functions in connection with a particular matter because of a possible conflict of interests or for any other reason.

(2) But a person may be appointed under this paragraph only if he/she is eligible under Paragraph 1(2) to be appointed as Ombudsman.

(3) The Lord Chancellor may:

- (a) pay to a person appointed under this paragraph such remuneration, fees or expenses as the Lord Chancellor may determine;
- (b) pay, or make provision for the payment of, such pension, allowance or gratuity as the Lord Chancellor may determine to or in respect of a person who is or has been a person appointed under this paragraph.

(4) A person appointed under this paragraph is to exercise the functions of the Ombudsman in accordance with the terms of his/her appointment.

(5) The Lord Chancellor may end an appointment under this paragraph at any time.

(6) Otherwise any appointment of a person under this paragraph ends on the earliest of:

- (a) that person's ceasing to be eligible to be appointed as Ombudsman;
- (b) the expiry of the appointment in accordance with its terms and conditions;
- (c) the date on which with the agreement of the Lord Chancellor the Ombudsman resumes the exercise of his/her functions;
- (d) the appointment of a new Ombudsman;
- (e) the end of twelve months beginning with the relevant date.

(7) The relevant date is:

- (a) if the appointment was under sub-paragraph (1)(a), the date when the vacancy arose;
- (b) if the appointment was under sub-paragraph (1)(b), the date of the Lord Chancellor's determination;
- (c) if the appointment was under sub-paragraph (1)(c), the date of the notification.

Status of the Ombudsman

Article 8

The person for the time being holding the office of the Ombudsman is by the name of that office a corporation sole.

Powers of the Ombudsman

Article 9

(1) The Ombudsman does not have power to do any of the following:

- (a) to borrow money;
- (b) to hold real property;
- (c) to appoint staff (except by way of arrangements under Paragraph 10).

(2) Subject to sub-paragraph (1), the Ombudsman may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of his/her functions.

(3) Nothing in this Schedule is to be read as limiting the generality of sub-paragraph (2).

Arrangements for Assistance

Article 10

(1) The Ombudsman may make arrangements with such persons as he/she considers appropriate for assistance to be provided to him/her.

(2) Arrangements may include the paying of fees to such persons.

(3) No arrangements may be made under this paragraph unless approved by the Lord Chancellor.

Arrangements by the Lord Chancellor

Article 11

Unless the Ombudsman has made arrangements under Paragraph 10, the Lord Chancellor may make arrangements for assistance to be provided to the Ombudsman.

Delegation of Functions

Article 12

(1) The Ombudsman may delegate any functions to:

- (a) any person with whom arrangements are made under paragraph 10 or 11, or
- (b) any person providing assistance to the Ombudsman in pursuance of such arrangements.

(2) But all recommendations and reports prepared by or on behalf of the Ombudsman must be signed by him/her.

Financial Provisions and Directions

Article 13

(1) Expenditure incurred by the Ombudsman in the discharge of his/her functions is to be met by the Lord Chancellor.

(2) The Lord Chancellor may by direction require the Ombudsman:

- (a) not to incur costs and expenditure in excess of a specified amount without his/her consent;
- (b) to follow specified procedures in relation to his costs and expenditure.

(3) A direction under sub-paragraph (2) may relate to all of the Ombudsman's costs and expenditure, or to costs and expenditure of a specified description.

Code of Conduct

Article 14

The Lord Chancellor may issue and from time to time revise a code of conduct to be observed by the Ombudsman and any person appointed under Paragraph 7 to exercise his/her functions.

Reports

Article 15

(1) The Ombudsman must, as soon as practicable after the end of each financial year, provide to the Lord Chancellor a report about the performance of his/her functions during that year.

(2) The Lord Chancellor may by direction require the Ombudsman to deal, in reports or a particular report under sub-paragraph (1), with matters specified in the direction.

(3) The Ombudsman must, as soon as practicable after a direction by the Lord Chancellor under this sub-paragraph, provide to the Lord Chancellor a report about any matter or matters specified in the direction.

(4) The Lord Chancellor must lay before each House of Parliament a copy of any report provided to him/her under sub-paragraph (1).

Judge Advocate General
Section 29 of the Courts-Martial (Appeals) Act 1951 (c. 46)

(5) The Ombudsman must publish any report once copies of it have been laid under sub-paragraph (4).

Common Serjeant
Section 12(1) of the City of London (Courts) Act 1964 (c. iv)

Documentary Evidence

Article 16

A document purporting to be an instrument issued by the Ombudsman and to be signed by or on behalf of the Ombudsman is to be received in evidence and, unless the contrary is proved, taken to be such an instrument and signed in that way.

Circuit judge
Section 16(1) of the Courts Act 1971 (c. 23)

Recorder
Section 21(1) of the Courts Act 1971

Non-judicial member of the Restrictive Practices Court
Section 3(1) of the Restrictive Practices Court Act 1976 (c. 33)

General

Article 17

(1) "Financial year" in this Schedule, means:

(a) the period beginning with the date on which Section 62 comes into force and ending with the following 31 March, and

(b) each successive period of twelve months.

(2) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices) at the appropriate place insert:

"The Judicial Appointments and Conduct Ombudsman."

(3) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices which are public authorities) at the appropriate place insert:

"The Judicial Appointments and Conduct Ombudsman."

Master, Queen's Bench Division
Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals
Admiralty Registrar
Master, Chancery Division Registrar in Bankruptcy of the High Court
Taxing Master of the Senior Courts
District judge of the principal registry of the Family Division
Master of the Court of Protection
Section 89(1) of the Supreme Court Act 1981

Senior Master of the Queen's Bench Division
Chief Chancery Master
Chief Taxing Master
Chief Bankruptcy Registrar
Senior District Judge of the Family Division
Section 89(3) of the Supreme Court Act 1981 (c. 54) (c. 54)

District judge
Section 6(1) of the County Courts Act 1984 (c. 28)

Schedule 14 – The Judicial Appointments Commission: Relevant Offices and Enactments

Chief Child Support Commissioner
Child Support Commissioner
Section 22(1) of the Child Support Act 1991 (c. 48)

Part 1 – Appointments by Her Majesty

Member of the Employment Appeal Tribunal
Section 22(1)(c) of the Employment Tribunals Act 1996 (c. 17)

Office

Enactment

Judge Advocate of Her Majesty's Fleet
Section 28(1) of the Courts-Martial (Appeals) Act 1951 (c. 46)

District Judge (Magistrates' Courts)
Section 10A(1) of the Justices of the Peace Act 1997 (c. 25)

Senior District Judge (Chief Magistrate)
Deputy Senior District Judge (Chief Magistrate)
Section 10A(2) of the Justices of the Peace Act 1997

Chief Social Security Commissioner
Social Security Commissioner
Paragraph 1(1) of Schedule 4 to the Social Security Act 1998 (c. 14)

District Judge (Magistrates' Courts)
Section 22(1) of the Courts Act 2003 (c. 39)

Senior District Judge (Chief Magistrate)
Deputy Senior District Judge (Chief Magistrate)
Section 23 of the Courts Act 2003 (c. 39)

Part 2 – Appointments by the Lord Chancellor: Offices to which Paragraph 2(2)(D) of Schedule 12 does not apply

Office

Enactment

Vice Judge Advocate General
Assistant Judge Advocate General
Section 30(1) of the Courts-Martial (Appeals) Act 1951 (c. 46)

Person appointed temporarily to assist the Judge Advocate General
Section 30(2) of the Courts-Martial (Appeals) Act 1951

Judge of the Courts-Martial Appeal Court
Section 2(2) of the Courts-Martial (Appeals) Act 1968 (c. 20)

General Commissioner for a division in England and Wales
Section 2 of the Taxes Management Act 1970 (c. 9)

Assistant recorder
Section 24(1) of the Courts Act 1971 (c. 23)

Deputy district judge in a district registry of the High Court
Section 102(1) of the Supreme Court Act 1981 (c. 54)

Deputy district judge for a county court district
Section 8(1) of the County Courts Act 1984 (c. 28)

Justice of the peace
Section 5 of the Justices of the Peace Act 1997 (c. 25)

Deputy District Judge (Magistrates' Courts)
Section 10B(1) of the Justices of the Peace Act 1997 (c. 25)

Justice of the peace who is not a District Judge (Magistrates' Courts)
Section 10(1) of the Courts Act 2003 (c. 39)

Deputy District Judge (Magistrates' Courts)
Section 24(1) of the Courts Act 2003

Part 3 – Appointments by the Lord Chancellor: Offices to which Paragraph 2(2)(d) of Schedule 12 applies

Office

Enactment

Member of pensions appeal tribunal
Paragraphs 2 and 3 of the Schedule to the War Pensions (Administrative Provisions) Act 1919 (c. 53)

Member of the Shipping Claims Tribunal
President of the Shipping Claims Tribunal
Section 8(1) of the Compensation (Defence) Act 1939 (c. 75)

Member of panel
Section 109(1)(a) of the London Building Acts (Amendment) Act 1939 (c.xcvii)

Deputy member of panel
Section 109(1)(h) of the London Building Acts (Amendment) Act 1939

Member of a Pensions Appeal Tribunal
Paragraph 2(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39)

President of Pensions Appeal Tribunals
Deputy President of Pensions Appeal Tribunals
Paragraph 2B of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39)

Member of panel of persons to act as arbitrators
Chairman of panel of persons to act as arbitrators
Deputy chairman of panel of persons to act as arbitrators
Section 61(1) of the Coal Industry Nationalisation Act 1946 (c. 59)

Chairman of an Agricultural Land Tribunal
Paragraph 13(1) of Schedule 9 to the Agriculture Act

Member of panel of deputy-chairmen of Agricultural Land Tribunal Paragraph 14(1) of Schedule 9 to the Agriculture Act 1947	1986 (Modifications in Schedule 4 to the Transport Act 1968) Order 1986 (S.I. 1986/1801)
Member of panel Paragraph 15(1) of Schedule 9 to the Agriculture Act 1947 (c. 48)	Special Commissioner Presiding Special Commissioner Section 4(1) of the Taxes Management Act 1970 (c. 9)
President of the Lands Tribunal Member of the Lands Tribunal Section 2(1) of the Lands Tribunal Act 1949 (c. 42)	Deputy Special Commissioner Section 4A(1) of the Taxes Management Act 1970
First of the three arbitration committee members Section 7(6) of the National Health Service (Amendment) Act 1949 (c. 93)	Chairman of a tribunal Paragraph 1(1)(a) of Schedule 3 to the Misuse of Drugs Act 1971 (c. 38)
Arbitrator Section 18(3) of the National Parks and Access to the Countryside Act 1949 (c. 97)	President of tribunal established by the Secretary of State Paragraph 4(a) of Schedule 3 to the Industry Act 1975 (c. 68)
Chairman of the Foreign Compensation Commission Section 1(1) of the Foreign Compensation Act 1950 (c. 12)	President of the Aircraft and Shipbuilding Industries Arbitration Tribunal Section 42(3)(a) of the Aircraft and Shipbuilding Industries Act 1977 (c. 3)
Arbitrator Paragraph 3(4) of Schedule 6 to the Transport Act 1962 (c. 46)	Member of panel Paragraph 2(a) of Schedule 10 to the Rent Act 1977 (c. 42)
Chairman of a Levy Appeal Tribunal Section 29(2)(a) of the Betting, Gaming and Lotteries Act 1963 (c. 2)	President of the Family Health Services Appeal Authority Deputy President of the Family Health Services Appeal Authority
Commons Commissioner Chief Commons Commissioner Section 17(1) of the Commons Registration Act 1965 (c. 64)	Member of the Family Health Services Appeal Authority Paragraph 1 of Schedule 9A to the National Health Service Act 1977 (c. 49)
Substitute Chief Commons Commissioner Section 17(3) of the Commons Registration Act 1965	Arbitrator Paragraph 12(3) of Schedule 2 to the British Telecommunications Act 1981 (c. 38)
Arbitrator Section 15A(3) of the Countryside Act 1968 (c. 41)	Arbitrator Section 28N(3) of the Wildlife and Countryside Act 1981 (c. 69)
Arbitrator Paragraph 13(3) of Schedule 4 to the Transport Act 1968 (c. 73)	Arbitrator Section 66(4)(a) of the Transport Act 1982 (c. 49)
Arbitrator Paragraph 10(3) of Schedule 4 to the Transport Act 1968 as set out in Schedule 2 to the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) Order 1985 (S.I. 1985/1903)	Member of the Mental Health Review Tribunal Paragraph 1 of Schedule 2 to the Mental Health Act 1983 (c. 20)
Arbitrator Paragraph 10(3) of Schedule 4 to the Transport Act 1968 as set out in Schedule 2 to the Airports Act	Chairman of the Mental Health Review Tribunal Paragraph 3 of Schedule 2 to the Mental Health Act 1983

Arbitrator
Paragraph 2(5) of Schedule 1 to the Ordnance
Factories and Military Services Act 1984 (c. 59)

Member of panel
Paragraph 2(1)(a) of Schedule 2 to the Reserve
Forces (Safeguard of Employment) Act 1985 (c. 17)

President of the Transport Tribunal
Chairman of the Transport Tribunal
Paragraph 2(1)(a) of Schedule 4 to the Transport Act
1985 (c. 67)

Member of Insolvency Practitioners Tribunal panel
Paragraph 1(1)(a) of Schedule 7 to the Insolvency Act
1986 (c. 45)

Member of panel constituted for the purposes of
Schedule 11
Paragraph 1(5) of Schedule 11 to the Agricultural
Holdings Act 1986 (c. 5)

Chairman of Section 706 tribunal

Member of Section 706 tribunal
Section 706(1) of the Income and Corporation Taxes
Act 1988 (c. 1)

Arbitrator
Paragraph 9(4) of Schedule 10 to the Education
Reform Act 1988 (c. 40)

Chairman of the Copyright Tribunal
Deputy chairman of the Copyright Tribunal
Section 145(2) of the Copyright, Designs and Patents
Act 1988 (c. 48)

Arbitrator
Paragraph 9(2)(a) of Schedule 10 to the Electricity
Act 1989 (c. 29)

Arbitrator
Schedule 9, Paragraph 5(5)(a), of the Broadcasting
Act 1990 (c. 42)

Deputy Child Support Commissioner
Paragraph 4(1) of Schedule 4 to the Child Support
Act 1991 (c. 48)

Arbitrator
Paragraph 11(5) of Schedule 2 to the Ports Act 1991
(c. 52)

Member of panel
Section 31(1) of the Land Drainage Act 1991 (c. 59)

Arbitrator
Paragraph 7(4) of Schedule 5 to the Further and
Higher Education Act 1992 (c. 13)

Member of panel
Section 6(1) of the Tribunals and Inquiries Act 1992
(c. 53)

Member of tribunal for the purposes of Section 150 of
the Mines and Quarries Act 1954 (c. 70)

Chairman of tribunal for the purposes of Section 150
of the Mines and Quarries Act 1954
Section 6(5) of the Tribunals and Inquiries Act 1992

Arbitrator
Paragraph 8(6)(a) of Schedule 2 to the Coal Industry
Act 1994 (c. 21)

President of VAT tribunals
Paragraph 2(2) of Schedule 12 to the Value Added
Tax Act 1994 (c. 23)

Member of panel of chairmen
Paragraph 7(3)(a) of Schedule 12 to the Value Added
Tax Act 1994

Persons appointed to hear and determine appeals
Section 77(1) of the Trade Marks Act 1994 (c. 26)

Arbitrator
Regulation 32(3)(a) of the Conservation (Natural
Habitats, &c) Regulations 1994 (S.I. 1994/2716)

Wreck commissioner
Section 297(1) of the Merchant Shipping Act 1995
(c. 21)

Arbitrator
Paragraph 10(6)(a) of Schedule 1 to the Atomic
Energy Authority Act 1995 (c. 37)

Person nominated for the purpose of Schedule 6 to
the Police Act 1996
Paragraph 1(1)(a) of Schedule 6 to the Police Act
1996 (c. 16)

Arbitrator
Paragraph 8(6)(a) of Schedule 5 to the Broadcasting
Act 1996 (c. 55)

Chairman of a tribunal
Schedule 2, Paragraph 1(1)(a), to the School
Inspections Act 1996 (c. 57)

President of the Special Educational Needs and
Disability Tribunal

Member of the chairmen's panel of the Special Educational Needs and Disability Tribunal Section 333 of the Education Act 1996 (c. 56)	President of the Financial Services and Markets Tribunal Paragraph 2(1) of Schedule 13 to the Financial Services and Markets Act 2000 (c. 8)
Member of panel of chairmen for England and Wales Paragraph 6(2)(a) of the Schedule to the Deregulation (Model Appeal Provisions) Order 1996 (S.I. 1996/1678)	Deputy President of the Financial Services and Markets Tribunal Paragraph 2(3) of Schedule 13 to the Financial Services and Markets Act 2000
Chairman of the Plant Varieties and Seeds Tribunal Paragraph 2(1) of Schedule 3 to the Plant Varieties Act 1997 (c. 66)	Member of panel of chairmen of the Financial Services and Markets Tribunal Paragraph 3(1) of Schedule 13 to the Financial Services and Markets Act 2000
Member of Special Immigration Appeals Commission Paragraph 1(1) of Schedule 1 to the Special Immigration Appeals Commission Act 1997 (c. 68)	Member of lay panel of the Financial Services and Markets Tribunal Paragraph 3(4) of Schedule 13 to the Financial Services and Markets Act 2000
Chairman of Special Immigration Appeals Commission Paragraph 2 of Schedule 1 to the Special Immigration Appeals Commission Act 1997	Member of the Proscribed Organisations Appeal Commission Paragraph 1(1) of Schedule 3 to the Terrorism Act 2000 (c. 11)
President of appeal tribunals Section 5(1) of the Social Security Act 1998 (c. 14)	Chairman of the Proscribed Organisations Appeal Commission Paragraph 1(2) of Schedule 3 to the Terrorism Act 2000
Member of panel of persons to act as members of appeal tribunals Section 6(2) of the Social Security Act 1998	Member of the Adjudication Panel for England Section 75(3) of the Local Government Act 2000 (c. 22)
Social Security Commissioner (deputy) Paragraph 1(2) of Schedule 4 to the Social Security Act 1998	President of the Adjudication Panel for England
Chairman of the Information Tribunal Deputy chairman of the Information Tribunal Section 6(4) of the Data Protection Act 1998 (c. 29)	Deputy President of the Adjudication Panel for England Section 75(4) of the Local Government Act 2000
President of the Tribunal Member of the chairman's panel of the Tribunal Paragraph 2(1) of the Schedule to the Protection of Children Act 1999 (c. 14)	Member of the panel of tribunal chairmen Regulation 7(1)(a) of the Health Service Medicines (Price Control Appeals) Regulations 2000 (S.I. 2000/124)
Member of the lay panel of the Tribunal Paragraph 2(3) of the Schedule to the Protection of Children Act 1999 (c. 14)	Senior tribunal chairman Regulation 7(1)(b) of the Health Service Medicines (Price Control Appeals) Regulations 2000 (S.I. 2000/124)
Member of appeal panel Section 189(6) of the Greater London Authority Act 1999 (c. 29)	Member of the Pathogens Access Appeal Commission Paragraph 1(1) of Schedule 6 to the Anti-terrorism, Crime and Security Act 2001 (c. 24)
Member of the Immigration Services Tribunal Paragraph 1(2) of Schedule 7 to the Immigration and Asylum Act 1999 (c. 33)	Chairman of the Pathogens Access Appeal Commission Paragraph 1(2) of Schedule 6 to the Anti-terrorism, Crime and Security Act 2001
President of the Immigration Services Tribunal Paragraph 2 of Schedule 7 to the Immigration and Asylum Act 1999	

President of the Employment Tribunals (England and Wales)
Regulation 3(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 (S.I. 2001/ 1171)

Member of panel
Regulation 5(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001

Regional Chairman
Regulation 8(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001

Road user charging adjudicator
Regulation 3(1) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 (S.I. 2001/2313)

Adjudicator to Her Majesty's Land Registry
Section 107(1) of the Land Registration Act 2002 (c. 9)

President of the Competition Appeal Tribunal
Section 12(2)(a) of the Enterprise Act 2002 (c. 40)

Member of panel of chairmen of the Competition Appeal Tribunal
Section 12(2)(b) of the Enterprise Act 2002

Acting President of Competition Appeal Tribunal
Paragraph 3 of Schedule 2 to the Enterprise Act 2002

Member of panel of assessors to assist Special Commissioners
Section 320(3)(b) of the Proceeds of Crime Act 2002 (c. 29)

Adjudicator
Section 81(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41)

Chief Adjudicator
Deputy Chief Adjudicator
Regional Adjudicator
Deputy Regional Adjudicator
Section 81(3) of the Nationality, Immigration and Asylum Act 2002

Member of the Immigration Appeal Tribunal
Paragraph 1 of Schedule 5 to the Nationality, Immigration and Asylum Act 2002

Deputy President of the Immigration Appeal Tribunal
Paragraph 4(1) of Schedule 5 to the Nationality, Immigration and Asylum Act 2002

Arbitrator
Paragraph 4(7)(a) of Schedule 2 to the Communications Act 2003 (c. 21)



URUGUAY

Constitution

1967 Constitution with the Amendments approved by plebiscite on 26 November 1989, 26 November 1994, 8 December 1996 and 31 October 2004

– extracts –

...

Article 85

It is incumbent on the General Assembly to:

...

2) set up courts and organise the administration of justice and administrative proceedings;

...

20) interpret the Constitution without prejudice to the power of the Supreme Court of Justice under Articles 256 to 261.

...

Section XV – The Judiciary

Chapter I

Article 233

Judicial authority will be exercised by the Supreme Court of Justice and by the courts and tribunals under the conditions laid down by law.

Chapter II

Article 234

The Supreme Court of Justice will consist of five members.

Article 235

A member of the Supreme Court of Justice must be:

1) at least 40 years of age;

2) a full citizen by birth or a legal citizen for ten years, having resided in Uruguay for the past 25 years;

3) a lawyer with 10 years' seniority or somebody who has served in that capacity in the judiciary or public prosecutor's office for eight years.

Article 236

Members of the Supreme Court of Justice shall be appointed by the General Assembly by two-thirds of the votes of all its members. Appointment must take place within 90 days of the occurrence of the vacancy, for which purpose the General Assembly will be specially convened. If appointment does not take place before that date, the person appointed to membership of the Supreme Court of Justice will automatically be the person with the most seniority in that position and, where there is equal seniority in that position, the person with the most seniority in the judiciary, the magistrates service or the public prosecutor's office.

Where there is a vacancy, for such time as the position remains unfilled, and where the person appointed refuses the post or states that he/she is unable or unfit to discharge his/her judicial function, the Supreme Court of Justice will be constituted under the conditions set out by law.

Article 237

Members of the Supreme Court of Justice will serve ten years in their posts, without prejudice to the provisions of Article 250, and may not be re-elected until five years have elapsed between the end of their term of office and re-election.

Article 238

The court budget is established by the legislator.

Chapter III

Article 239

It is incumbent on the Supreme Court of Justice to:

1) judge anybody who has infringed the Constitution without exception; rule on offences against international law and admiralty cases; on matters relating to treaties, covenants and conventions with other States; try cases relating to diplomats accredited to the Republic as provided for by international law.

The applicable law governing the matters cited above and any others over which the Supreme Court has originating jurisdiction will be as cited in the judgments, which shall in all cases be public, definitive and reasoned and make explicit reference to the applicable law;

2) exercise managerial, corrective, consultative and economic supervision of the tribunals, courts and other departments of the Judiciary;

3) draw up draft budgets for the Judiciary and transmit them as appropriate to the Executive for inclusion in the appropriate draft budgets, along with any amendments it deems relevant;

4) with the approval of the Chamber of Senators or, during the latter's recess with the approval of the Standing Committee, appoint citizens to sit on Appeal Court juries. Appointees are subject to the following requirements:

a) a vote in favour by three of its members where the candidates belong to the judiciary or the public prosecutor's office, and
b) a vote in favour by four of its members where the candidates do not have the qualifications listed in the previous sub-paragraph;

5) appoint qualified judges of all grades and titles, an absolute majority of members of the Supreme Court being required in every case.

These appointments shall take effect immediately they are made where the appointee is a citizen who already has two years of service with the judiciary, the public prosecutor's office or the office of the justice of the peace, exercising functions normally discharged by lawyers.

If these officials have held their respective posts for a shorter period, they will be regarded as interim qualified judges for a period of two years from the date of appointment. Citizens who have recently entered the magistracy will also be regarded as temporary for the same period.

During the interim period the Supreme Court may at any time remove an interim qualified judge by an absolute majority of all its members. Once the interim period is over, the appointment will be deemed automatically confirmed;

6) appoint permanent ombudsmen and justices of the peace by an absolute majority of all members of the Supreme Court of Justice;

7) appoint, promote and dismiss *ex officio*, by a vote in favour by four of its members, employees of the

Judiciary, as laid down in Articles 58 to 66, as appropriate;

8) comply with the other requirements laid down by law.

Article 240

In exercising its functions it will communicate directly with the other State Powers, and its President will be entitled to attend parliamentary committees, where he/she may speak but not vote, and may participate in discussions of matters of interest to the administration of justice. He/she may defend judicial reform bills and amendments to codes of procedure during such discussions.

Chapter IV

Article 241

The law makes provision for two Appeal Courts and sets out their respective powers.

Each will consist of three members.

Article 242

A member of an Appeal Court must be:

1) at least 35 years of age;

2) a full citizen by birth or a legal citizen, who has been established for seven years;

3) a lawyer with eight years' seniority or somebody who has served in that capacity in the judiciary, the magistrates service or the public prosecutor's office for six years.

Article 243

Members of Appeal Courts will remain in their posts, as long as their conduct is proper, until the deadline stipulated in Article 250.

Chapter V

Article 244

The law will establish the number of courts in the Republic, having regard to the requirement for the swift and unimpeded administration of justice, and will indicate the location of each of their headquarters, their powers and the way these are to be exercised.

Article 245

A judge must be:

- 1) at least 28 years of age;
- 2) a full citizen by birth or a legal citizen, who has been established for four years;
- 3) a lawyer with four years' seniority or somebody who has acted in that capacity for two years in the judiciary, the office of the public prosecutor, or the magistrates service.

Article 246

Qualified judges shall continue in their posts for as long as their conduct is good until the deadline in Article 250. However, the Supreme Court of Justice may transfer them for operational reasons at any time and change their work or place of assignment or both, provided that such transfer is decided on after a hearing by the Court prosecutor and the following requirements are observed:

- 1) a vote in favour of the transfer by three members of the Supreme Court, unless the new post involves a drop in grade or remuneration or both;
- 2) a vote in favour by four members if the new post involves a drop in grade or remuneration or both.

Chapter VI**Article 247**

A Justice of the Peace must be:

- 1) at least 25 years of age;
- 2) a full citizen by birth or a legal citizen, who has been established for two years.

He/she must be a lawyer in order to be a Justice of the Peace in the Department of Montevideo and a lawyer or notary public in the capitals and cities of other departments, and in any other town in the Republic whose judicial situation so requires, in the opinion of the Supreme Court.

Article 248

There will be as many Justices of the Peace in the Republic as there are judicial sections into which the territory of the departments is divided.

Article 249

Justices of the Peace will serve for four years and may be removed at any time, if this will improve the service to the public.

Chapter VII**Article 250**

The term of office of all members of the Judiciary will expire when he/she reaches seventy years of age.

Article 251

Judicial posts will be incompatible with any other paid public function, apart from the profession of teacher in higher public education in the legal field, and with any other permanent honorary public function apart from those specifically related to the judicial field.

Prior authorisation is necessary from the Supreme Court of Justice for the discharge of any of these functions. Such authorisation will be granted by an absolute majority of the total votes of its members.

Article 252

Magistrates and all employees belonging to the internal sections and offices of the Supreme Court, tribunals and courts are forbidden, on penalty of immediate dismissal, to direct, defend or deal with judicial matters or to be involved in them in any way, even on a voluntary basis, except in the fulfilment of their duties. An infringement will automatically be declared as soon as it becomes apparent. This prohibition does not apply to personal cases involving the official or his/her spouse, children and ascendants.

The internal staff mentioned above will also be subject to the exceptions laid down by law.

The law may also lay down specific prohibitions for officials or employees of sections not mentioned in the first paragraph of this Article.

Chapter VIII**Article 253**

Military jurisdiction is limited to military offences and to a state of war.

Ordinary offences committed by the military in peacetime, irrespective of where they are committed, will be subject to ordinary justice.

Article 254

Justice will be free of charge for those declared without means in the eyes of the law. In cases where this declaration has been made in favour of the plaintiff, the defendant will have the same benefit until the final judgment, which will be confirmed even if the plaintiff is declared culpably rash in bringing his/her action.

Article 255

No civil action may be brought without prior production of evidence that an attempt at conciliation has been made in the presence of a Justice of the Peace, except in exceptional cases laid down by law.

Chapter IX

Article 256

Laws may be declared unconstitutional in form or content in accordance with the provisions of the following Articles.

Article 257

The Supreme Court of Justice has exclusive, originating jurisdiction in this field, and must give a ruling according to the requirements for definitive judgments.

Article 258

Anyone who believes that their legitimate interests have been directly and personally infringed may request that a law be declared unconstitutional and its relevant provisions inapplicable:

- 1) by means of a lawsuit, to be brought before the Supreme Court of Justice;
- 2) by entering an objection, which can be effected during any judicial proceedings.

The Judge or Court conducting a hearing in any judicial proceedings, or the Administrative Court, as appropriate, can also request *ex officio* a declaration of unconstitutionality of a law and its inapplicability before issuing a ruling.

In such cases and those provided for under 2) above the proceedings will be suspended and the action referred to the Supreme Court of Justice.

Article 259

The verdict of the Supreme Court of Justice will refer exclusively to the specific case and will only affect proceedings on which it has already ruled.

Article 260

Decrees of Departmental Governments which have the force of law in their jurisdictions may also be declared unconstitutional, subject to the provisions of the above Articles.

Article 261

The relevant procedures will be regulated by law.

