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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**LAW OF THE HIGH CONSTITUTIONAL COURT
OF THE PALESTINIAN NATIONAL AUTHORITY**

**The law of the High Constitutional Court
No. (3) For the year 2006**

Head of the Executive Committee of the Palestinian Liberation Organization
Head of the Palestinian National Authority

After reviewing the Basic law for the year 2003 and its amendments, precisely article 41,
And after reviewing the law of civil and commercial procedures no (2) for the year 2002,
And the law on Formation of the Regular courts no (1) for the year 2003,
And the Draft Law presented to the council of ministers.
And according to what the legislative council ratified in its session held on 27/12/2005, and
following the approval of the Council on the comments of the head of the PNA on 13/ 2/2006
And in the name of the Palestinian people we have promulgated the following:-

Chapter one
The Formation of the court
Section One
General provisions

Article (1)

According to the provisions of this law a High Constitutional Court is established, it is an independent judicial body in Palestine, and is refereed to hereinafter as the court.
2- The headquarters of the court is in Jerusalem; however, the court may have a temporary headquarter in the city of Ramallah and in Gaza according to the situation.

Article (2)

The court is formed of a president, a deputy and seven judges. The Court panel is held with at least the presence of its president and six judges. The decisions are issued with the majority.

Article (3)

The court sessions are presided by the president of the court. In case of vacancy, absence or any impediment the deputy exercises all jurisdictions, next is for the most senior of the court members.

Article (4)

It is conditioned that any appointed member of the court shall fulfill the general conditions required for occupying a position in the judiciary, given that his age is not less than 40 years and he is within the following categories:-

- 1) Being a current or former member of the High Court of Justice who has spent at least five continuous years in the position.
- 2) Being from the existing heads of the Courts of Appeal who have spent at least seven continuous years in the position.
- 3) Being from the current or former law professors in the Palestinian Universities or the universities that are approved and recognized by Palestine, and has occupied the position of a professor of adjunct professor for at least ten continuous years.

- 4) Lawyers who have practiced the profession for are least fifteen continuous years.

Article (5)

- 1) The onset formation of the court is consummated by the appointment of the president of the court and the judges therein and by a decision of the president of the Palestinian National Authority, and after consultation with the High Judicial Council and the minister of Justice.
- 2) The president of the court and the judges are appointed by a decision of the president of the PNA and upon the recommendation of the General Assembly of the High Constitutional Court.

Article (6)

The member of the court is not allowed to occupy any other position, or to exercise any business or political activity or any activity with a political fraction, or be a member of a political fraction, it is then necessary that the member resigns before taking the legal oath.

Article (7)

The president of the court and his deputy and the judges in the court perform- before the head of the PNA and prior to commencing their job and in the presence of the head of the legislative Council and the head of the High judicial Council- the following oath:-

"I swear in the name of God the almighty to respect the constitution and the law and to make fair judgments."

Section Two

The General Assembly of the Court

Article (8)

- 1) The General Assembly of the Court is composed of all the members of the court. The Assembly is competent, in addition to what is stipulated in the this law to put forward the interior regulations that explain means of reviewing the issues that are relevant to the regulations of the court and the criteria for capability and needed expertise concerning its judges, its interior issues, and the distribution of work between its members and all other relevant matters. The Assembly should be consulted in the draft laws that concern the court prior to being transferred to the legislative council. It is conditioned that the Assembly expresses its opinion in a written form within a month from the date it receives the proposal.
- 2) The General Assembly may delegate the president of the court or a committee composed from its members to exercise some of its jurisdiction with a decision taken by the majority.

Article (9)

The General Assembly of the court directly carries out all the competences determined for the High Judicial Council according to the law of the judicial Authority.

Article (10)

- 1) The General Assembly meets upon the call of the president of the court or upon the request of one third of the courts members, the sessions of the court are not considered proper except with the attendance of the majority of its members. The Assembly is headed by the president of the court or by whoever replaces him.

- 2) The General Assembly issues its decisions with the absolute majority of the attendance, incase there is an equal number of the voices, the voices of the side that attends and the president is on are given the preference, except in the case when the voting is done in secret, the proposition then is considered refused.
- 3) The minutes of the General Assembly are kept in an archive, which is signed by the president of the court and the secretary general of the Assembly.

Article (11)

- 1) Upon a decision by the absolute majority of the General Assembly; a temporary committee is established and headed by the president of the court and the membership of two or more of its members. The committee carries out the competencies of the General Assembly in the urgent matters during the judicial holiday in the court, in addition to other tasks referred to it by the Assembly.
- 2) The decisions issued by the temporary committee during the judicial holiday should be submitted to the General Assembly during its first meeting, or otherwise they will not be legally effective. If the decisions were submitted to the General Assembly and were not approved by the absolute majority, they would loose any legal effect obtained.

Section Three

The Rights and the duties of the members

Article (12)

The members of the court are subject (in accordance to the nature of the court and its independence) to the provisions relevant to rejection of judges , inability of dismissal, obligations, independence vacations and secondment of judges stipulated in the law of the judiciary.

Article (13)

The president of the court and the members therein receive the salary and allowances and the compensation determined for the head and the members of the High Court in accordance to the law of the judiciary.

Article (14)

- 1) The services of the members are terminated by rule of law when the member completes 70 years of age.
- 2) The pension salary and the severance pay for the member of the court are paid according to the General Pension Law.

Article (15)

- 1) In regard to dismissal, recusation and disputes with the members of the court the provisions stipulated in chapter (9& 10) of the law on Civil and commercial Procedures prevail, the court settles the requests for recusation, dismissal and the dispute action with the presence of all its members except the disputed party or the member subject to dismissal. It is conditioned in this case that the number of the members of the court is single.
- 2) It is not acceptable to dismiss or to raise a dispute action against all the members of the court, or some of them, whereas the number of the remaining judges in the court becomes less than seven.

Article (16)

- 1) If any of the members of the court were attributed with a matter that might affect the confidence or consideration, or with an intentional and significant disturbance in the duties or the requirements of the position, the president of the court undertakes presenting the issue before the temporary committee in the court.
- 2) If the committee decided after calling the member to listen to his/her statement and decided that there is reason for proceeding; the president of the court forms a committee of three of the members of the General Assembly to investigate and question the member. The member who has been referred to investigation is considered in a definite leave and is entitled to a full salary from the date of the mentioned decision.
- 3) After concluding the investigation, it is presented to the General Assembly which is held in the form of a disciplinary court (with an exception to the members who participated in the investigation or were accused). The Assembly issues -after hearing the defense of the member and investigating about it- its decision of innocence or reference to pension or retirement, with the absolute majority of voices, from the date of issuing its decision without detriment to any other penalty stipulated in the law. The decision is final and not subject to appeal by any means.

Article (17)

- 1) In the cases other than being caught in the criminal act (flagrante delicto) it is not permissible to detain or arrest a member of the court or to take any criminal actions against him except after having the permission of the president of the court.
- 2) In the cases where the court member is being caught in the criminal act, the attorney General- upon detention- should refer the case to the president of the court during the 24 hours following the detention. The temporary committee in the court should decide after hearing the statements of the member either to release him on bail or without bail or to continue detention for the duration it decides. The committee is entitled to renew the detention period.
- 3) The detention of the member of the court and the execution of the penalty that restricts the freedom is performed in a place separate than the places allocated for other prisoners.

Article (18)

The temporary committee in the court is specialized and competent in examining and renewing the detention of the member of the court, except if the case was observed before the competent criminal courts.

Article (19)

As a result of detaining the member of the court he is stopped from carrying out his position during the detention period. The president of the court may order the member of the court to stop exercising his profession during the investigation procedures concerning a crime he is charged of committing, in this case the provisions stipulated in article 16 of this law are applied.

Article (20)

A penal action may not be filed against the member of the court except with the permission of the president of the court who is authorized to determine the court that hears the case regardless of the Rules of jurisdiction of location.

Article (21)

- 1) The services of the member of the court are terminated in any of the following cases:-
 - a. Reaching the age of seventy
 - b. Resignation
 - c. Loosing the legal capacity or competence
 - d. Disability due to any reason to perform the tasks
 - e. Death
 - f. Referral to pension or retirement
 - g. Lose of nationality or citizenship
- 2) The decision of termination of services is issued by the president of the PNA according to a request by the General Assembly of the court.

Article (22)

Termination of the services of the member of the court for any reason do not lead to abatement of the pension salary or the severance pay.

Article (23)

- 1) The member of the court shall not be absent or abstain from work without reason and with notice to the president of the court.
- 2) A member is considered resigning if he abstains from his work for a period of fifteen continuous days without a reason that is acceptable to the president of the court even if this occurred following the end of his leave or secondment.
- 3) The resignation of the member of the court is acceptable after two weeks from the date it has been submitted to the president of the court, a decision with its acceptance is issued by the president of the PNA from the date of submission.

Chapter Two

Jurisdiction and Procedures

Section One

The Jurisdiction of the court

Article (24)

The court is exclusively competent of the following:-

- 1) Constitutional supervision and control on the laws and regulations.
- 2) Explaining the provisions of the Basic Law and other laws in the cases where there is a conflict relevant to the rights of the three authorities, their duties and competencies.
- 3) To settle conflict of jurisdiction between the judicial bodies and the administrative bodies having judicial competencies.
- 4) To settle the disputes that arise concerning the execution of two contradicting final decisions whereby one of the decisions is issued by a judicial body or a body having judicial competencies and the other from a different side of it.
- 5) Resolution and settlement of an appeal concerning the legal incompetence of the president of the PNA in accordance to clause (1/C) of article 37 of the amended Basic Law for the year 2003. Its decision is considered valid from the date the legislative Council ratifies the law with the majority of two thirds of its members.

Article (25)

- 1) The court- in order to exercise its jurisdiction stipulated in article 24- is authorized to review and decide the unconstitutionality of any legislation or action that is inconsistent with the Basic Law either (partially or completely).

- 2) Upon deciding the unconstitutionality of any law, decree, regulation, bylaw or decision either partially or completely, the Legislative Authority or the authorized body should amend the law, decree, regulation, bylaw or decision to be in consistency with the provisions of the Basic Law and the law.
- 3) Upon issuing a decision with the unconstitutionality of any act, the enforcement of such an act is considered unlawful, and the body or authority which implemented such an act should correct the situation in accordance to the Basic Law and should return the right to the aggrieved party, or compensate for any harm or damage resulting from the act, or to correct the situation by carrying out both options.

Section Two Procedures

Article (26)

With an exception to what is provisioned in this section, The provisions in the civil and commercial procedural law apply to the decisions of transfer, the legal actions and requests and applications submitted to the court in a manner that is not in contradiction to the nature and jurisdiction of the court or the cases decided before it.

Article (27)

The court performs judicial supervision on the constitutionality according to the following:

- 1) Through the original direct action that is raised by the aggrieved before the court in accordance to article (24) of this law.
- 2) If it seemed to any of the courts or bodies having judicial authority during the cognizance of any case that there is unconstitutionality in a provision in the law, decree, regulation, or a decision necessary for the settlement of the dispute, the execution of the proceedings of the case are stopped (or stayed) and the papers and file is referred to the constitutional court free of charge in order to settle the constitutional issues.
- 3) If the litigants pleaded during the hearing of the case before any court or body having judicial authority the unconstitutionality of a provision in the law decree, regulation, or a, or a decision and the court or the authorized body considered that the defense is serious; the court postpones the hearing of the case and determines for the side that initiated the defense a date that should not exceed ninety days, to take a legal action before the High Constitutional Court. In the case were the action is not taken in due time it is considered as if it had not existed.
- 4) If the court was in the course of discussing a dispute raised before it and during the proceedings of the dispute, it became evident to the court that there is an unconstitutional provision linked to the dispute, it then is automatically entitled to confront the issue by deciding the unconstitutionality of the provision. In this case it is conditioned that the mentioned provision is linked to the disputed issue before the courts and according to rules.

Article (28)

The decision issued with the referral to court or the legal pleading submitted before it according to the previous article, should include the legal provision that is contested for being unconstitutional in addition to the relevant constitutional provision alleged to be in contradiction with the mentioned article in addition to the means of contradiction.

Article (29)

- 1) Every concerned party is entitled to appeal to the court to appoint the competent judicial side to hear the case according to what was mentioned in clause three of article (24) of this law.
- 2) The application should include the disputed issue and the judicial parties who reviewed it and the decisions taken in its regard.
- 3) As a result for submitting the application the relevant legal action is stayed until the application is settled, an authentic copy of the two decisions subject to the dispute should be attached to the application mentioned in clause (2) herein above and otherwise the application is considered unacceptable.

Article (30)

- 1) The application requesting interpretation is submitted by the Minister of Justice according to the request of the President of the PNA or to the Head of the Legislative Council, or the head of the High Judicial Council or of whom the constitutional rights were violated.
- 2) The application requesting the interpretation should include: The legislative provision subject for explanation, the conflict it caused upon application, the scope of its importance which evoked explaining it to achieve a unity and harmony in application.

Article (31)

It is not allowed to carry out the procedures except through the representative of the panel of state actions, or through an attorney whose expertise in the legal profession is not less than ten continuous years. The president of the court may appoint an attorney for the plaintiff who is proven to be in a state of insolvency.

Article (32)

The clerk's office registers the decisions of committal, lawsuits and requests incoming from the court from the date it arrives or from the date it is submitted to the specialized register. The clerk's office should announce to the concerned parties the decisions, lawsuits and requests during a period of fifteen days from that date. The government is considered a concerned party in constitutional actions.

Article (32)

The office of the advocate who signed the initiatory pleading or the request, and the office of the lawyer representing the party sought in responding to the request are considered as location of choice for each of the parties, except in the case where one of the parties determines a preferred location to be notified through.

Article (34)

- 1) Everyone who receives a declaration concerning the decision of committal or a lawsuit should submit to the clerk's office at the court a memorandum with all his remarks supported by documents during a period of fifteen days.
- 2) The adversary litigant should respond to the memorandum and the documents during the fifteen days following the termination of the mentioned date, if the opponent used his right in responding the first may comment with a memorandum during the following fifteen days.
- 3) The clerk's office shall not receive any papers from the litigants after the termination of the dates mentioned in (clause 1, 2). The clerk's office shall write a report proving the dates of

the submission of the papers, the name of the person who submitted the papers and his characteristics.

Article (35)

- 1) The clerk's office presents the case file or the request to the president of the court during the three days following the termination of the dates manifested in the previous article, for purposes of determining the date of the session for the hearing the case or request.
- 2) The clerk's office shall notify the concerned persons about the date of the session in accordance to the Civil and Commercial Procedural Law.
- 3) The date for attendance is at least fifteen days, unless the president of the court orders – in the state of emergency or according to the request of the concerned people to shorten this period for not less than three days. The concerned persons are informed about this issue with a notice of the date of the session.

Article (36)

The court makes decisions concerning the legal actions and requests presented before it in scrutiny and without the pleading procedures. If the court considers that there is necessity for the oral hearing, it shall hear the litigants. In this case the litigants shall not be allowed to attend to court without a legal representative or attorney. The court may order the needed data or papers and it may call on the concerned persons to inquire about the facts and merits and to charge them to present the documents and additional papers in addition to other procedures in the Date it determines.

Article (37)

The rules concerning attendance to court or absence stipulated in the Civil and commercial procedural law do not apply to the legal actions and requests

Chapter Three Decisions and Rulings

Article (38)

The decisions of the court are issued in the name of the Arab Palestinian People.

Article (39)

- 1) The court decides to hold back the case after closing the court pleading.
- 2) The court settles the case automatically in all subsidiary issues.

Article (40)

The rulings and the judgments of the court are final and not subject to appeal.

Article (41)

- 1) The rulings of the court in the constitutional cases and the explanatory decisions are binding to all the authorities in the state and to everyone.
- 2) If the court decided that the provision subject to revision is partially or completely impaired or faulty due to unconstitutionality, it shall explain this in a reasoned decision describing the limits of the unconstitutionality. The provision that is considered unconstitutional is within the framework of the court decisions that are unlawful and inapplicable.

3) If the decision of unconstitutionality was relevant to a penal provision; the incriminating decisions shall be considered inapplicable. The President of the court informs the Attorney General with the decision immediately after the pronouncement of the judgment to take the required legal proceedings.

Article (42)

A draft copy of the decision is kept in the case file at the time of pronouncement. The file includes the text of the decision, the reasoning and its status from the panel of the court.

Article (43)

- 1) The court exclusively settles the disputes concerning the execution of the rulings and decisions that are issued in accordance to Enforcement Law to the extent that is not contradicting with the nature and the competence of the court, and the situation before it.
- 2) The suspension of the dispute shall not result in pausing the enforcement, unless the court orders for this awaiting for the dispute to be settled.

Article (44)

The decisions and rulings issued by this court (in the cases where there is no provision in this law) are subject to the rules in the Civil and Commercial Procedural Law to the extent that is not contradicting to the nature of the decisions.

Chapter Four Fees and Expenditures

Article (45)

- 1) A fixed fee amounting to one hundred Jordanian Dinars or the equivalent in current legal currency is imposed on the actions that are lodged to the court in accordance to this law. The imposed fee includes all the judicial proceedings of the case including the publishing of the papers and the decisions.
- 2) The plaintiff shall lodge a deposit (warranty) in the court treasury upon submitting the case pleading amounting to one hundred J.Ds. or the equivalent in the current legal currency. In the case where there is more than one plaintiff lodging the legal action in the same pleading, one warranty is deposited. The court orders to seize the warranty if the case was not accepted or refused.
- 3) With consideration to the following article, the clerk's office refuses to accept the case pleading if it was not associated with a proof for the deposit.

Article (46)

- 1) Whoever proves to be financially incapable may be exempted from paying the fees (partially or totally) and the warranty (partially or totally).
- 2) The president of the court renders judgments concerning the exemption applications after reviewing the papers and hearing the statements of the applicants. His decision in this case is final.
- 3) As a result of submitting the fee exemption application, the dates for lodging the case (for unconstitutionality) are paused.

Article (47)

The fees and expenditures (in the cases where there is no provision in this law) are subject to the provisions stipulated in the law on the fees for the Regular Courts number (1) for the year 2003.

Chapter Five

Financial and administrative Issues

Section One

Financial Issues

Article (48)

- 1) An annual independent budget is allocated for the court according to the principals of preparing the balance sheet.
- 2) The president of the court undertakes to develop a budget proposal to be submitted to the concerned parties after discussion and ratification by the General Assembly of the court with the absolute majority. The president of the court is responsible for all the related issues relevant to the execution of the budget in accordance to the regulations issued by to this law.
- 3) The budget of the court and the final account statements are subject to the provisions of the Law on the balance sheets.

Section Two

Administrative Issues

Article (49)

There shall be a head of the clerk's office and a sufficient number of employees and administrative staff, the president of the court and the Minister of Justice have the supervisory authority each according to his competencies and in accordance to the provisions of the Law on the Judiciary.

Article (50)

The administrative staff working in the court is subject to the provisions Civil Service Law.

Chapter Six

Concluding Provisions

Article (51)

All the legal actions and requests that are heard before the High Court but are subject to the provisions of this law and are within the jurisdiction of the court shall be transferred under their existing status to this court immediately after its formation and without fees.

Article (52)

The president of the court shall issue the interior regulations and the needed decisions for the implementation of the provisions of this law after being ratified by the absolute majority of the General Assembly.

Article (53)

The decisions of the court and the interior regulations and bylaws are issued in the official Gazette without any expenditure during a maximum of 15 days from the date of issuance.

Article (54)

Any provision that is contradicting to the provisions of this law is annulled.

Article (55)

All competent parties - each according to their respect- shall implement the provisions of this law.

This law comes into force after 30 days from the date of being published in the official Gazette.

Issued in Ramallah on 17/2/2006

Mahmoud Abbas

Head of the Executive Committee of the P.L.O
President of the Palestinian National Authority

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