

THE CONSTITUTIONAL COURT ACT

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CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to set forth provisions necessary for the organization and operation of the Constitutional Court and its adjudication procedures.

Article 2 (Jurisdiction)

The Constitutional Court shall have jurisdiction over the following issues:

1. Constitutionality of statutes upon the request of the ordinary courts;
2. Impeachment;
3. Dissolution of a political party;
4. Competence dispute between state agencies, between a state agency and a local government, or between local governments; and
5. Constitutional complaint.

Article 3 (Composition)

The Constitutional Court shall consist of nine Justices.

Article 4 (Independence of Justices)

The Justices shall adjudicate independently according to the Constitution and laws, guided by their consciences.

Article 5 (Qualifications of Justices)

(1) The Justices shall be appointed from among those who are forty or more years of age and have held any of the following positions for fifteen or more years: *Provided*, That the periods of service of the person who has held two or more following positions shall be aggregated.

1. Judge, public prosecutor or attorney;
2. Person who is qualified as attorney, and has been engaged in legal affairs in a state agency, a state-owned or public enterprise, a government-invested institution or other corporation; or
3. Person who is qualified as attorney, and has held a position equal to or higher than assistant professor of law in an accredited college.

(2) No person falling under any of the following shall be appointed Justice:

1. Person who is disqualified to serve as

- a public official under the pertinent laws and regulations;
2. Person who has been criminally sanctioned with a sentence of imprisonment without forced labor or more severe sentence; or
 3. Person for whom five years have not yet passed since his or her dismissal resulting from impeachment.

Article 6 (Appointment of Justices)

(1) The Justices Shall be appointed by the President of the Republic. Among the Justices, three shall be elected by the National Assembly, and three shall be designated by the Chief Justice of the Supreme Court.

(2) The Justices shall be appointed, elected or designated after a Personnel Hearing held by the National Assembly. In this event, the President shall request a Personnel Hearing before he or she appoints the Justices (except the

Justices who shall be elected by the National Assembly or designated by the Chief Justice of the Supreme Court) and the Chief Justice of the Supreme Court shall request a Personnel Hearing before he or she designates the Justices.

(3) In the event the term of a Justice expires or a Justice approaches the retirement age, a successor shall be appointed no later than by the date of term expires or when the Justice reaches his or her retirement age.

(4) When a vacancy occurs during the term of office of a Justice, his/her successor shall be appointed within 30 days from the date a vacancy occurs.

(5) Notwithstanding paragraphs (3) and (4) of this Article, when the term of office of a Justice elected by the National Assembly expires or he/she reaches the retirement age, or a vacancy occurs during adjournment or recess of the National Assembly, the National Assembly

shall elect his/her successor within 30 days after resuming of the session or the commencement of next session.

Article 7 (Term of Justices)

(1) The term of Justices shall be six years and may be renewed.

(2) The retirement age of a Justice shall be sixty-five: *Provided*, That the retirement age of the President of the Constitutional Court shall be seventy.

Article 8 (Guarantee of Justices' Status)

No Justice shall be removed from his or her office against his or her own will unless he or she falls under any of the following:

1. When an impeachment decision is rendered against him or her; or
2. When he or she is criminally sanctioned with a sentence of imprisonment without forced labor or more severe sentence.

Article 9 (Prohibition of Justices' Participation in Politics)

No Justice shall join a political party or participate in politics.

Article 10 (Rulemaking Power)

(1) The Constitutional Court may make rules of adjudication procedure, internal discipline and management of general affairs, to the extent that those are not inconsistent with this Act and other laws.

(2) The Constitutional Court Rules shall be promulgated through publication in the Gazette of the government.

Article 10-2 (Presentation of Opinions on Legislation)

Where the President of the Constitutional Court deems that any enactment or amendment of the Acts relating to organization, personnel affairs, operation, adjudication procedure and other functions of the Constitutional Court is re-

quired, the President may present in writing opinions thereon to the National Assembly.

Article 11 (Expenses)

(1) The expenses of the Constitutional Court shall be appropriated independently in the budget of the state.

(2) The reserve funds shall be included in the expenses referred to in paragraph (1).

CHAPTER II ORGANIZATION

Article 12 (President of Constitutional Court)

(1) The Constitutional Court shall have a president.

(2) The President of the Republic shall, with the consent of the National Assembly, appoint the President of the Constitutional Court among the Justices.

(3) The President of the Constitutional Court shall represent the Constitutional Court, take

charge of the affairs of the Constitutional Court, and direct and supervise those public officials under his or her authority.

(4) Whenever the President of the Constitutional Court is unable to perform the duties of his or her office due to an accident or the office is vacant, other Justices shall, in the order prescribed by the Constitutional Court Rules, perform such duties in place of the President.

Article 13 Repealed.

Article 14 (Prohibition of Concurrent Service)

The Justices shall not conduct any business for profit or hold concurrently any of the following offices:

1. Member of the National Assembly or a local council;
2. Public official in the National Assembly, the Executive or an ordinary court;
or
3. Advisor, officer or employee of a cor-

poration and organization, etc.

Article 15 (Treatment of President of Constitutional Court and other Justices)

(1) The treatment and remuneration of the President of the Constitutional Court shall be the same as that of the Chief Justice of the Supreme Court, and the Justices of the Constitutional Court shall be in political service and their treatment and remuneration shall be the same as that of the Justices of the Supreme Court.

(2) Repealed.

Article 16 (Council of Justices)

(1) The Council of Justices shall consist of all Justices, and the President of the Constitutional Court shall serve as the Chairperson.

(2) Decisions of the Council of Justices shall be taken with the attendance of seven or more Justices and by the affirmative vote of a majority of the Justices present.

(3) The Chairperson shall have the right to vote.

(4) Decisions on the following matters shall be taken by the Council of Justices:

1. Matters concerning the enactment, amendment of the Constitutional Court Rules and the matters concerning a presentation of opinions on legislation pursuant to Article 10-2;
2. Matters concerning a request for budget, appropriation of reserve funds and settlement of accounts;
3. Matters concerning the appointment or dismissal of the Secretary General, Deputy Secretary General, President of the Constitutional Research Institute, Constitution Research Officers and public officials of Grade III or higher; and
4. Matters deemed specially important and presented by the President of the Con-

stitutional Court for discussion.

(5) Matters necessary for the operation of the Council of Justices shall be stipulated in the Constitutional Court Rules.

Article 17 (Department of Court Administration)

(1) In order to manage the administrative affairs of the Constitutional Court, the Department of Court Administration shall be established in the Constitutional Court.

(2) There shall be a Secretary General and a Deputy Secretary General in the Department of Court Administration.

(3) The Secretary General shall, under the direction of the President of the Constitutional Court, take charge of the affairs of the Department of Court Administration and direct and supervise those public officials under his or her authority.

(4) The Secretary General may attend the National Assembly or the State Council and

speak about the administration of the Constitutional Court.

(5) The defendant in the administrative litigation challenging an action of the President of the Constitutional Court shall be the Secretary General.

(6) The Deputy Secretary General shall assist the Secretary General. Whenever the Secretary General is unable to perform his or her duties due to an accident, the Deputy Secretary General shall act on behalf of him or her.

(7) The Department of Court Administration shall have offices, bureaus and divisions.

(8) The office chief shall be assigned to the office, the bureau chief, to the bureau, and the division chief, to the division. There may be directors or officers under the Secretary General, the Deputy Secretary General, the office chief or the bureau chief for assisting in policy planning, establishment of plans, research, investigation, examination, evaluation and public

relations.

(9) The organization and the scope of functions of the Department of Court Administration, the prescribed number of public officials assigned to the Department of Court Administration and other necessary matters, which are not prescribed in this Act, shall be stipulated in the Constitutional Court Rules.

Article 18 (Public Officials of Department of Court Administration)

(1) The Secretary General shall be appointed as a public official in Political Service, and his or her salary shall be equal to that of a member of the State Council.

(2) The Deputy Secretary General shall be appointed as a public official of Political Service, and his or her salary shall be equal to that of a Vice-Minister.

(3) The office chiefs shall be appointed as public officials of Grade I or II in general service;

the bureau chiefs as public officials of Grade II or III in general service; the directors and officers-in-charge as public officials of Grade II through IV in general service; and the division chiefs as public official of Grade III or IV in general service: Provided, That one officer-in-charge may be appointed as public officials corresponding to Grade III or IV in extraordinary civil service.

(4) Public officials of the Department of Court Administration shall be appointed and dismissed by the President of the Constitutional Court: *Provided*, That the appointment and dismissal of public officials of Grade III or higher shall be subject to a resolution of the Council of Justices.

(5) The President of the Constitutional Court may request other state agencies to dispatch their public officials so as to have them serve as public officials of the Department of Court Administration.

(6) Repealed.

Article 19 (Constitution Research Officers)

(1) The Constitutional Court shall have Constitution Research Officers equivalent to the number as provided by the Constitutional Court Rules.

(2) The Constitution Research Officers shall be public officials in special service.

(3) The Constitution Research Officers shall be engaged in investigation and research concerning the deliberation and adjudication of cases under the order of the President of the Constitutional Court.

(4) The Constitution Research Officers shall be appointed by the President of the Constitutional Court through a resolution of the Council of Justices from those falling under any of the following subparagraphs:

1. A person who is qualified as a judge, a public prosecutor, or an attorney-at-

law;

2. A person who has been in a position equal to or higher than an assistant professor of law in an accredited college or university;
3. A person who has been engaged in legal affairs for five or more years as a public official of Grade IV or higher in the state agencies, such as the National Assembly, the Executive, or courts;
4. A person who has obtained a doctorate in law, and engaged in legal affairs for five or more years in the state agencies, such as the National Assembly, the Executive, courts, or the Constitutional Court; and
5. A person who has obtained a doctorate in law, and engaged in legal affairs for five or more years in an accredited research institute, such as a college or university as stipulated by the Consti-

tutional Court Rules.

(5) Repealed.

(6) Any person falling under one of the following subparagraphs shall not be appointed as Constitution Research Officers:

1. A person falling under one of each subparagraph of Article 33 of the State Public Officials Act;
2. A person who has been sentenced to imprisonment without prison labor or a heavier punishment; and
3. A person for whom 5 years have not elapsed after the dismissal due to a decision of impeachment.

(7) The term of office of Constitution Research Officers shall be 10 years, but a consecutive appointment may be permitted, and their age limit shall be 60 years old.

(8) When any Constitution Research Officer comes to fall under one of each subparagraph of paragraph (6), the officer shall be deservedly

retired. Provided, That this shall not apply when it falls under subparagraph 5 of Article 33 of the State Public Officials Act.

(9) The President of the Constitutional Court may request other state agencies to dispatch their public officials to the Constitutional Court so as to have them serve as the Constitution Research Officers.

(10) The Deputy Secretary General may hold an additional position as a Constitution Research Officer.

(11) The President of the Constitutional Court may have Constitution Research Officers hold concurrent offices other than investigation and research concerning the deliberation and adjudication of cases. Together with such provisions, the number of Constitution Research Officers shall be stipulated as provided by the Constitutional Court Rules, and his or her salary shall be equal to whichever is higher.

Article 19-2 (Assistant Constitution Research Officer)

(1) Where any Constitution Research Officer is newly appointed, he or she shall be appointed as such Officer after having been appointed as an Assistant Constitution Research Officer and serving a the period of 3 years, and then taking into account the service records: Provided, That an appointment as an Assistant Constitution Research Officer may be exempted or a service period as such may be reduced by taking into account his or her career and service abilities, etc. under the conditions as stipulated by the Constitutional Court Rules.

(2) The Assistant Constitution Research Officer shall be appointed by the President of the Constitutional Court through a resolution of the Council of Justices.

(3) The Assistant Constitution Research Officer shall be a public official in extraordinary service, and his remuneration and criteria for promotion shall be based on the practices of those for the Constitution Research Officer.

(4) Where the service records of an Assistant Constitution Research Officer is inferior, the officer may be dismissed through a resolution of the Council of Justices.

(5) The service period of Assistant Constitution Research Officer shall be counted in the tenure of service as a Constitution Research Officer as referred to in this Act and other laws and regulations.

Article 19-3 (Academic adviser)

(1) The Constitutional Court may have Academic adviser. Academic adviser shall be engaged in professional investigation and research concerning the deliberation and adjudication of cases.

(2) Academic adviser shall be appointed to serve stipulated period within 3 years.

(3) Academic adviser shall be appointed as public officials of Grade II or III in special service or contractual service, and its duties

and qualifications shall be stipulated in the Constitutional Court Rules.

Article 19-4 (Constitutional Research Institute)

(1) The Constitutional Research Institute shall be established in the Constitutional Court for the purpose of carrying out the research on the constitutional law and constitutional adjudication and education for Constitution Research Officers, administration staff, etc.

(2) The Constitutional Research Institute shall be composed of less than 40 personnel, including its own President, who shall be appointed from Constitution Research Officer of the Constitutional Court or public official of Rank I in general service.

(3) Notwithstanding paragraph (2) of this Article, the President of the Constitutional Research Institute may be appointed as a public official in temporary position.

(4) Matters concerning the organization and

operation of the Constitutional Research Institute shall be stipulated in the Constitutional Court Regulations.

Article 20 (Aide Office of President of Constitutional Court, etc)

(1) The Constitutional Court shall have the aide office of the President of the Constitutional Court.

(2) A Chief Aide shall be assigned to the aide office of the President of the Constitutional Court. The Chief Aide shall be appointed as a public official of Grade I in Special Service, and take charge of confidential affairs under the direction of the President of the Constitutional Court.

(3) Matters necessary for the organization and operation of the aide office of the President of the Constitutional Court shall be prescribed by the Constitutional Court Rules.

(4) The Constitutional Court shall have the

aides of the Justices.

(5) The aides of the Justices shall be appointed as public officials of Grade IV in General or Special Service, and take charge of confidential affairs under the direction of the Justices.

Article 21 (Clerks and Courtroom Guards)

(1) Clerks and courtroom guards shall be assigned to the Constitutional Court.

(2) The President of the Constitutional Court shall designate clerks and courtroom guards from among the personnel of the Department of Court Administration.

(3) Clerks shall take charge of the affairs concerning the preparation, safekeeping or service of documents related to cases under the direction of the presiding Justice.

(4) Courtroom guards shall maintain order in the courtroom and execute other affairs directed by the presiding Justice.

CHAPTER III GENERAL PROCEDURE OF ADJUDICATION

Article 22 (Full Bench)

(1) Except as provided in this Act, the adjudication of the Constitutional Court shall be assigned to the Full Bench composed of all the Justices.

(2) The presiding Justice of the Full Bench shall be the President of the Constitutional Court.

Article 23 (Quorum)

(1) The Full Bench shall review a case by and with the attendance of seven or more Justices.

(2) The Full Bench shall make a decision on a case by the majority vote of Justices participating in the final discussion: It requires a vote of six or more Justices in cases of falling under any of the following:

1. When it makes a decision of upholding

- on the constitutionality of statutes, impeachment, dissolution of a political party or constitutional complaint; and
2. When it overrules the precedent on interpretation and application of the Constitution or laws made by the Constitutional Court.

Article 24 (Exclusion, Recusal and Evasion)

(1) When a Justice falls under any of the following, the Justice shall be excluded from the execution of the Justice's services:

1. When the Justice is a party or is or was the spouse of a party;
2. When the Justice is or was a relative of a party [to the proceeding];
3. When the Justice bears testimony or gives an expert opinion on the case;
4. When the Justice is or was the counsel of a party with respect to the case; or
5. When the Justice was involved in the

case outside of the Constitutional Court by reason of his duties or profession.

(2) The Full Bench may, *ex officio* or upon motion by a party, make a decision to exclude a Justice.

(3) When there is a circumstance in which it is difficult to expect the impartiality of a Justice, a party may move to recuse the Justice: *Provided*, That this shall not apply when the party has appeared and entered a plea on the hearing date.

(4) A party may not move to recuse two or more Justices for the same case.

(5) When there exists a cause referred to in paragraph (1) or (3), the Justice may recuse himself with the permission of the presiding Justice.

(6) The provisions of Articles 44, 45, 46 (1), (2) and 48 of the Civil Procedure Act shall apply *mutatis mutandis* to the adjudication on the motion to exclude or recuse.

Article 25 (Legal Representative)

(1) When the Government is a party (including an intervener. Hereinafter the same shall apply) in any proceeding, the Minister of Justice shall represent it.

(2) In any proceeding, a state agency or local government which is a party, may select an attorney or an employee who is qualified as an attorney as a counsel and have him pursue the proceeding.

(3) When a private person is a party, in any proceeding, such person shall be represented by an attorney: *Provided*, That this shall not apply when he is an attorney.

Article 26 (Form of Request for Adjudication)

(1) The request for an adjudication of the Constitutional Court shall be made by submitting to the Constitutional Court a written request as prescribed for each matter to be adjudged: *Provided*, That in an adjudication on

the constitutionality of statutes, it shall be substituted by a written request by the court, and in an adjudication on impeachment, by an authentic copy of the impeachment resolution of the National Assembly.

(2) Evidentiary documents or reference materials may be appended to the written request.

Article 27 (Service of Written Request)

(1) The Constitutional Court shall, upon receiving a written request, serve without delay a certified copy thereof on the respondent agency or respondent (hereinafter referred to as “respondent”).

(2) In case of a request for an adjudication on the constitutionality of statutes, a certified copy of the written request shall be served to the Minister of Justice and the parties of the ordinary court case concerned.

Article 28 (Correction of Request for Adjudication)

(1) When the presiding Justice determines that

a request for adjudication fails to meet its requirements but may satisfy them by correction, the Justice shall require that request be corrected within a reasonable time.

(2) The provision of Article 27 (1) shall be applicable *mutatis mutandis* to a written correction as referred to in paragraph (1).

(3) When a correction is made under paragraph (1), the corrected request shall be deemed to have been made at the time the initial request was submitted.

(4) The period for correction as referred to in paragraph (1) shall not be included in calculating the period of adjudication under Article 38.

(5) The presiding Justice, if necessary, may authorize one of the Justices to request the correction in Article 28 (1).

Article 29 (Presentation of Written Answer)

(1) The respondent may, upon receiving a written request or correction, present a written

answer to the Constitutional Court.

(2) The written answer shall include an answer to the claim and the bases of the request for adjudication.

Article 30 (Method of Review)

(1) The adjudication of impeachment, dissolution of a political party or competence dispute shall be conducted through oral arguments.

(2) The adjudication on the constitutionality of statutes or constitutional complaint shall be conducted without oral arguments: If it is deemed necessary, the Full Bench may hold oral proceedings, and hear the statements of parties, interested persons and amici curiae.

(3) When the Full Bench holds oral proceedings, it shall fix the date and summon parties and interested persons.

Article 31 (Inspection of Evidence)

(1) When the Full Bench deems necessary for

the review of a case, it may, upon motion by a party or *ex officio*, inspect evidence as follows:

1. To examine the party or witness;
2. To demand presentation of documents, books, articles and other evidentiary materials which are possessed by the parties or interested persons, and to place them in custody;
3. To order a person of special learning and experience to evaluate evidence; and
4. To verify the nature or condition of relevant goods, persons, places and other things.

(2) The presiding Justice may, if necessary, designate one of Justices to inspect evidence under paragraph (1).

Article 32 (Demand, etc. for Presentation of Materials)

The Full Bench may, by a ruling, make inquiries concerning facts necessary for the ad-

judication to other state agencies or the organs of public organizations, or demand them to send records or present materials: *Provided*, That with respect to records on a case for which a trial, prosecution or criminal investigation is under way, sending of the records shall not be demanded.

Article 33 (Place of Adjudication)

The oral arguments of the adjudication and the pronouncement of final decision shall be made in the courtroom: When the President of the Constitutional Court deems necessary, it may be made in a place outside of the courtroom.

Article 34 (Opening of Proceedings to Public)

(1) The oral arguments of the adjudication and the pronouncement of the decision shall be open to the public: Any review without oral arguments and deliberation shall not be open to the public.

(2) The proviso of Article 57 (1) and the provi-

sions of Article 57 (2), (3) of the Court Organization Act shall be applicable *mutatis mutandis* to the proceedings of the Constitutional Court.

Article 35 (Direction of Proceedings and Police Power in Courtroom)

(1) The presiding Justice shall keep order in the courtroom, and preside over oral arguments and deliberations.

(2) The provisions of Articles 58 to 63 of the Court Organization Act shall apply *mutatis mutandis* to the maintenance of order and the use of language in the courtroom of the Constitutional Court.

Article 36 (Final Decision)

(1) When the Full Bench finishes the review, it shall make a final decision.

(2) Upon making a final decision, a written decision stating the following matters shall be prepared, signed and sealed by all the Justices

participating in the adjudication:

1. Number and title of the case;
2. Indication of the parties and persons who pursue the proceeding for them or their counsels;
3. Holding;
4. Rationale; and
5. Date of decision.

(3) Any Justice who participates in an adjudication shall express his or her opinion on the written decision.

(4) When a final decision is pronounced, the clerk shall prepare without delay an authentic copy of the written decision and serve it on the parties.

(5) The final decision shall be made public through publication in the Gazette of the government or other means stipulated in the Constitutional Court Regulations.

Article 37 (Expenses, etc. of Adjudication)

(1) The expenses for adjudication by the Constitutional Court shall be borne by the state: The Expenses for the inspection of evidence upon request of a party may be borne by the party as prescribed in the Constitutional Court Rules.

(2) The Constitutional Court may order a person requesting an adjudication on a constitutional complaint to pay a deposit money as prescribed in the Constitutional Court Rules.

(3) The Constitutional Court may order a transfer of all or part of the deposit money to the national treasury as prescribed in the Constitutional Court Rules, in case of falling under any of the following:

1. When a request for adjudication on constitutional complaint is dismissed; or
2. When a request for adjudication on constitutional complaint is rejected, and such a request is deemed to be an abuse of right.

Article 38 (Time Limit of Adjudication)

The Constitutional Court shall pronounce the final decision within one hundred eighty days after it receives the case for adjudication: *Provided*, That if the attendance of seven Justices is impossible due to vacancies of Justices, the period of vacancy shall not be included in calculating the period of adjudication.

Article 39 (*ne bis in idem*)

The Constitutional Court shall not adjudicate again the same case on which a prior adjudication has already been made.

Article 39-2 (Access Right to a Final Decision)

(1) Anyone may request for an access to, or a copy of the written records of a final decision for the purpose of rights relief, academic research, or for public interest. *Provided*, that the President of the Constitutional Court may decline an access to, or a copy of the written record of the case in the following cases.

1. When the hearing was closed to the public.
2. When it is deemed that national security, good morals, public order or public welfare will be clearly infringed by the disclosure of the written records of the case.
3. When it is deemed that honor of the interested parties, privacy, and/or trade secrets (refers to the trade secret provided under Article 2-2 of the 「the Act on Prohibition of Anti-competition and Protection of Trade Secrets」), or safety and peacefulness of one's life and liberty will be clearly infringed by the disclosure of the written records of the case.

(2) When access to the written record is limited pursuant to the conditional clause under paragraph (1), the President of the Constitutional Court shall notify the reasons thereof to

its applicant.

(3) Any necessary provisions in relation to the access of the written records under paragraph ① shall be provided by the Constitutional Court Rule.

(4) The person who had an access to the written records shall not, with the knowledge acquired, infringe upon public order or good morals, or defame or invade privacy of the interested parties.

Article 40 (Applicable Provisions)

(1) Except as otherwise provided in this Act, the provisions of laws and regulations relating to civil litigation shall apply *mutatis mutandis* to the procedure for adjudication of the Constitutional Court within the limit not contrary to the nature of constitutional adjudication. Together with such provisions, laws and regulations relating to criminal litigation shall apply *mutatis mutandis* to the adjudication

on impeachment and the Administrative Litigation Act to the adjudication on competence dispute and constitutional complaint.

(2) In case referred to in the latter part of paragraph (1), if the laws and regulations relating to the criminal litigation or the Administrative Litigation Act conflict with those relating to the civil litigation, the latter shall not be applicable *mutatis mutandis*.

CHAPTER IV SPECIAL ADJUDICATION PROCEDURES

SECTION 1 Adjudication on the Constitutionality of Statutes

Article 41 (Request for Adjudication on the Constitutionality of Statutes)

(1) When the issue of whether or not statutes are constitutional is relevant to the judgment of the original case, the ordinary court(including the military court; hereinafter the same shall

apply) shall request to the Constitutional Court, *ex officio* or by decision upon a motion by the party, an adjudication on the constitutionality of statutes.

(2) The motion of the party as referred to in paragraph (1) shall be in writing, stating matters as referred to in subparagraphs 2 to 4 of Article 43.

(3) The provisions of Article 254 of the Civil Procedure Act shall apply *mutatis mutandis* to the examination of the written motion referred to in paragraph (2).

(4) No appeal shall be made against the decision of the ordinary court on the request for adjudication on the constitutionality of statutes.

(5) When an ordinary court other than the Supreme Court makes a request referred to in paragraph (1), it shall do so through the Supreme Court.

Article 42 (Suspension of Proceedings, etc.)

(1) When an ordinary court requests to the Constitutional Court an adjudication on the constitutionality of statutes, the proceedings of the court shall be suspended until the Constitutional Court makes a decision on the constitutionality of statutes: *Provided*, That if the court deems urgent, the proceedings other than the final decision may be proceeded.

(2) The period in which a proceeding is suspended under the main sentence of paragraph (1) shall not be included in calculating the detention period as prescribed in Article 92 (1) and (2) of the Criminal Procedure Act and Article 132 (1) and (2) of the Military Court Act and the period of judgment under Article 199 of the Civil Procedure Act.

Article 43 (Matters to be Stated in Written Request)

When an ordinary court requests to the Constitutional Court an adjudication on the constitutionality of statutes, the court's written re-

quest shall include the following matters:

1. Indication of the requesting court;
2. Indication of the case and the parties;
3. The statute or any provision of the statute which is interpreted as unconstitutional;
4. Bases on which it is interpreted as unconstitutional; and
5. Other necessary matters.

Article 44 (Opinions of Parties, etc. to Litigious Case)

The parties to the original case and the Minister of Justice may submit to the Constitutional Court an amicus brief on the issue of whether or not statutes are constitutional.

Article 45 (Decision of Unconstitutionality)

The Constitutional Court shall decide only whether or not the requested statute or any provision of the statute is unconstitutional: *Provided*, That if it is deemed that the whole provisions of the statute are unable to enforce

due to a decision of unconstitutionality of the requested provision, a decision of unconstitutionality may be made on the whole statute.

Article 46 (Service of Written Decision)

The Constitutional Court shall serve an authentic copy of the written decision on the requesting court within fourteen days from the day of decision. In this case, if the requesting court is not the Supreme Court, it shall be served through the Supreme Court.

Article 47 (Effect of Decision of Unconstitutionality)

(1) Any decision that statutes are unconstitutional shall bind the ordinary courts, other state agencies and local governments.

(2) Any statute or provision thereof decided as unconstitutional shall lose its effect from the day on which the decision is made: *Provided*, That the statutes or provisions thereof relating to criminal penalties shall lose their effect

retroactively.

(3) In case referred to in the proviso of paragraph (2), the retrial may be allowed with respect to a conviction based on the statutes or provisions thereof decided as unconstitutional.

(4) The provisions of the Criminal Procedure Act shall apply *mutatis mutandis* to the retrial as referred to in paragraph (3).

SECTION 2 Adjudication on Impeachment

Article 48 (Institution of Impeachment)

If a public official who falls under any of the following violates the Constitution or laws in the course of execution of his or her services, the National Assembly may pass a resolution on the institution of impeachment as prescribed in the Constitution and the National Assembly Act:

1. President of the Republic, Prime Minister, Members of the State Council or

Ministers;

2. Justices of the Constitutional Court, judges or Commissioners of the National Election Commission;
3. Chairman and Commissioners of the Board of Audit and Inspection; or
4. Other public officials as prescribed by relevant laws.

Article 49 (Impeachment Prosecutor)

(1) For the adjudication on impeachment, the Chairperson of the Legislation and Justice Committee of the National Assembly shall be the impeachment prosecutor.

(2) The impeachment prosecutor shall request adjudication by presenting to the Constitutional Court an authentic copy of the written resolution of the institution of impeachment, and may examine the accused person in the oral proceedings.

Article 50 (Suspension of Exercise of Power)

No person against whom a resolution of institution of impeachment is passed shall exercise his or her power until the Constitutional Court makes a decision thereon.

Article 51 (Suspension of Impeachment Proceeding)

When a criminal proceeding is under way for the same cause as in the request for impeachment against the accused person, the Full Bench may suspend the proceeding of impeachment.

Article 52 (Non-Attendance of Party)

- (1) If a party fails to attend on the hearing date, a new date shall be fixed.
- (2) If the party fails to attend even on the re-fixed date, the examination against the party shall be allowed without his or her attendance.

Article 53 (Decision)

- (1) When a request for impeachment is upheld, the Constitutional Court shall pronounce a decision that the accused person be removed from

the public office.

(2) If the accused person has been already removed from the public office before the pronouncement of the decision, the Constitutional Court shall reject the request for impeachment.

Article 54 (Effect of Decision)

(1) The decision of impeachment shall not exempt the accused person from the civil or criminal liabilities.

(2) Any person who is removed by the decision of impeachment shall not be a public official until five years have passed from the date on which the decision is pronounced.

SECTION 3 Adjudication on Dissolution of a Political Party

Article 55 (Request for Adjudication on Dissolution of a Political Party)

If the objectives or activities of a political party are contrary to the basic order of democracy,

the Executive may request to the Constitutional Court, upon a deliberation of the State Council, an adjudication on dissolution of the political party.

Article 56 (Matters to be Stated on Written Request)

The written request for adjudication on dissolution of a political party shall include the following matters:

1. Indication of the political party requested to be dissolved; and
2. Bases of the request.

Article 57 (Provisional Remedies)

The Constitutional Court may, upon receiving a request for adjudication on dissolution of a political party, make *ex officio* or upon a motion of the plaintiff or a decision to suspend the activities of the defendant until the pronouncement of the final decision.

Article 58 (Notification of Request, etc.)

- (1) When an adjudication on dissolution of a

political party is requested, a decision on the provisional remedies is rendered, or the adjudication is brought to an end, the President of the Constitutional Court shall notify the facts to the National Assembly and the National Election Commission.

(2) The written decision ordering dissolution of a political party shall also be served, in addition to the defendant, on the National Assembly, the Executive and the National Election Commission.

Article 59 (Effect of Decision)

When a decision ordering dissolution of a political party is pronounced, the political party shall be dissolved.

Article 60 (Execution of Decision)

The decision of the Constitutional Court ordering dissolution of a political party shall be executed by the National Election Commission in accordance with the Political Parties Act.

SECTION 4 Adjudication on Competence Dispute

Article 61 (Causes for Request)

(1) When any controversy on the existence or the scope of competence arises between state agencies, between a state agency and a local government, or between local governments, a state agency or a local government concerned may request to the Constitutional Court an adjudication on competence dispute.

(2) The request for adjudication referred to in paragraph (1) may be allowed only when an action or omission by the defendant infringes or is in obvious danger of infringing upon the plaintiff's competence granted by the Constitution or laws.

Article 62 (Classification of Adjudication on Competence Dispute)

(1) The adjudication on competence dispute shall be classified as follows:

1. Adjudication on competence dispute between state agencies: Adjudication on competence dispute between the National Assembly, the Executive, ordinary courts and the National Election Commission;
2. Adjudication on competence dispute between a state agency and a local government:
 - (a) Adjudication on competence dispute between the Executive and the Special Metropolitan City, Metropolitan City or Province; and
 - (b) Adjudication on competence dispute between the Executive and the City/County or District which is a local government (hereinafter referred to as a “Self-governing District”).
3. Adjudication on competence dispute between local governments:
 - (a) Adjudication on competence dispute

- between the Special Metropolitan City, Metropolitan City or Province;
- (b) Adjudication on competence dispute between the City/County or Self-governing District; and
 - (c) Adjudication on competence dispute between the Special Metropolitan City, Metropolitan City or Province and the City, County or Self-governing District.

(2) When a competence dispute relates to the affairs of a local government concerning education, science or art under Article 2 of the Local Educational Self-Governance Act, the Superintendent of the Board of Education shall be the party referred to in paragraph (1) 2 and 3.

Article 63 (Time Limit for Request)

(1) The adjudication on competence dispute shall be requested within sixty days after the existence of the cause is known, and within one

hundred eighty days after the cause occurs.

(2) The period as referred to in paragraph (1) shall be a peremptory period.

Article 64 (Matters to be Stated on Written Request)

The written request for adjudication on competence dispute shall include the following matters:

1. Indication of the plaintiff or the institution whereto the plaintiff belongs, and the person who pursues the proceeding or counsel;
2. Indication of the defendant;
3. Action or omission by the defendant, which is the object of the adjudication;
4. Reasons for the request; and
5. Other necessary matters.

Article 65 (Provisional Remedies)

The Constitutional Court may, upon receiving a request for adjudication on competence dispute, make *ex officio* or upon a motion by the plain-

tiff a decision to suspend the effect of an action taken by the defendant which is the object of the adjudication until the pronouncement of the final decision.

Article 66 (Decision)

(1) The Constitutional Court shall decide as to the existence or scope of the competence of a state agency or a local government.

(2) In the case as referred to in paragraph (1), the Constitutional Court may cancel an action of the defendant which is the cause of the competence dispute or may confirm the invalidity of the action, and when the Constitutional Court has rendered a decision on admitting the request for adjudication against an omission, the defendant shall take a disposition in pursuance of the purport of decision.

Article 67 (Effect of Decision)

(1) The decision on competence dispute by the Constitutional Court shall bind all state agen-

cies and local governments.

(2) The decision to revoke an action of a state agency or a local government shall not alter the effect which has already been given to the person whom the action is directed against.

SECTION 5 Adjudication on Constitutional Complaint

Article 68 (Causes for Request)

(1) Any person who claims that his basic right which is guaranteed by the Constitution has been violated by an exercise or non-exercise of governmental power may file a constitutional complaint, except the judgments of the ordinary courts, with the Constitutional Court: *Provided*, That if any relief process is provided by other laws, no one may file a constitutional complaint without having exhausted all such processes.

(2) If the motion made under Article 41 (1) for adjudication on constitutionality of statutes is rejected, the party may file a constitutional

complaint with the Constitutional Court. In this case, the party may not repeatedly move to request for adjudication on the constitutionality of statutes for the same reason in the procedure of the case concerned.

Article 69 (Time Limit for Request)

(1) A constitutional complaint under Article 68 (1) shall be filed within ninety days after the existence of the cause is known, and within one year after the cause occurs: *Provided*, That a constitutional complaint to be filed after taking prior relief processes provided by other laws, shall be filed within thirty days after the final decision in the processes is notified.

(2) The adjudication on a constitutional complaint under Article 68 (2) shall be filed within thirty days after a request for an adjudication on constitutionality of statutes is dismissed.

Article 70 (Court-Appointed Counsel)

(1) If a person who desires to file a constitu-

tional complaint has no financial resources to appoint an attorney as his counsel, he may request the Constitutional Court to appoint a court-appointed counsel. In this case, the time limit for request as prescribed in Article 69 shall be counted from the day on which such request is made.

(2) When the Constitutional Court deems it necessary for the public interest, it may appoint a court-appointed counsel notwithstanding the provision of paragraph (1).

(3) The Constitutional Court shall, upon receiving an request under paragraph (1) or in the case of paragraph (2), appoint a court-appointed counsel from among attorneys under the conditions as prescribed by the Constitutional Court Rules: Provided, That it may not appoint a court-appointed counsel in cases where the said request for adjudication is obviously dismissible or groundless, or where deemed to be an abuse of rights.

(4) When the Constitutional Court makes a decision not to appoint a court-appointed counsel, it shall notify the applicant without delay. In this case, the period from the day the request was made to the day the notification is given shall not be included in calculating the period for request as prescribed in Article 69.

(5) A court-appointed counsel who has been appointed under paragraph (3) shall submit to the Constitutional Court a written request for adjudication indicating the matters as referred to in Article 71, within 60 days from the date of his appointment.

(6) The court-appointed counsel under paragraph (3) shall be paid from the national treasury under the conditions as prescribed by the Constitutional Court Rules.

Article 71 (Matters to be Stated on Written Request)

(1) The written request for adjudication on constitutional complaint under Article 68 (1)

shall include the following matters:

1. Indication of the complainant and his counsel;
2. Infringed rights;
3. Exercise or non-exercise of governmental power by which the infringement of the right is caused;
4. Bases of the request; and
5. Other necessary matters.

(2) The provisions of Article 43 shall apply *mutatis mutandis* to matters to be stated on the written request for adjudication on constitutional complaint under Article 68 (2). In this case, the term “indication of the requesting court” used in subparagraph 1 of Article 43 shall be considered as the term “indication of the complainant and his counsel”.

(3) The document attesting the appointment of a counsel or a written notification of appointment of the court-appointed counsel shall be appended to the written request for adjudication

on constitutional complaint.

Article 72 (Prior Review)

(1) The President of the Constitutional Court may establish the Panels each of which consists of three Justices in the Constitutional Court and have a Panel take a prior review of a constitutional complaint.

(2) Repealed.

(3) In case of any of the followings, the Panel shall dismiss a constitutional complaint with a decision of an unanimity:

1. When a constitutional complaint is filed, without having exhausted all the relief processes provided by other laws, or against a judgment of the ordinary court;
2. When a constitutional complaint is filed after expiration of the time limit prescribed in Article 69;
3. When a constitutional complaint is filed

without a counsel under Article 25; or

4. When a constitutional complaint is inadmissible and the inadmissibility can not be corrected.

(4) When a Panel can not reach a decision of dismissal referred to in paragraph (3) with an unanimity, it shall transfer by a decision the constitutional complaint to the Full Bench. When a dismissal is not decided within thirty days after requesting the adjudication on constitutional complaint, it shall be deemed that a decision to transfer it to the Full Bench (hereinafter, “decision to transfer to the Full Bench”) is made.

(5) The provisions of Articles 28, 31, 32 and 35 shall apply *mutatis mutandis* to the review of the Panels.

(6) Matters necessary for the composition and operation of the Panels shall be provided by the Constitutional Court Rules.

Article 73 (Notification of Dismissal or Decision to

Transfer to Full Bench)

(1) When a Panel dismisses a constitutional complaint or decides to transfer it to the Full Bench, it shall notify it to the complainant or his counsel and the respondent within fourteen days from the day of decision. The same shall also apply to the case provided in the latter part of Article 72 (4).

(2) When a constitutional complaint is transferred to the Full Bench under Article 72 (4), the President of the Constitutional Court shall notify it without delay to the following persons:

1. The Minister of Justice; and
2. A Party to the case concerned who is not the complainant, in case of an adjudication on constitutional complaint under Article 68 (2).

Article 74 (Presentation of Opinions by Interested Agencies)

(1) State agencies or public organizations which

are interested in an adjudication on a constitutional complaint, and the Minister of Justice may present to the Constitutional Court an amicus brief on the adjudication.

(2) When a constitutional complaint prescribed in Article 68 (2) is transferred to the Full Bench, the provisions of Articles 27 (2) and 44 shall apply *mutatis mutandis* to it.

Article 75 (Decision of Upholding)

(1) A decision to uphold a constitutional complaint shall bind all the state agencies and the local governments.

(2) In upholding a constitutional complaint under Article 68 (1), the infringed basic rights and the exercise or non-exercise of governmental power by which the infringement has been caused, shall be specified in the holding of the decision of upholding.

(3) In the case referred to in paragraph (2), the Constitutional Court may revoke the exercise of

governmental power which infringes basic rights or confirm that the nonexercise thereof is unconstitutional.

(4) When the Constitutional Court makes a decision to uphold a constitutional complaint against the non-exercise of governmental power, the respondent shall take a new action in accordance with such decision.

(5) In the case referred to in paragraph (2), when the Constitutional Court deems that the exercise or non-exercise of governmental power is caused by unconstitutional laws or provisions thereof, it may declare in the decision of upholding that the laws or provisions are unconstitutional.

(6) In the case, referred to in paragraph (5) and when a constitutional complaint prescribed in Article 68 (2) is upheld, the provisions of Articles 45 and 47 shall apply *mutatis mutandis* to such cases.

(7) When a constitutional complaint prescribed

in Article 68 (2) is upheld, and when a case concerned in an ordinary court involving the constitutional complaint has been already decided by final judgment, the party may request a retrial of the case before the court.

(8) In the retrial referred to in paragraph (7), the provisions of the Criminal Procedure Act shall apply *mutatis mutandis* to criminal cases, and those of the Civil Procedure Act to other cases.

CHAPTER V Adjudication Procedures Based on Electronic Information Processing System

Article 76 (Receipt of Electronic Documents)

(1) A party or interested persons of each adjudication procedure may submit a request or other required documents as provided in this Act in electronic format (information prepared and transmitted, received, or stored in digital format through devices capable of information

processing, such as computers, hereinafter ‘electronic documents’) through the electronic information-processing system (electronic devices capable of processing information required for preparation, submission, and service of electronic documents, hereinafter the same shall apply) designated and operated by the Constitutional Court by using the information and communication network.

(2) The electronic documents submitted pursuant to Article 76 (1) take the same effect as the written documents submitted in accordance with the Act.

(3) Electronic documents submitted through the electronic information-processing system shall be deemed to have been received upon being recorded electronically in the electronic information-processing system.

(4) In case electronic documents are received pursuant to Article 76 (3), the Constitutional Court shall immediately notify the party or in-

interested persons electronically the receipt thereof as provided in the Constitutional Court Rule.

Article 77 (Digital Signature, etc.)

(1) The party shall fix a digital signature on the electronic documents submitted to the Constitutional Court for authentication as provided in the Constitutional Court Rule.

(2) A Justice or clerk, when preparing the documents related to the case subject to adjudication, shall fix an administrative digital signature as provided in Article 2 Item 6 of the Electronic Government Act (hereinafter “administrative digital signature”).

(3) The digital signature in Article 77 (1) and administrative digital signature in Article 77 (2) shall be considered signed and sealed as prescribed in the provisions concerning the adjudication procedures of the Act.

Article 78 (Electronic Service, etc.)

(1) The Constitutional Court may serve a copy of the decision or all types of documents related to the Act on the party by using the electronic information-processing system and its associated information and communication network. Provided, that the same will not apply if the party does not consent thereto.

(2) The Constitutional Court shall record and register the documents to be served on the party, such as the copy of decisions, in the electronic information-processing system, and notify the party or interested persons electronically the registration thereof as prescribed in the Constitutional Court Rule.

(3) Service of documents using the electronic information-processing system pursuant to Section 1 takes the same effect as the service of the written documents.

(4) In the case of Article 78 (2), the time of service on the party shall be when the recipient confirms the registered electronic document as

provided in the Constitutional Court Rule. Provided, that if the registration is not confirmed within fourteen days from the day of its notification, the time of service shall be over fourteen days from the day of its notification.

(5) In case electronic service is, despite Article 78 (1), impossible due to a disrupted situation in the electronic information-processing system or other reasons prescribed in the Constitutional Court Rule, the documents concerned may be served pursuant to the “Civil Procedure Act”.

CHAPTER VI PENAL PROVISIONS

Article 79 (Penal Provisions)

Any person who falls under any of the following subparagraphs, shall be punished by an imprisonment not more than one year, or a fine not exceeding one million won:

1. Person who is summoned or commis-

sioned as a witness, expert witness, interpreter or translator by the Constitutional Court but fails to attend without any justifiable reason;

2. Person who is demanded or ordered to present articles of evidence by the Constitutional Court but fails to present them without any justifiable reason; or
3. Person who refuses, interferes with or evades an inspection or examination of the Constitutional Court without any justifiable reason.

ADDENDA

(Omitted.)

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