

THE CONSTITUTIONAL COURT ACT

Enacted	Aug.	5, 1988
Amended	Nov.	30, 1991
	Dec.	22, 1994
	Aug.	4, 1995
	Dec.	13, 1997
	Jan.	19, 2002
	Jan.	26, 2002
	Mar.	12, 2003
	Mar.	31, 2005
	Jul.	29, 2005
	Dec.	21, 2007
	Mar.	14, 2008
	Dec.	29, 2009
	May	4, 2010
	Apr.	5, 2011
	Dec.	11, 2012
	May	20, 2014
	Dec.	30, 2014
	Mar.	20, 2018

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 2 (Jurisdiction)

The Constitutional Court shall have jurisdiction over the following matters:

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 3 (Composition)

The Constitutional Court shall consist of nine Justices.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 4 (Independence of Justices)

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 5 (Qualifications of Justices)

(1) The Justices shall be appointed from among those who have held any of the following positions for fifteen years or more and who are forty or older: *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 public institution under Article 4 of the Act on the Management of Public Institutions 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 or university.
- (2) No person falling under any of the following shall be appointed as a Justice:
1. Person who is disqualified to serve as a public official under the pertinent laws and regulations;
 2. Person who has been sentenced to imprisonment without prison labor or a heavier punishment; or
 3. Person for whom five years have not yet passed since he or she was dismissed by impeachment.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 6 (Appointment of Justices)

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

(2) The Justices shall be appointed, elected or nominated, following confirmation hearing of the National Assembly. In this event, the President shall request a confirmation hearing before he or she appoints the Justices(except the Justices elected by the National Assembly or nominated by the Chief Justice of the Supreme Court) and the Chief Justice of the Supreme Court shall request a confirmation hearing before he or she nominates the Justices.

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

(4) When a vacancy occurs during the term of office of a Justice, his or her successor

shall be appointed within thirty days from the date on which the 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 when the National Assembly is out of session or in recess, the National Assembly shall elect his or her successor within thirty days after resuming of the session or the commencement of next session.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 seventy. *<Amended by Act No. 12897, Dec. 30, 2014>*

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 sentenced to imprisonment without prison labor or a heavier punishment.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 9 (Prohibition of Justices' Participation in Politics)

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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).

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

CHAPTER II ORGANIZATION

Article 12 (President of Constitutional Court)

- (1) The Constitutional Court shall have a president.
- (2) The President of the Republic of Korea 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) Where the position of the President of the Constitutional Court is vacant or the President becomes unable to perform his or her duties due to an accident, other Justices, in the order prescribed by the Constitutional Court Rules, shall act on behalf of the President.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 13 Repealed. <by Act No. 4408, Nov. 30, 1991>

Article 14 (Prohibition of Concurrent Service)

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

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 corporation and organization, etc.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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

(1) The treatment and remuneration of the President of the Constitutional Court shall follow the practices for the Chief Justice of the Supreme Court, and the Justices of the Constitutional Court shall be public officials in political service and their treatment and remuneration shall follow the practices for the Justices of the Supreme Court.

(2) Repealed.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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) Resolutions 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 a vote.

(4) Resolutions 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, Rapporteur Judges and public officials of Grade III or higher; and
4. Matters deemed specially important and presented by the President of the Constitutional Court for discussion.

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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-in-charge 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 remuneration shall be equal to that of a member of the State Council.

(2) The Deputy Secretary General shall be appointed as a public official in political service, and his or her remuneration 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 a public official of the level equivalent 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 public officials under their authority to the Constitutional Court in order to have them serve as public officials of the Department of Court Administration.

(6) Repealed.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 19 (Rapporteur Judges)

(1) The Constitutional Court shall have Rapporteur Judges of the number provided by the Constitutional Court Rules. *<Amended by Act No. 10546, Apr. 5, 2011>*

(2) The Rapporteur Judges shall be public officials in special service. *<Amended by Act No. 10546, Apr. 5, 2011>*

(3) The Rapporteur Judges shall be engaged in investigation and research concerning the review and adjudication of cases under the order of the President of the Constitutional Court. *<Amended by Act No. 10546, Apr. 5, 2011>*

(4) The Rapporteur Judges 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: <Amended by Act No. 10546, Apr. 5, 2011>

1. A person who is qualified as a judge, a public prosecutor, or an attorney;
 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 the ordinary 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, the ordinary 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 Constitutional Court Rules.
- (5) Repealed. <by Act No. 6861, Mar. 12, 2003>
- (6) Any person falling under any of the following subparagraphs shall not be appointed as a Rapporteur Judge: <Amended by Act No. 10546, Apr. 5, 2011>
1. A person falling under any 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 five years have not elapsed since he or she was dismissed by impeachment.
- (7) The term of office of Rapporteur Judges shall be ten years, which may be renewed, and their retirement age shall be sixty. <Amended by Act No. 10546, Apr. 5, 2011>
- (8) When any Rapporteur Judge comes to fall under any subparagraph of paragraph (6), the Rapporteur Judge shall be required to retire. Provided, That this shall not apply when he or she falls under subparagraph 5 of Article 33 of the State Public Officials Act. <Amended by Act No. 10546, Apr. 5, 2011>
- (9) The President of the Constitutional Court may request other state agencies to dispatch public officials under their authority to the Constitutional Court in order to have them serve as Rapporteur Judges. <Amended by Act No. 10546, Apr. 5, 2011>
- (10) The Deputy Secretary General may hold a concurrent position as a Rapporteur Judge. <Amended by Act No. 10546, Apr. 5, 2011>
- (11) The President of the Constitutional Court may appoint Rapporteur Judges, or assign them to hold a concurrent position, to perform duties other than investigation and research concerning the review and adjudication of cases. The number of Rapporteur Judges shall be prescribed by the Constitutional Court Rules, and his or her remuneration shall be equal to whichever is higher. <Amended by Act No. 10546, Apr.

5, 2011; Act No. 12897, Dec. 30, 2014>

Article 19-2 (Junior Rapporteur Judges)

- (1) Where any Rapporteur Judge is newly appointed, he or she shall be appointed as such Rapporteur Judge after he or she is appointed and serves as a Junior Rapporteur Judge for three years and his or her work performance is considered: *Provided*, That an appointment as a Junior Rapporteur Judge may be exempted or the service period may be reduced by taking into account his or her work experience and abilities, etc., as stipulated by the Constitutional Court Rules.
- (2) The Junior Rapporteur Judges shall be appointed by the President of the Constitutional Court through a resolution of the Council of Justices.
- (3) The Junior Rapporteur Judges shall be public officials in extraordinary civil service, and their remuneration and criteria for promotion shall follow the practices for the Rapporteur Judges.
- (4) Where the work performance of a Junior Rapporteur Judge is unsatisfactory, he or she may be dismissed through a resolution of the Council of Justices.
- (5) The service period of a Junior Rapporteur Judge shall be added to his or her service period as a Rapporteur Judge prescribed in this Act and other laws and regulations.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 19-3 (Academic Advisers)

- (1) The Constitutional Court may have Academic Advisers. Academic Advisers shall be engaged in professional investigation and research concerning the review and adjudication of cases.
- (2) Academic Advisers shall be appointed to serve for a fixed period not exceeding three years.
- (3) Academic Advisers shall be appointed as a public official of a level equivalent to Grade II or III in extraordinary civil service or as a public official in a fixed term position as prescribed by Article 26-5 of the State Public Officials Act, and his or her duties and qualifications shall be stipulated in the Constitutional Court Rules. <Amended by Act No. 11530, Dec. 11, 2012>

[This Article Newly Inserted by Act No. 8729, Dec. 21, 2007]

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 Rapporteur Judges, public officials of the Department of Court Administration and others.
- (2) The Constitutional Research Institute shall be composed of forty persons or less,

including one President, heads of departments and teams, research officers, and researchers. <Amended by Act No. 12897, Dec. 30, 2014>

(3) The President of the Constitutional Court shall nominate a Rapporteur Judge or appoint a public official of Grade I in general service to the position of the President of the Constitutional Research Institute, following a vote by the Council of Justices. <Newly Inserted by Act No. 12897, Dec. 30, 2014>

(4) A Rapporteur Judge or public official of Grade II or III in general service shall be appointed as head of a department, a Rapporteur Judge or public official of Grade III or IV in general service shall be appointed as head of a team, and a Rapporteur Judge or public official in general service shall be appointed as a research officer or researcher. <Amended by Act No. 12897, Dec. 30, 2014>

(5) The President of the Constitutional Court shall appoint a research officer or researcher, of his or her volition or upon the request of the President of the Constitutional Research Institute, from among the following persons: <Newly Inserted by Act No. 12897, Dec. 30, 2014>

1. A Rapporteur Judge;
2. A person qualified as an attorney (including qualified foreign attorneys);
3. A person who has obtained a bachelor's or master's degree and whose performance or experience meets the qualifications prescribed by the Constitutional Court Regulations;
4. A person who has obtained a doctorate.

(6) Other necessary matters concerning the organization and operation of the Constitutional Research Institute shall be prescribed by the Constitutional Court Regulations. <Newly Inserted by Act No. 12897, Dec. 30, 2014>

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 extraordinary civil service, and take charge of confidential affairs under the direction of the President of the Constitutional Court.

(3) Other than those prescribed in paragraph (2), 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 service or public officials of the level equivalent to Grade IV in extraordinary

civil service, and take charge of confidential affairs under the direction of the Justices.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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: *Provided*, That a vote of six or more Justices is required in case of any of the following:

1. Where it decides to rule a statute unconstitutional, sustain impeachment, dissolve a political party, or uphold a constitutional complaint; and
2. Where it overrules the Constitutional Court's precedent on interpretation and application of the Constitution or statutes.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 24 (Exclusion, Recusal and Self-Disqualification)

(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 to the case;
2. When the Justice is or was a relative of a party to the case;
3. When the Justice testifies or gives an expert opinion on the case;

4. When the Justice is or was the counsel of a party to the case; or
 5. When the Justice was involved in the case by reason of his duties or profession outside of the Constitutional Court.
- (2) The Full Bench, on its own motion or motion of a party, may 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 argued on the merits during oral arguments.
- (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 disqualify himself or herself 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 25 (Representative or Counsel)

- (1) In any proceeding where the Government is a party (including an intervener; hereinafter the same shall apply), the Minister of Justice shall represent the Government.
- (2) In any proceeding where a state agency or local government is a party, the state agency or local government may select an attorney or an employee who is qualified as an attorney as a counsel and have him or her pursue the proceeding.
- (3) In any proceeding where a private person is a party, such person shall not request adjudication or pursue the proceeding unless he or she is represented by a counsel who is an attorney: *Provided*, That this shall not apply when such person is an attorney.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 26 (Forms of Adjudication Request)

- (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 type of proceedings: *Provided*, That in an adjudication on the constitutionality of statutes, it shall be substituted by a written request of the ordinary 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 on the Minister of Justice and the parties to the original case.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 the request be corrected within a reasonable time.

(2) 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 submitted at the time the initial request was made.

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

(5) The presiding Justice, if necessary, may authorize one of the Justices to require the correction under paragraph.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 29 (Submission Written Answer)

(1) The respondent may, upon receiving a written request or correction, submit a written answer to the Constitutional Court.

(2) The written answer shall state answers in response to the claim and the bases of the request for adjudication.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 30 (Method of Review)

(1) The adjudication on 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: *Provided*, That if it is deemed necessary, the Full Bench may hold oral arguments, and hear the statements of parties, interested persons and persons for reference.

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 31 (Examination of Evidence)

(1) When the Full Bench deems it necessary for the review of a case, it may, on its own motion or motion of a party, examine 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 relevant persons, and to place them in custody;
3. To order a person of special knowledge and experience to give an expert opinion; 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 examine evidence under paragraph (1).

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 32 (Demand, for Submission of Materials)

The Full Bench may, by a ruling, make inquiries concerning facts necessary for the adjudication to other state agencies or public organizations, or demand them to send records or submit materials: *Provided*, That it shall not make such demand for sending records on a case for which a trial, prosecution or criminal investigation is under way.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 33 (Place of Adjudication)

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 34 (Proceedings Open to Public)

(1) The oral arguments and the pronouncement of the decision shall be open to the public: *Provided*, That any review without oral arguments and the Conference of Justices shall not be open to the public.

(2) The proviso of Article 57 (1) and the provisions of Article 57 (2), (3) of the Court Organization Act shall be applicable *mutatis mutandis* to the proceedings of the Constitutional Court.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 35 (Authority to Preside over Proceedings and Control Courtroom)

(1) The presiding Justice shall keep order in the courtroom and preside over oral arguments and the Conference of Justices.

(2) 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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. Information on the parties and persons who pursue the proceeding for them or their counsels;
3. Holding;
4. Reasoning; and
5. Date of decision.

(3) Any Justice who participates in 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 Rules.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 37 (Expenses for Adjudication)

(1) The expenses for adjudication by the Constitutional Court shall be borne by the State: *Provided*, That the expenses for the examination 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 any of the following:

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 counted in the period of adjudication.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 39 (*Res Judicata*)

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 39-2 (Perusal and Copying of Case Records)

(1) Anyone may apply for the perusal and copying of the records of a finally decided case, for the purpose of rights relief, academic research, or public interest. Provided, that the President of the Constitutional Court may restrict the perusal and copying of the case records in the following cases:

1. Where the oral argument was closed to the public.
2. Where it is deemed that national security, good morals, public order or public welfare may be substantially infringed by the disclosure of the written records of the case.
3. Where it is deemed that the reputation of the relevant persons, privacy, and/or trade secrets (referring to the trade secret provided under Article 2-2 of the “Act on Prohibition of Anti-competition and Protection of Trade Secrets”), or safety of life and body or the tranquility of life may be substantially infringed by the disclosure of the case records.

(2) When the perusal and copying of the case records is restricted pursuant to paragraph (1), the President of the Constitutional Court shall notify the reasons thereof to its applicant.

(3) Any necessary matters in relation to the perusal and copying of the written records under paragraph (1) shall be provided by the Constitutional Court Rules.

(4) No person who perused or copied the case records shall, by using the knowledge acquired, engage in an act of infringing upon public order or good morals, damaging the reputation of the relevant persons, or disturbing the tranquility of their life.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 40 (Applicable Provisions)

(1) Except as otherwise provided in this Act, laws and regulations relating to civil litigation shall apply *mutatis mutandis* to the procedure for adjudication of the Constitutional Court as long as it is not contrary to the nature of constitutional adjudication: *Provided*, however, That laws and regulations relating to criminal

litigation shall apply *mutatis mutandis* to the adjudication on impeachment, and those of 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 laws and regulations relating to civil litigation shall not apply.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

CHAPTER IV SPECIAL ADJUDICATION PROCEDURES

SECTION 1 Adjudication on the Constitutionality of Statutes

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

(1) If the constitutionality of a statute is precondition to the judgment of original case, the ordinary court which takes charge of that case (including the military court; hereinafter the same shall apply) shall, by its own motion or by its decision upon a motion of a party, request a review on the constitutionality of the statute to the Constitutional Court.

(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 review 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 42 (Suspension of Proceedings)

(1) When an ordinary court requests a review on the constitutionality of a statute to the Constitutional Court, the proceedings in the original case shall be suspended until the Constitutional Court makes a decision on the constitutionality of the statute: *Provided*, That if the court finds it urgent, the proceedings other than the final judgment 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 43 (Matters to be Stated in Written Request)

When an ordinary court requests a review on the constitutionality of a statute to the Constitutional Court, the court's written request shall include the following matters:

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 44 (Opinion of Parties and Others)

The parties to the original case and the Minister of Justice may submit to the Constitutional Court a written opinion on the issue of whether or not a statute is constitutional.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 45 (Decision of Unconstitutionality)

When the Constitutional Court decides on the constitutionality of a statute, the decision shall be made only for the statute or a provision of the statute for which a review is requested: *Provided*, That if the Court finds that a decision of unconstitutionality on a provision would render the entire statute unenforceable, it may decide the statute unconstitutional as a whole.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 47 (Effect of Decision of Unconstitutionality)

- (1) Any decision that a statute is 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. *<Amended by Act No. 12597, May 20, 2014>*
- (3) Notwithstanding paragraph (2), any statute or provision thereof relating to

criminal penalties shall lose its effect retroactively: *Provided*, That where a decision of constitutionality has previously been made in a case to which any such statute or provision thereof applies, such statute or provision thereof shall lose its effect from the day following that on which the decision was made. *<Newly Inserted by Act No. 12597, May 20, 2014>*

(4) In cases referred to in paragraph (3), a retrial may be requested with respect to a conviction based on the statute or provision thereof decided as unconstitutional. *<Amended by Act No. 12597, May 20, 2014>*

(5) The provisions of the Criminal Procedure Act shall apply *mutatis mutandis* to the retrial as referred to in paragraph (4). *<Amended by Act No. 12597, May 20, 2014>*

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 duties, 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 impeachment resolution and may examine the accused person in the oral argument.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 52 (Non-Attendance of Party)

(1) If a party fails to attend on the oral argument, a new schedule for the oral argument shall be arranged.

(2) If a party fails to attend the rescheduled oral argument, the adjudication can be carried out without his or her attendance.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 53 (Decision)

(1) When the Constitutional Court approves a request for impeachment, it 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 54 (Effect of Decision)

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

(2) Any person who is removed from the public office 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

SECTION 3 Adjudication on Dissolution of Political Party

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

If the objectives or activities of a political party are contrary to the basic order of democracy, the Executive, upon a deliberation of the State Council, may request an adjudication on dissolution of the political party to the Constitutional Court.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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. Information of the political party requested to be dissolved;
2. Bases of the request.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 57 (Provisional Remedies)

When it receives a request for adjudication on dissolution of a political party, the Constitutional Court, on its own motion or upon a motion of the requesting party, may make a decision to suspend the activities of the respondent until the pronouncement of the final decision.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 58 (Notification of Request and Others)

(1) When an adjudication on dissolution of a political party is requested, a decision on the provisional remedies is rendered, or a final decision on dissolution of a political party is delivered, the President of the Constitutional Court shall notify them to National Assembly and the National Election Commission.

(2) The written decision ordering dissolution of a political party shall also be served on the National Assembly, the Executive and the National Election Commission as well as the respondent.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 59 (Effect of Decision)

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 an adjudication on competence dispute to the Constitutional Court.

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

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 62 (Classification of Adjudication on Competence Dispute)

(1) The adjudication on competence dispute shall be classified as follows: *<Amended by Act No. 15495, Mar. 20, 2018>*

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 Cities, the Special Self-Governing City, Provinces or the Special Self-Governing 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 Cities, the Special Self-Governing City, Provinces or the Special Self-Governing Province;
 - (b) Adjudication on competence dispute between the Cities/Counties or Self-Governing Districts; and
 - (c) Adjudication on competence dispute between the Special Metropolitan City, Metropolitan Cities, the Special Self-Governing City, Provinces or the Special Self-Governing Province and the Cities, Counties or Self-Governing Districts.

(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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 peremptory.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 64 (Matters to be Stated on Written Request)

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

1. Information of the requesting party or the institution whereto the plaintiff belongs, and the person who pursues the proceeding or counsel;
2. Information of the respondent;
3. Action or omission by the respondent, which is the subject to adjudication;
4. Reasons for the request; and
5. Other necessary matters.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 65 (Provisional Remedies)

When receiving a request for adjudication on competence dispute, the Constitutional Court may, on its own motion or a motion of the requesting party, grant a provisional remedy to suspend the effect of an action taken by the respondent which is subject to the adjudication until the pronouncement of the final decision.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 66 (Decision)

(1) The Constitutional Court shall decide as to whether/or to what extent, a state agency or a local government has the competence, which is subject to adjudication.

(2) In the case as referred to in paragraph (1), the Constitutional Court may revoke or invalidate the respondent's action that infringed the competence at issue, and when the Constitutional Court approves the request against an omission, the respondent shall take an action pursuant to the purport of decision.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 67 (Effect of Decision)

(1) The decision on competence dispute by the Constitutional Court shall bind all state agencies 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 toward whom the action is directed.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

SECTION 5 Adjudication on Constitutional Complaint

Article 68 (Causes for Request)

(1) Any person whose basic rights guaranteed by the Constitution is infringed due to exercise or non-exercise of the governmental power, excluding judgment of the ordinary courts, may file a constitutional complaint with the Constitutional Court: Provided, That if any remedy 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 the constitutionality of

statutes is denied, the party may file a constitutional complaint with the Constitutional Court. In this case, the party shall be precluded from filing a motion to request for review on the constitutionality of statutes for the same cause in the proceedings of the original case.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 69 (Time Limit for filing Complaint)

(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 which is filed after exhausting remedial 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 denial of a motion to request for review on the constitutionality of the statute is notified.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 70 (Court-Appointed Counsel)

(1) If a person who desires to file a constitutional complaint has no financial resources to appoint an attorney as his counsel, he or she may move the Constitutional Court to appoint a court-appointed counsel. In this case, the time limit for filing a complaint as prescribed in Article 69 shall run from the date on which such motion is filed.

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

(3) The Constitutional Court shall, upon receiving an motion under paragraph (1) or in the case of paragraph (2), appoint a court-appointed counsel from among attorneys 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 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 movant without delay. In this case, the period from the day the motion was made to the day the notification is served shall not be counted in the period for filing a complaint as prescribed in Article 69.

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

(6) A court-appointed counsel who has been appointed under paragraph (3) shall be paid his or her remuneration from the national treasury, as prescribed by the Constitutional Court Rules.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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. Information of the complainant and his or her 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 "information of the requesting court" used in subparagraph 1 of Article 43 shall be considered as the term "information of the complainant and his or her 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 the Panels take a prior review of a constitutional complaint.

<Amended by Act No. 10546, Apr. 5, 2011>

(2) Repealed. *<by Act No. 4408, Nov. 30, 1991>*

(3) In case of any of the followings, the Panel shall dismiss a constitutional complaint in a unanimous decision: *<Amended by Act No. 10546, Apr. 5, 2011>*

1. Where a constitutional complaint is filed, without having exhausted all the remedial processes provided by other laws, or against a judgment of the ordinary court;

2. Where a constitutional complaint is filed after expiration of the time limit prescribed in Article 69;

3. Where a constitutional complaint is filed without a counsel under Article 25; or

4. Where a constitutional complaint is not justiciable and the nonjusticiability can not be corrected.

(4) Where a Panel can not reach a decision of dismissal referred to in paragraph (3),

it shall transfer the constitutional complaint to the Full Bench by a decision. When a dismissal is not decided within thirty days after filing 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. <Amended by Act No. 10546, Apr. 5, 2011>

(5) The provisions of Articles 28, 31, 32 and 35 shall apply *mutatis mutandis* to the review of the Panels. <Amended by Act No. 10546, Apr. 5, 2011>

(6) Matters necessary for the composition and operation of the Panels shall be provided by the Constitutional Court Rules. <Amended by Act No. 10546, Apr. 5, 2011>

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 or her counsel and the respondent within fourteen days from the date of decision. The same shall 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 original case who is not the complainant, in case of an adjudication on constitutional complaint under Article 68 (2).

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 74 (Submission of Opinions by Interested Agencies and others)

(1) State agencies or public organizations who have interests in an adjudication on a constitutional complaint, and the Minister of Justice may submit to the Constitutional Court a written opinion 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*.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 infringing 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.

(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 pursuant to the purport of 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 statutes or provisions thereof, it may declare in the decision of upholding that the statutes 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 of ordinary court, which is related to the instant 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.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

CHAPTER V Adjudication Proceedings through Electronic Data Processing System

Article 76 (Receipt of Electronic Documents)

(1) A party or relevant persons in each adjudication procedure may submit a request or other required documents as provided in this Act in electronic documents (referring to information prepared and transmitted, received, or stored in electronic form through devices capable of data processing, such as computers, hereinafter the same shall apply) via the electronic data processing system (referring to electronic devices capable of processing information required for preparation, submission, and service of electronic documents required for proceedings of adjudication, hereinafter the same shall apply) designated and operated by the Constitutional Court by using the information and communication networks.

(2) Any electronic document submitted pursuant to paragraph (1) takes the same effect as the written documents submitted in accordance with this Act.

(3) Any electronic document submitted via the electronic data processing system shall be deemed to have been received upon being recorded electronically in the electronic data processing system.

(4) In case any electronic document is received pursuant to paragraph (3), the Constitutional Court shall immediately notify the party or relevant persons such receipt by an electronic method as provided in the Constitutional Court Rules.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

Article 77 (Electronic Signature)

(1) Any party or relevant person shall affix his or her electronic signature on the electronic documents submitted to the Constitutional Court for authentication as provided in the Constitutional Court Rules.

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

(3) Any electronic signature under paragraph (1) and administrative electronic signature under paragraph (2) shall be considered a signature, a signature and seal or name and seal prescribed by laws and regulations on procedures of adjudication of the Constitutional Court.

[This Article Newly Inserted by Act No. 9839, Dec. 29, 2009]

Article 78 (Electronic Service)

(1) The Constitutional Court may serve a copy of the decision or any document pursuant to this Act on the parties or relevant persons by using the electronic data processing system and its associated information and communication network. Provided, that the same shall not apply if the parties or relevant persons do 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 data processing system, and notify the party or relevant persons, by an electronic method, the registration thereof as prescribed in the Constitutional Court Rules.

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

(4) In case of paragraph (2), when any person who is to receive a document confirms a registered electronic document as prescribed by the Constitutional Court Rule, such document shall be deemed to have been served: Provided, That when the person does not confirm such record within two weeks from the date of notification, such document shall be deemed to have been served on the following day after two weeks from the date of notification.

(5) Notwithstanding paragraph (1), in case electronic service is impossible due to a disrupted situation in the electronic data processing system or other reasons prescribed in the Constitutional Court Rule, the documents concerned may be served pursuant to the "Civil Procedure Act."

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

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 commissioned as a witness, appraiser, interpreter or translator by the Constitutional Court but fails to attend without any justifiable reason;
2. Person who is demanded or ordered to submit articles of evidence by the Constitutional Court but fails to submit them without any justifiable reason; or
3. Person who refuses, interferes with or evades an investigation or examination of the Constitutional Court without any justifiable reason.

[This Article Wholly Amended by Act No. 10546, Apr. 5, 2011]

ADDENDA <Act No. 4017, Aug. 5, 1988>

Article 1 (Enforcement Date)

This Act shall enter into force on September 1, 1988: Provided, That the appointment of the president, full-time Justices and Justices of the Constitutional Court under this Act, and the preparation for the enforcement of this Act may be done before this Act enters into force.

Article 2 (Repealed Act)

The Constitutional Committee Act (Act No. 2530) shall hereby be repealed.

Article 3 (Transitional Measures concerning Pending Cases)

Cases pending in the Constitutional Committee at the time when this Act enters into force, shall be transferred to the Constitutional Court. In this case, it shall not affect the effect of adjudication already in force.

Article 4 (Transitional Measures concerning Matters Occurred)

This Act shall also apply to matters occurred before this Act enters into force: Provided, That it shall not prejudice the effect in force under the Constitutional Committee Act before the enforcement of this Act.

Article 5 (Transitional Measures concerning Previous Personnel)

Public officials in the Secretariat of the Constitutional Committee at the time when this Act enters into force, shall be considered to be appointed as those in the Department of Court Administration of the Constitutional Court.

Article 6 (Transitional Measures concerning Budget)

The budget managed by the Constitutional Committee at the time when this Act enters into force, shall be considered to be under the control of the Constitutional Court.

Article 7 (Succession of Rights and Duties)

Rights and duties which the Constitutional Committee has at the time when this Act enters into force, shall be succeeded to by the Constitutional Court.

Article 8 Omitted.

ADDENDA <Act No. 4408, Nov. 30, 1991>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Article 2 (Transitional Measures)

Full-time Justices and Justices who are not full-time Justices, at the time when this Act enters into force, shall be considered Justices appointed under this Act, and their term shall be calculated from the time of their appointment before this Act enters into force.

Article 3 Omitted.

ADDENDUM <Act No. 4815, Dec. 22, 1994>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 4963, Aug. 4, 1995>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 5454, Dec. 13, 1997>

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

ADDENDA <Act No. 6622, Jan. 19, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

Articles 2 and 3 Omitted.

ADDENDA <Act No. 6626, Jan. 26, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 2002.

Articles 2 through 7 Omitted.

ADDENDA <Act No. 6861, Mar. 12, 2003>

(1) (Enforcement Date) This Act shall enter into force three months after the date of its promulgation.

(2) (Transitional Measures) The Constitution Research Officer and Assistant Constitution Research Officer who are the public officials in general service or extraordinary civil service at the time of enforcement of this Act, shall be deemed to have been appointed under this Act respectively as the Constitution Research Officer who is a state public official in special service and the Assistant Constitution Research Officer who is a state public official in extraordinary civil service: Provided, That the period of service as the Constitution Research Officer and Assistant Constitution Research Officer prior to the enforcement of this Act shall be counted in the tenure of service as the Constitution Research Officer and Assistant Constitution Research Officer as referred to this Act and other statutes, and the period of service as a Grade IV public official in a state agency shall be regarded as the period of service as an Assistant Constitution Research Officer at the time of defining the salary class.

(3) Omitted.

ADDENDA <Act No. 7427, Mar. 31, 2005>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 through 7 Omitted.

ADDENDUM <Act No. 7622, Jul. 29, 2005>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 8729, Dec. 21, 2007>

This Act shall enter into force on January 1, 2008.

ADDENDUM <Act No. 8893, Mar. 14, 2008>

This Act shall enter into force three months after the date of its promulgation.

ADDENDUM <Act No. 9839, Dec. 29, 2009>

This Act shall enter into force on March 1, 2010: Provided, That the amended provisions of Article 28 (5) shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 10278, May 4, 2010>

This Act shall enter into force on the date of its promulgation: Provided, That the amended provisions of Article 19-4 shall enter into force six months after the date of its promulgation.

ADDENDUM <Act No. 10546, Apr. 5, 2011>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 11530, Dec. 11, 2012>

Article 1 (Enforcement Date)

This Act shall enter into force one year after the date of its promulgation. (Proviso Omitted.)

Articles 2 through 7 Omitted.

ADDENDUM <Act No. 12597, May 20, 2014>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 12897, Dec. 30, 2014>

This Act shall enter into force six months after the date of its promulgation: Provided, That the amended provisions of Article 7 (2) shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 15495, Mar. 20, 2018>

This Act shall enter into force on the date of its promulgation.

Copyright ©2013
by the Constitutional Court
Printed in Seoul,
the Republic of Korea
