

Law by Decree No. 19 of 2017
Concerning the Amendment of the Law of the High Constitutional Court No. 3 of 2006

The President of the State of Palestine
The Chairman of the Executive Committee of the Palestine Liberation Organisation

In reference of the provisions of the Amended Basic Law of 2003 and its Amendments, particularly Article 43 thereunder,

The provisions of the Law of the High Constitutional Court No. 3 of 2006,

The provisions of the Law of Civil and Commercial Procedure No. 2 of 2001, as amended,

The provisions of the Law of the Judicial Authority No. 1 of 2002,

Based upon the recommendation of the Council of Ministers, dated August 15th, 2017,

Based upon the powers bestowed upon me, and

In accomplishment of the public interest,

In the name of the Arab Palestinian people,

I hereby promulgate the following Law by Decree:

Article 1

For the purposes of effecting this amendment, the Law of the High Constitutional Court No. 3 of 2006 shall be referred to as the Original Law.

Article 2

1. The phrase “Palestinian National Authority”, wherever it is mentioned in the Original Law, shall be replaced by the phrase “State of Palestine”.
2. The phrase “President of the Palestinian National Authority”, wherever it is mentioned in the Original Law, shall be replaced by the phrase “President of the State of Palestine”.

Article 3

Article 2 of the Original Law shall be amended so as to become as follows:

1. The President and members of the Court shall be appointed for a non-renewable period of six years, taking account of the following:
 - a. The Court shall be formed of a President, a deputy thereof, and at least seven judges, subject to the provisions of Clause (b), Paragraph 1 of this Article.
 - b. Three members shall be appointed to the Court every two years as from the date of the first formation of the Court.
2. In the event the President is absent or prevented by an obstacle, the Deputy President shall take his place. In case both are absent, they shall be replaced by the most senior member of the Courts. In the event of equal seniority, they shall be deputised by the oldest member.
3. The member may not be delegated, seconded or assigned to work for any other entity during the period of his membership on the Court.
4. The Court shall convene before a panel of a president and at least six judges and shall render its decisions by a majority vote.

Article 4

Article 3 of the Original Law shall be repealed.

Article 5

Article 4 of the Original Law shall be amended so as to become as follows:

A person who is appointed as a member of the Court shall be required to meet the general requirements necessary to assume a judicial position in pursuance of the provisions of the Law of the Judicial Authority, provided that he is not younger than forty (40) years of age and is from among the following categories:

1. Current or former members of the High Court who have spent in their positions at least three consecutive years.
2. Current judges of the Courts of Appeal, who have spent in their positions at least seven consecutive years.
3. Current or former professors of law at Palestinian universities or recognised universities in Palestine, who have spent in the profession of professor at least three consecutive years, associate professor who has spent at least six consecutive years, or an assistant professor who has spent at least nine consecutive years.
4. Lawyers, who have practiced the legal profession for at least twenty consecutive years.
5. Members of the Public Prosecution who have spent in the position of Head of Prosecutors' District Office or above at least fifteen consecutive years.

Article 6

Article 9 of the Original Law shall be amended so as to become as follows: "The General Assembly of the Court shall exercise all of the powers assigned thereto in pursuance of the provisions of this Law by Decree and the regulations pertaining to its members."

Article 7

Article 13 of the Original Law shall be amended so as to become as follows:

1. The President and members of the Court shall earn the salaries, increments, and allowances determined in accordance with the Table annexed to this Law by Decree as from the issuance of the decision on appointment.
2. The periodic annual increment shall be counted for each year of service as from the date of appointment in the Court. The years of previous service in any regular judicial position or another position shall be counted for the purposes retirement only. In case the gross salary of the Court judges, who are appointed from regular courts, is less than the gross salary designated for the Court judge, the higher salary shall be kept.
3. The Council of Ministers shall issue forth a regulation to determine the benefits of the President, Deputy President and members of the Court.

Article 8

Article 14 of the Original Law shall be amended so as to become as follows:

1. The Court judges or their heirs, once the judges retire, shall be entitled to a pension of 12.5% of each year they spent in service, provided that it is not less than 50% and not

more than 70% of the gross salary, and without prejudice to the rights of former judges.

2. The provisions of Paragraph 1 of this Article shall not apply to the Court judge in the event of resignation or penalty of dismissal. He shall be entitled to the severance pay in accordance with the relevant laws in force.
3. The President and members of the Court may not combine the honorarium and monthly salary, or any other honorarium or retirement pension from the Public Treasury.
4. In case the Court judge dies, the retirement pension shall be distributed as per the Table annexed to the Law of Public Retirement in force.
5. The Public Treasury shall afford all of the salaries and pension benefits relating to the President, Deputy and members of the Court.

Article 9

Article 15 of the Original Law shall be repealed.

Article 10

Article 21 of the Original Law shall be amended so as to become as follows:

1. The service of the President and members of the Court shall terminate in any of the following cases:
 - a. Retirement on pension with the expiration of the six year period, which is set by this Law by Decree.
 - b. Resignation.
 - c. Incapacitation.
 - d. Death.
 - e. Disability, for any reason whatsoever, to perform the duties of his position.
 - f. In the event he is convicted of offence involving breach of honour or trust by a definitive judgment, even if he is rehabilitated.
 - g. Dismissal from service in accordance with the law.
2. With the exception of death, in the event any of the cases provided for in Paragraph 1 of this Article, the service of the Court member shall be terminated automatically by a decision issued forth by the President of the State, based upon a recommendation from the General Assembly.

Article 11

Paragraph 2 of Article 23 of the Original Law shall be amended so as to become as follows: “The member shall be deemed to have resigned if he abandons his work for a period of fifteen consecutive days without an excuse acceptable to the General Assembly, even if this occurs after the end of a period of his leave, or a for period of thirty separate days during the year.”

Article 12

Paragraph 2 of Article 24 of the Original Law shall be amended so as to become as follows:

1. Interpretation of the provisions of the Basic Law.
2. Interpretation of pieces of legislation in case they give rise to a dispute in application, and they are so important that their interpretation is required.
3. Adjudication of the conflicts of jurisdiction between authorities.

Article 13

Article 25 of the Original Law shall be amended so as to become as follows:

1. The Court shall, in the course of performing the jurisdictions set forth in Article 24 of the Original Law, be entitled to exercise all the powers of hearing and pronouncing the unconstitutionality of any provision of any law, decree, bylaw or regulation, which it encounters on the occasion of exercising its jurisdiction and is related to the dispute submitted thereto, after the procedures for preparing constitutional cases are followed.
2. Upon the pronouncement of the unconstitutionality of any law, decree, bylaw or regulation, the Legislative Authority or the competent authority must amend such law, decree, bylaw or regulation in a manner that is consistent with the provisions of the Basic Law.
3. Upon the pronouncement of the unconstitutionality of any law, decree, bylaw or regulation, it shall be deemed unenforceable, and the authority which performed it must rectify the situation in accordance with the provisions of the Basic Law.

Article 14

Paragraphs 2 and 3 of Article 27 of the Original Law shall be amended so as to become as follows:

2. If a court states, during the hearing of a case, the unconstitutionality of a provision in a law, decree, bylaw or regulation that is necessary for the adjudication of the dispute, it shall halt the case and refer the files without fees to the Court in order to dispose the constitutional matter.
3. If the adversary parties rebut, during the hearing of a case before a court, that a provision in a law, decree, bylaw or regulation is unconstitutional, and the court deems that the rebuttal is serious, the hearing of the case shall be adjourned and an appointment shall be set for the person raising the rebuttal within a period not to exceed sixty (60) days to file a case thereon before the Court. If the case is not filed within the said time, the rebuttal shall be deemed as if it had never taken place.

Article 15

Article 31 of the Original Law shall be amended so as to become as follows: “Proceedings before the Court may not be initiated except through the Attorney General or one of his Assistants as a representative of the State, and by the rest of adversary parties through a lawyer whose period of experience in and practice of the legal profession is not less than ten years.”

Article 16

Article 32 of the Original Law shall be amended so as to become as follows: “The clerk of the Court shall record the decisions of referral received by the Court and the actions and requests submitted on the day on which they are received or submitted in a register designated thereto. The clerk of the Court shall inform those concerned of the decisions, actions or requests within fifteen days from such date. The government institutions shall be deemed among those concerned in constitutional actions and requests for interpretation.”

Article 17

Article 33 of the Original Law shall be amended so as to become as follows: “The office of the lawyer who signed the statement of claim or request, as well as the office of the lawyer who represents the party petitioned against who is required to reply to the case or request, shall be a chosen place for both of them, unless any of either party determines for itself a chosen place to announce it therein.”

Article 18

Paragraphs 1 and 3 of Article 34 of the Original Law shall be amended so as to become as follows:

1. Any person who receives an announcement of a decision of referral or of a action shall have the right to submit to the clerk of the Court within fifteen days from the date of his notification a note including his remarks, enclosed with the supporting documents.
3. Following the expiration of the periods set forth under Paragraphs 1 and 2 of this Article, the clerk of the Court may not accept papers from the adversary parties and must draw up a protocol in which he states the date of the submission of such papers and the name or capacity of the person who submitted them.

Article 19

Paragraphs 1 and 2 of Article 35 of the Original Law shall be amended so as to become as follows:

1. The clerk of the Court shall submit the file of the action or request to the President of the Court within three days from the date of the expiration of the periods under the preceding Article in order to set the date of the session in which the action or request shall be heard.
2. The clerk of the Court shall notify those concerned of the date of the session pursuant to the Law of the Civil and Commercial Procedure.

Article 20

Article 49 of the Original Law shall be amended so as to become as follows:

1. The Court shall have a Secretary General, a Chief Clerk, and a sufficient number of working employees and administrative staff. The President of the Court and the Minister of Justice, each one within the sphere of his jurisdiction, shall have the supervising authority over them.
2. The Secretary General of the Court shall be appointed by a decision from the President of the State of Palestine in a judicial grade based upon a nomination from the Council of Ministers and a recommendation from the General Assembly of the Court. His advancement shall be from the grade of a Court of Appeal judge to the grade of a High Court judge. He shall supervise all of the functions of employees, and all of the matters relating to the administrative and financial affairs of the Court, under the supervision of the President of the Court.

Article 21

Article 53 of the Original Law shall be amended so as to become as follows: “The decisions of the Court shall be published in the Official Gazette.”

Article 22

All provisions that contradict the provisions of this Law by Decree shall be repealed.

Article 23

This Law by Decree shall be presented to the Legislative Council in the first session it convenes for approval.

Article 24

All the competent authorities, each one within its sphere of jurisdiction, shall implement the provisions of this Law by Decree, which shall enter into force thirty days after the date of its publication in the Official Gazette.

**Issued in the city of Ramallah on October 2nd, 2017 Anno Domini.
Corresponding to Muharram 12th, 1439 Anno Hegira.**

**Mahmoud Abbas
President of the State of Palestine
Chairman of the Executive Committee of the Palestine Liberation Organisation**