

Constitution Drafting Assembly

3rd Specialized Committee

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The Judiciary

Chapter One

General Provisions

Article 1

Members of judicial bodies are independent in their work. No authority has power over them except that of the law and their conscience, they shall not be removed from their positions, are equal in their rights and duties, guarantors of the enforcement of provisions of the Constitution, the rule of law and protection of rights and freedoms, and the State ensures the independence of the judiciary, and interfering with the justice is a crime which is not subject to the statute of limitation, and they swear an oath before taking office in the manner stated by the law.

Article 2

Members of the Judiciary are judges, members of the Public Prosecutor's Office and the law regulates the manner in which they are appointed and the way their administrative and career affairs are managed in a manner that ensures their neutrality and integrity. They are prohibited from exercising any political or party function or any other profession besides that of the Judiciary. They shall not be seconded or transferred to other jobs except for carrying out the same job in Military Courts or the Higher Electoral Commission or their equivalent, the same conditions and provisions shall apply on the members of the judicial institutions.

Article 3

Members of the judiciary enjoy judicial immunity. They may not be arrested or interrogated unless their immunity is lifted. When they are caught flagrante delicto in crimes for which precautionary arrest is allowed, the Higher Judicial Council should be informed; and it decides whether or not to lift immunity. Members might not be removed or dismissed. They might not be transferred to another job during the legal year except by a justified decision by the Higher Judicial Council. They may not be disciplined except in the cases and in accordance with the guarantees stipulated by the law.

Article 4

The Judicial Authority shall be exercised by the different types and grades of courts. The right of litigation and defence is guaranteed by the Constitution. Court sessions shall be public unless the court decides otherwise due to public order or public morals. Court deliberations are confidential, but court rulings are public. Individuals under precautionary arrest shall attend before the courts in person. Death sentences are issued only in implementation of a judicial or Sharia sentence, and after ensuring the existence of Sharia stipulated evidence. Rulings are made in the name of the people. Refraining from enforcing final court rulings and judicial orders is a crime regulated by the law.

Article 5

Precautionary incarceration shall be an exception. The Public Prosecutor's Office may not incarcerate an individual for more than six days for any crime for which precautionary incarceration is permitted. It may not be extended for more than a total of six months during which the accused should be referred to the 'charging chamber' or the competent court, or should be released. All trials take place on two levels. In felonies, trials should involve three judges in the court of first instance. The rank of each judge may not be less than that of a court deputy. Rulings of the court of first instance can be appealed before the Appeals Court, which consists of three or five judges. A trial might not last for more than two years as of the date of the first session. The law regulates court proceedings and duration of precautionary incarceration.

Article 6

Human being, in principle, is presumed innocent. Every person has the right to a fair trial before his natural judge within a reasonable time. Litigants are equal before the law. The state ensures easy access to the courts. The courts do not admit any evidence extracted under coercion or through illegal measures. Creating special or exceptional courts is prohibited. No legislation might be given immunity against appeal before the courts. The law regulates the competencies of the different types and levels of courts.

Article 7

1. The tenure for Heads of the judicial institutions and authorities and their deputies are four years or the remaining duration to their retirement, whichever is closer, and for one term.
2. The term of office for a member of the judiciary terminates when he reaches seventy years of age. Nevertheless, he might retire, upon his request, when he reaches fifty five years of age. The law regulates the other cases and procedures of terminating their service.

Chapter Two

The Higher Judicial Council

Article 8

The Higher Judicial Council consists of:

1. President of the High Court, as President;
2. President of the State's Council, as Deputy
3. The Public Prosecutor, as member;
4. The Minister of Justice, as member;
5. President of the Judicial Bodies Oversight Administration, as member;
6. Heads of Appeals Courts, as members;
7. Head of the Administration of the State's Legal Affairs Administration, as member;
8. The most senior head of a court of first instance, as member.

The Council enjoys administrative and financial autonomy, drafts its own budget and discusses its full components with the Legislative Authority and afterwards it is stipulated as a single figure, and it shall undertake the establishment of courts and prosecution offices and expresses its opinion on draft laws related to the Judiciary. When the President of the Council is absent, the next most senior member in the Council stands in as President. Every meeting has to achieve a two-thirds quorum. It takes its decisions by majority of those present. When votes are equal, the side that includes the President wins and the law shall regulate its other competencies.

Chapter Three

The Courts and the Public Prosecutor's Office

Article 9

The High Court is the highest judicial authority and consists of a president; a vice-president and a sufficient number of Counselors whose rank might not be lower than that of Head of an Appeals Court, or an equivalent, chosen by the Higher Judicial Council and the Court's President and Vice-President are from the three most senior judges of the court and selected by its general assembly. The court is the only competent authority to decide on matters of "conflict of competence" among judicial bodies and conflicts in implementing final contradictory rulings. The legal principles it decides shall be binding to all courts and other bodies, with the exception of the Constitutional Court. The law regulates administrative matters of its members. Its rulings are subject to a supplication for reconsideration. The law regulates its other competences.

Article 10

The Public Prosecutor's Office of the Court of Cassation shall be under the High Court, and shall consist of a sufficient number of members whose ranks might not be less than that of Chief Prosecutor, or its equivalent. They join it upon a decision of the Higher Judicial Council. Its president shall be its most senior member, and its competences shall be regulated by the law.

Article 11

Members of the Public Prosecutor's Office are prosecutors acting on behalf of the Public Prosecutor who shall be responsible for investigation and initiating and proceeding with public lawsuits and is the only authority with the power to request lifting legal immunity from those who enjoy it in order for the Higher Judicial Council to rule on their cases. The Public Prosecutor is appointed by the President of the State upon the nomination of the Higher Judicial Council. He shall be selected from among High Court Counselors, members of the State's Council, heads of Appeals Courts or grade (A) Attorney Generals for a four-year term or for the remaining period until his retirement, whichever is closer, and for one term.

Chapter Four

The State's Council

Article 12

1. The State's Council is an independent judicial body based in Tripoli. Its general assembly might decide to convene it in any other place inside Libya. It consists of a president, vice-president and a sufficient number of counsellors of the level of Chief of Appellate Court or its equivalent shall be is created upon a decision of the High Judicial Council.
2. Administrative prosecution office will be affiliated to the State's Council that comprises of sufficient number of prosecutors whose ranks shall be no less than first deputy prosecutor that undertakes investigation of administrative and financial infringements and the administration's overstepping its authorities, and shall undertake initiating and processing lawsuits and attending the court's sessions, shall be nominated by the Public Prosecutor and shall be [appointed] via a decision by the Higher Judicial Council; its Chairmanship shall be assumed by its most senior member. The law regulates its other competences.

Article 13

The State's Council alone is authorized to look into administrative challenges related to human rights, disciplinary challenges, electoral challenges made by the administrative departments of the Appeals Courts affiliated to it. It's competence also includes examining conflicts in relation to enforcing all its rulings; it prepares, writes and explains draft laws, revises draft contracts in which the state or any of its public or private bodies is part. Its members are subject to the same procedures that apply to selecting President of the High Court, his deputy and the Court's counsellors. The law regulates its other competences.

Chapter Five
The Judicial Institutions

The Judicial Inspection Authority
Article 14

Is a judicial body that is established via a decision of the Higher Judicial Council; it shall comprise a chairperson and deputy as well as a sufficient number of counsellors whose rank shall be no less than a deputy [head] of the appellate court or equivalent.

The State's Legal Affairs Administration and the Public Attorney Office

Article 12

Judicial body its formation decision is issued by the Higher Judicial Council and represents the state in lawsuits filed by or against the state. It might ask for and accept a cordial settlement at any stage of litigation. The Public Attorney's Office defends whoever wishes to be defended by it. The law shall regulate the affairs and competences of both bodies.

Chapter Six

Lawyers

Article 16

Lawyers are independent professionals and partners in administering justice. They enjoy criminal immunity and the arrest or detention of a lawyer during or due to carrying out his duties is prohibited unless caught on flagrante delicto. The law regulates the conditions of enrollment as lawyers and rules of making them account for their actions and disciplining them.

Chapter Seven

Judicial Experts

Article 17

Judicial experts, forensic medicine experts and functionaries of the courts and the Public Prosecutors' Offices are independent in discharging their duties and enjoy criminal immunity in the course of discharging their duties or because of them. All of that shall be regulated by law.

Chapter Eight

Military Courts

Article 18

Military courts are specialized in looking into military crimes committed by members of the military or in association with civilians. Civilians might not be tried before military courts except for crimes which constitute a direct aggression on military installations or installations of a similar nature. The law states those crimes and other competences of military courts in a manner that ensures the right to challenge their rulings before the High Court in the case of felonies, provided that lawyers carry out their defence in accordance with the law. Their members enjoy the guarantees and immunities enjoyed by members of judicial bodies.

Chapter Nine

Transitional Provisions

Article 19

The High Court continues to discharge its duties in examining constitutional and administrative challenges until The Constitutional Court and the State's Council are created.

Article 20

Benefits and other career aspects enjoyed by counsellors of the High Court and the Court of Cassation's Prosecution service apply to all members of judicial bodies. The High Judicial Council issues a decision stating the seniority ranking of members of judicial bodies, including High Court Counsellors.

Title Four

The Constitutional Court

Chapter One

The Court's structure

Article 21

The Constitutional Court is a judicial body based in Tripoli, and might be convened in any other city inside Libya upon a decision of its General Assembly. It has its own independent budget that is discussed before the legislative authority and afterwards is stipulated as a single figure. Its opinion is sought in relation to draft laws concerning it.

Article 22

The Court consists of eleven members, including its president and vice-president. The High Judicial Council nominates five counsellors with the rank of head of an appeals court, the President of the State nominates three members and the legislative authority nominates three members. The nominees of the President of the State and the legislative authority should be highly qualified and competent in the law, Islamic Sharia law or political science with at least twenty years of practical experience in their fields, or lawyers accepted before the High Court for fifteen uninterrupted years. The president and vice-president of the court should be among

the members nominated by the High Judicial Council. Vacancies in membership are filled using the same standards.

Article 23

Members of the court serve one six-year term. Members of the court might not play any political or party role or do any other job during their membership in the Constitutional Court. The law regulates the functioning of the Court, the procedures followed before it and its other competences.

Chapter Two

The Court's Competence

Article 24

The Constitutional Court is the sole body authorized with judicial oversight over the constitutionality of legislation, interpretation of constitutional texts and reviewing international agreements to which the Libyan state is party. It is also authorized to rule on conflicts related to its members' affairs, implementing the rulings and decisions it passes and ruling on challenges to rulings related to the constitutionality of establishing political parties, their programmes, the way they are formed and financed, their activities, objectives, procedures of dissolving them, terminating their activities and ruling on the extent to which all these aspects conform to the constitution. It is authorized to rule on conflicts between the authorities with reference to the powers given to them in the constitution, reviewing legislation on which a ruling of unconstitutionality has been made before re-passing them. Its rulings are final and binding to all. The law regulates its other competences.

Article 24

The President of the State, the Prime Minister and the Public Prosecutor might submit a challenge to the Constitutional Court requesting the passing of legislation to regulate a certain issue if the Legislative Authority refuses to pass it. Likewise, any natural or legal person with an interest might ask the Constitutional Court to pass legislation to protect their basic rights provided for in the constitution. The rulings and decisions of the Court shall be published in the official gazette.