

Islamic Republic of Afghanistan

Ministry of Justice

Official Gazette

Law on Structure and Jurisdiction of Special Courts

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In the Name of Allah, the Most Merciful and the Most Compassionate

Law on Structure and Jurisdiction of Special Courts

Chapter One

General Provisions

Base

Article one:

This law has been enacted pursuant to provisions of Articles 78 and 127 of the Afghan Constitution.

Objectives

Article two:

The objectives of this law are as following:

1. To regulate the affairs related to detection, investigation, case filing and prosecution of crimes committed by Ministers (members of the government) and Chief Justice of the Supreme Court and any of its members.
2. To regulate the duties and jurisdiction of the detection and investigation authorities, formation of the Court and procedure of the trial of persons stipulated in paragraph (1) of this article.
3. To observe the principle of rule of law and ensure fair trial.

Area of Implementation

Article three:

The provisions of this law shall be enforced on the following persons:

- (1) Incumbent Ministers and ministers appointed, upon establishment of the government, based on provisions of paragraph (2), article 161 of the Constitution who commit a crime while holding the position.
- (2) Chief Justice of the Supreme Court and any of its members appointed, upon establishment of the Supreme Court, based on provisions of paragraph (2), article 161 of the Constitution who commit a crime while holding the position.

Chapter two

Detection, Investigation and Case filing

Detection and Investigation of Crime

Article Four:

- (1) Detection and Investigation of crimes attributed to ministers (members of the government) stipulated in paragraph (1), article 3 of this law shall be carried out in accordance with the provisions of this law and adherence to article 134 of the Constitution.
- (2) Detection and Investigation of crimes attributed to Chief Justice of the Supreme Court and any of its members shall be carried out in accordance with provisions of this law and adherence to article 127 of the Afghan Constitution.

Board of Investigation

Article Five:

- (3) Investigation of the crime attributed to the persons mentioned in paragraph (1), Article Three of this Law shall be carried out by two senior expert prosecutors under the supervision of the Attorney General.
- (4) Investigation of the crime attributed to Chief Justice of the Supreme Court and any of its members, adherence to provision of article 127 of the Afghan Constitution, shall be carried out by a board comprised of a member of the Lower House (Wolosi Jirga) with experience in justice and judiciary selected by Speaker of the House and Attorney General under the supervision of a Supreme Court member selected by High Council of the Supreme Court.

Temporary Dismissal

Article Six:

If investigation of an incumbent minister accused of a crime requires her/his detention, he/she shall temporarily be dismissed based on the request of the Attorney General and approval of the President.

Detention Request

Article Seven:

- (1) If investigation of the persons stipulated in article 3 of this law, requires detention of the accused, permission for detention shall be requested by head of investigation from the Special Court.
- (2) In the light of circumstances, the detention period may be extended for maximum of two months; extension of detention for more than two months shall be in accordance with circumstances stipulated in article 8 of this law.
- (3) Detention of the said persons shall be carried out separately from other detainees in the detention center.

Period of Investigation

Article Eight:

In the light of circumstances, the investigation period of the persons stipulated in article 3 of this law shall be carried out within maximum of two months.

If, due to legal grounds, investigation cannot be completed within two months, head of Special Court may extend the period for two more months. Extension of investigation period over four months shall be requested by investigation board and after approval of Special Court.

Place of Investigation

Article Nine:

Investigation of the persons stated in article 3 of this law shall be carried out in a proper place based on discretion of the Board of Investigation.

Filing Case

Article Ten

- (1) Filing a case against the accused stipulated in article 3 of this Law shall be carried out by head of an investigation board.

Chapter Three Special Court

Establishment of Special Court

Article Eleven:

- (1) Special Court comprised of three members of the Supreme Court shall be established to try cases of ministers. The chief and members of the court shall be appointed with approval of the High Council of the Supreme Court.
- (2) Special Court comprised of the following persons shall be established to try cases of Chief justice of the Supreme Court and its members:
 - 1- Two members of the Lower House (Wolosi Jirga) with legal knowledge and adequate experience in justice and judiciary field with the approval of the House.
 - 2- One member of the Upper House (Mishrano Jirga) with legal knowledge and adequate experience in justice and judiciary field with the approval of the House.
 - 3- Two members of the Supreme Court including head of the court approved by High Council of the Supreme Court.

Oath -Taking

Article Twelve:

(1) Before occupying the position as judges, the members of Special Court stipulated in paragraph (2) article 11 of this law except members of the Supreme Court shall swear in to the President as:

I swear by the name of God Almighty that I shall ensure justice in accordance with the teachings of Holy Religion of Islam, provisions of the Constitution and other laws of Afghanistan, and carry out the duties with loyalty, honesty and impartiality.

Independency of the Special Court

Article Thirteen:

The Special Court shall be independent in resolving cases, and shall issue its verdict within provisions of the law and based on understanding adopted from presented evidence. Case resolving and verdict issuance by the Special Court shall be administered according to the principle of parties' mutual equality before the law and the court and observation of justice and impartiality.

Basis of Decision

Article Fourteen:

Special Court shall implement provisions of the Constitution, this law and other laws in its proceedings.

Open Trial:

Article Fifteen:

Special Court shall try cases openly unless close trial is deemed necessary or to observe customs or public order. Making notice of the final decision shall always be open to public.

Legal Citation

Article Sixteen:

Special Court shall be duty bound to state the reasons for a decision to issue.

Resolution Stages

Article Seventeen:

Verdicts of the Special Court shall be decisive and final and shall not be appealed to a higher court.

(1)

Dissolution of Special Court

Article Eighteen:

- (1) Special Court shall be dissolved after issuing, writing and notifying its verdict to the parties.
- (2) Decision of the Special Court shall be sent to Attorney General's Office to be implemented and original copies of the verdict and other documents and papers shall be indexed, sent to and kept in archive of the Supreme Court.

Chapter four

Miscellaneous Provisions

Rights in the Dismissal Period

Article Nineteen:

- (1) Administering the rights and privileges of the persons stated in article three of this law shall be suspended during dismissal and discharge of duty, detention and trial.
- (2) If the investigation board or the Court rule on non-prosecution and/or the accused is acquitted by the court, he/she shall be provided with all remunerations, rights and privileges of the dismissal/suspension period.

Stamp

Article Twenty:

Special court shall have a special stamp with the insignia of the Islamic Republic of Afghanistan and the court's name engraved on it and shall be returned to Supreme Court after dissolution of the Court.

Court Location

Article Twenty One:

The Special Court shall be located in Kabul city.

Enforcement:

Article Twenty Two:

This law shall come into force from the date of publication in the Official Gazette.