

Islamic Republic of Afghanistan

Ministry of Justice

Official Gazette

**Law on the Structure and Jurisdiction
of Judiciary of the Islamic Republic of
Afghanistan**

Issue No: 1109

Date: June 30, 2013

Law on the Structure and Jurisdiction of Judiciary of the Islamic Republic of Afghanistan

Chapter 1 General Provisions

Basis

Article 1:

This law has been introduced in accordance with the provisions of articles 116 and 123 of the constitution of Afghanistan to regulate the issues relating to the structure, composition, duties and powers and privileges of the courts of the judiciary.

Independence

Article 2:

The judiciary is an independent pillar of the government and performs its duties in accordance with the provisions of the law.

Ensuring justice

Article 3:

The judiciary shall settle issues and disputes between natural and legal persons including the government, ensuring justice, and protecting the rights of individuals and society in accordance with the provisions of the law, in order to consolidate judicial procedures in the country.

Terms

Article 4:

These terms in this law shall signify the following:

1. Upholding (Ebram): Confirmation of the verdict of the primary court by the appeals court or confirmation of the verdict of the appeals court by the Supreme Court.
2. Personnel affairs: Includes appointment, transfer, promotion, change of rank, retirement, removal of retirement, approval, acceptance of resignation, and extension of service.
3. Falsehood: A situation that results from the failure to observe the provisions of the law regarding fundamental proceedings that covers the following:
 - Lack of the basis elements of the judiciary
 - Issuance of a verdict that is impossible to prove
 - Disqualification of one of the parties to dispute, the judicial panel or an incompetent court

4. Interpretation: Interpretation of the provision of article of law to arrive at its likely meaning
5. Reconsideration: Reconsideration of the final verdicts of courts due to the emergence of new evidence in accordance with the provisions of the law.
6. Correction of verdict: It includes:
 - Correction of a formal mistake that is made unintentionally and substantial error in verdict that is free from falsehood and contradiction
 - Correction of an error that has been made in the interpretation of the law and does not stem from enforceable verdict
7. Amendment of verdict: Amendment of the verdict of subordinate court in penal cases where the error results from the implementation and interpretation of a specific article of the law and the re-determination of the quality and quantity of punishment of the convict provided that the error does not result in contradiction of the spoken and written or annulment of the verdict.
8. Interpretation: Explanation of the purpose of the provision of law and establishment of the will of the legislator
9. Verdict: The judicial decision of the court that is issued at the end of the judicial procures of case in the form of a decision or ruling.
10. Final verdict: Is a verdict that could not be addressed anymore or could not be protested against and its judicial procedures have, lawfully or because of the satisfaction of the parties, come to an end or the deadline for objection has expired or the protest of the appellant has been rejected. Definite and final verdicts have the same effect.
11. Lawsuit: Is seeking right by one from others before the court
12. Supreme Court: The highest and final judicial authority that oversees the cases in terms of accurate implementation of the law
13. Decision: Is decision of the judicial officials regarding the nature of the lawsuit that is taken at the end of judicial procedures
14. Ruling: A judicial decision that subjects the case formally to judicial procedures in the court
15. Case: An event that is submitted to the court by parties regarding criminal and civil matters, public rights, personal and commercial issues and undergo judicial procedures.
16. Judge: A person who has judicial appointment and examines cases in accordance with the provisions of the law and issues verdicts.

17. Annulment of verdict: Annulment of the definite and final verdict of courts that is made by the high council of the Supreme Court after reconsideration.

18. Court: The legal authority that can deal with cases and issue verdicts.

19. Primary court: Legal authority that initially examines the cases in terms of form and substance.

20. Appeals court: Legal authority that examines the cases secondarily in terms of form and substance

21. Judicial advisor: A person who possesses judicial appointment and analyzes cases in the tribunals of the Supreme Court and submits his report and opinion in judicial sessions

22. Military official: A person (including officers and contractors) who serves in one of the units of the ministry of interior, national directorate for security, border forces, ministries and institutions that have military organizations.

23. Contradiction of verdict: Breaking a provision that is at odds with law or involves an error in its implementation and interpretation and includes the following:

- The decision or ruling lacks evidence
- Inconsistency of evidence in the decision with the circumstances of the case
- Failure to observe the provisions of law
- Issuance of decision or ruling as to the cessation of hostility due to the absence of the claimant
- Other offenses that impair the verdict

Composition

Article 5:

(1) The judiciary consists of the Supreme Court, appeal courts and primary courts.

(2) The Supreme Court is located in Kabul, the appeal courts are located in the provincial centers and primary courts are in the centers of the cities and districts.

The Supreme Court could change the location of the courts if necessary.

(3) Mobile courts could be set up at the request of Supreme Court and endorsement of the president

Reference to courts

Article 6:

Each person could submit his claim to the courts without any hindrance. Submission of claims to the courts is optional.

Objection to decision:

Article 7:

The parties could submit their objection to the decision issued by the subordinate court to the superior court.

Final and definite decisions are exceptions.

Jurisdiction

Article 8:

The jurisdiction of judiciary includes all the claims that have been submitted to the court by natural and legal persons including the government as the claimant or defendant in accordance with the provisions of the law

No law could under any circumstances shall remove a case or area out of the jurisdiction of judiciary as set forth in the constitution and bestow it upon another authority.

This provision does not preclude the establishment of special courts set forth in articles 69, 78 and 127 of the constitution and martial courts in relevant cases.

Manner of examination

Article 9:

(1) Cases are generally examined in terms of substance, quality and content in two judicial stages (primary courts and appeal courts) unless the law dictates three or one stage.

(2) The supreme court examines the cases set forth in clause (1) to ensure accuracy in terms of compliance with the law and may based on the circumstances uphold, reverse, refute amend or annul the verdicts of the subordinate courts.

Examination of cases by judges

Article 10:

(1) Cases are examined in courts in the following manner:

1. By three judges in the initial stage unless the number of existing judges in the judiciary is fewer than three people.
2. In the appeals courts by three judges
3. In the supervision stage, by one judge or more of the Supreme Court

(2) The verdicts of execution, retribution and retaliation shall be issued by joint action of three judges in all stages including appeals.

Publicity of the sessions

Article 11:

Trials are held publicly in the courts of Afghanistan, and every person has the right to attend in observation of the provisions of the law, unless the court based on the interests

of the parties or observance of public order dictates the privacy of the session. Nevertheless, the announcement of the verdict takes place in public.

Privacy of the session does not preclude the presence of adversaries, witnesses, and attorneys. In case of the large number of attendants or other considerations, the court may prohibit the presence of certain people or distribute special cards for entrance.

Reference to articles of law

Article 12:

The court is obliged to mention the articles that have been invoked in the issuance of verdict.

Source of the verdicts

Article 13:

The courts shall implement the provisions of the constitution and other laws in examining case.

If there is no provision in the constitution and other laws for the case in question, then examination and issuance of verdict shall be done in accordance with the provisions of article 130 and 131 of the constitution.

Enforceability of definite decisions

Article 14:

All the final and definite decisions are enforceable except for the death sentence that must be endorsed by the president before implementation.

Having a translator

Article 15:

If parties to a lawsuit do not know the language in which the trial proceeds, then the office for legal assistance shall provide a translator to ensure the right to be informed of the materials and documents pertaining to the case and speaking in mother tongue.

The related expenses to the above shall be subject to the remuneration of experts set forth in the relevant laws.

Having an defense attorney

Article 16:

Each person can appoint a defense attorney in all stages of the criminal and civil proceedings to remove the charge upon arrest or establishment of his right.

Defense lawyers shall be appointed for indigent people in criminal cases, according to the law.

Not refraining from issuance of verdict

Article 17:

The court cannot refuse to issue a verdict or a ruling regarding a case that has been submitted to it, and the case under trial shall not be dismissed before it has been decided.

Not amending the announced verdict
Article 18:

The court cannot modify or amend the verdict after it has been announced. Necessary correction or explanation of the verdict is an exception.

Independence in the issuance of the verdict
Article 19:

The court is independent and while examining the case shall issue its verdict on the basis of the evidence presented and within the boundaries of the provisions of the law. Examination of the case and issuance of verdict by the court shall be founded on the basis of the equality of parties before the law and observing justice and impartiality.

Non-membership in political party
Article 20:

The judges cannot be member of political parties during their tenure of duty.

Not having another occupation
Article 21:

The judges cannot be employed for other jobs during their tenure of duty. Teaching in judicial programs is an exception.

Preparation and processing of budget
Article 22:

The budget of judiciary shall be prepared by the Supreme Court in consultation with the government and shall be presented to the National Assembly as part of the budget of government.
Implementation of the judiciary budget falls within the authority of Supreme Court.

Chapter Two

Organization, Composition, Duties and Powers of Supreme Court

The highest judicial authority
Article 23:

(1) Supreme Court is composed of 9 members and is the highest judicial organ at the top of the judiciary.

(2) Supreme Court exercises its duties and authorities in accordance with the provisions of the constitution, this law and other laws.

(3) All decisions of the Supreme Court relating to leadership of the judiciary and exercise of its privileges, shall be represented by the High Council of Supreme Court

High council

Article 24:

The high council of Supreme Court is composed of entire panel of the Supreme Court and it is the supreme decision- making authority in judiciary.

Appointment of the head of secretariat

Article 25:

The high council of the Supreme Court shall appoint a highly educated person who has professional and judicial experience as the head of secretariat.

The head of secretariat shall manage the affairs relating to the high council of Supreme Court in accordance with the provisions of this law and other relevant laws and regulations.

Quorum of the sessions of the high council

Article 26:

The quorum of high council of Supreme Court shall be made with the presence of two third of its members and its decisions shall be made by the majority of the present members.

Holding sessions

Article 27:

(1) The ordinary session of the high council of Supreme Court shall be held once a week.

(2) Extraordinary session of the high council of Supreme Court shall be held in the following circumstances:

1. On the order of the head of Supreme Court
2. On the proposal of attorney general and approval of the head of Supreme Court
3. At the request of one third of the members of the high council of Supreme Court

(3) The attorney general, and in his absence, the deputy to whom the powers have been delegated shall take part in the sessions of the high council of Supreme Court regarding criminal issues.

Authority to make proposal and interpret laws

Article 28:

High council of Supreme Court shall have the following authority with regard to formulation, making proposal and interpretation of laws:

1. Assess the conformity of laws, legislative decrees, international treaties and conventions with the constitution at the request of the government or courts
2. Interpret the constitution, laws, and legislative decrees at the request of the government or courts
3. Refusal to implement laws that are against the provisions of the constitution
4. Deal with disputes between national assembly and government resulting from implementation of the law and exercise of their legal authorities
5. Propose drafting of law for regulating the judicial affairs and submission to the relevant authority.

Points of reference of violations

Article 29:

The government can submit cases where the provisions of law have been violated to the Supreme Court for interpretation and decision.

Stopping of the examination of case

Article 30:

If the court, in the course of examination of cases, concludes that the decision requires interpretation of the law, then it shall stop working on the case and refer it to the high council of the Supreme Court.

Duties and judicial powers

Article 31:

In the judicial field, the high council of the Supreme Court has the following duties and powers:

1. Reconsideration of the definite and final verdicts of the courts due to the emergence of new evidence on the protest of the attorney general, justice minister, and the parties in accordance with the provisions of the law
2. Resolution of conflicts on the jurisdiction of the courts in accordance with the provisions of the law
3. Turning over the power of examining the case from one court to another at the request of the attorney general or the party while there is compelling reasons and necessity.
4. Deciding the extradition of a foreign citizen that is suspected of or charged with a crime to a foreign government in accordance with the provisions of the law.
5. Deciding whether to hand over the citizen of the country who is suspected or charged with a crime to a foreign government within the boundaries of article 28 of the constitution.
6. Examination of the requests and offering explanations for the courts in order to properly implement the law and ensure the unification of the judicial proceedings

7. Examination and approval of regulations, bills, guidebooks and guidelines regarding the regulation of judicial affairs
8. Examination of the suspension of judges from service upon commission of misdemeanor or felony till the endorsement of the dismissal of the judges by the president in accordance with the provisions of this law.
9. Trial of judges on crimes relating to their job

Administrative duties and authorities

Article 32:

The high council of Supreme Court has the following administrative and financial duties and authorities:

1. Examination of the organization and budget of the judiciary
2. Approval of judicial appointment, transfer, promotion, acceptance of resignation, extension of service, retirement, removal of retirement and other personnel affairs of the judges in accordance with the provisions of the law.
3. Approval of the proposal for establishment of courts and determination of their judicial and administrative powers to the president
4. Approval of the proposal for appointment of judges and judicial experts to the president in accordance with the provisions of the law
5. Provision of necessary facilities for the courts
6. Adoption of necessary measures to provide judicial training in order to enhance the legal knowledge of the judges and other employees
7. Adoption of necessary measures to provide and organize educational programs for the judges and clerks and regulation of the relevant affairs
8. Examination of the annual statistic report and report of the activities of the courts
9. Examination of the results of the audit, review, studies of judicial affairs and adoption of necessary measures to eliminate the shortcomings and consolidate the performance of the courts
10. Proposal for pardon or reduction of punishment of convicted judges to the president
11. Examination of other duties and exercise of privileges set forth in this law, the constitution, and other legislative documents.

Administrative duties

Article 33:

The Supreme Court performs the relevant administrative duties and privileges through the general administrative department of the judiciary.

The general administrative department of the judiciary shall be responsible to the high council of the Supreme Court for its performance.

Reconsideration of cases

Article 34:

The high council of Supreme Court shall reconsider the final and definite verdicts of the courts in the following circumstances:

In criminal cases:

1. The verdict- based facts are inconsistent with the facts on which the other final criminal decision was based.
2. When the criminal verdict is founded upon a verdict issued by a civil court and the latter is cancelled.
3. When after the verdict events happen or documents are presented that were not available during the trial and it is likely that these papers may lead to the exoneration of the convicted.
4. When forced testimony, fraud or other illegal acts by the witnesses or the experts are demonstrated during the criminal proceedings.
5. When the defendant is convicted to murder and then new evidence turns up that demonstrates the non-occurrence of the murder.
6. When the verdict is issued at the end of proceedings without official notification of the defendant or he has been denied his right to take part in the trial and consequently he has been deprived of the right to choose a defense lawyer or the reason for the absence of the convicted is not clear or the court has not been notified about this.

In civil cases, personal matters, public rights and trade issues:

1. Proving the falsehood of the testimony
2. Proving the falsehood of the deduction of the experts
3. Proving forgery and manipulation of recriminating evidence
4. Proving the inaccuracy of the translation that has been influential in the verdict
5. Provision of positive evidence by the convicted that has not been available upon the issuance of the verdict

Resubmission to the relevant court

Article 35:

If the high council of Supreme Court deems the objection and the case for reconsideration and determines the new evidence effective in changing and reversing the verdict, then it shall abolish the verdict and refer the case again to the relevant competent court for reconsideration.

Deadline for reconsideration

Article 36:

The deadline for the request for reconsideration regarding legal cases between natural and legal persons shall be 30 days from the date when the final verdict was issued. Criminal and public rights cases are exceptions.

Submission of request for reconsideration

Article 37:

The request for reconsideration shall be submitted to the head of Supreme Court. The head of the Supreme Court shall hand over the case to the commission that has been set

up for the assessment of requests for reconsideration through the secretariat of the high council of Supreme Court. The commission shall analyze the request and report its opinion as to the acceptance or rejection of the request to the high council of the Supreme Court.

The request for reconsideration in civil cases shall not preclude the implementation of definite verdict of the court.

Appointment of revision commissions

Article 38:

The high council of the Supreme Court shall appoint a commission for the revision of civil and criminal cases in the following manner:

1. The revision commission for public criminal cases is composed of an advisor from the public security tribunal, an advisor from the civil tribunal chaired by one of the members of the Supreme Court, in the public security tribunal.
2. The revision commission for criminal cases and public security is composed of an advisor from public criminal tribunal, an advisor from the civil tribunal chaired by one of the members of the Supreme Court, in the public criminal tribunal.
3. The revision commission for civil and public rights cases is composed of an advisor from trade tribunal, an advisor from public criminal tribunal chaired by one of the members of the Supreme Court, in the trade tribunal.
4. The revision commission for commercial cases is composed of a judicial advisor from the civil tribunal and an advisor from the public criminal tribunal chaired by one of the members of the Supreme Court, in the civil and public rights tribunal.

Presence of attorney general and justice minister in the revision sessions

Article 39:

In judicial sessions of the high council of Supreme Court on revision of criminal cases held at the request of the attorney general, the presence of attorney general or his deputy, and the presence of justice minister or an authorized representative from the ministry which is held at the request of justice minister on revision of public rights cases, is compulsory.

Powers of the head of Supreme Court

Article 40:

The head of Supreme Court represents the judiciary of the Islamic republic of Afghanistan and presiding the high council has the following duties and authorities:

1. Representation of the Supreme Court in national and international gatherings
2. General leadership of the judicial and administrative activities of the Supreme Court
3. Chairing the sessions of the high council of Supreme Court
4. Chairing the judicial sessions of the relevant courts of Supreme Court when necessary
5. Issuance of order to audit the activities of courts or one of the judges when necessary
6. Supervising the implementation of final and definite verdicts of the courts

7. Implementing the judiciary budget, and supervision and monitoring over its proper implementation by the relevant institutions
8. Supervising the activities of general administrative department of the judiciary and other professional, executive and administrative institutions of the Supreme Court
9. Presenting the judicial and administrative performance reports of the judiciary to the president
10. Delegating jurisdiction for examination of cases from one tribunal of the Supreme Court to another when necessary
11. Performance of other duties and authorities set forth in the constitution, this law and other legislative documents

Delegation of authority

Article 41:

Head of the Supreme Court shall delegate his responsibilities in case of illness, absence or leave to one of the members of Supreme Court.

Tribunals of the Supreme Court

Article 42:

(1) The Supreme Court comprises the following tribunals:

1. Public criminal tribunal
2. Public security tribunal
3. Civil and public rights tribunal
4. Commercial tribunal
5. Tribunal for military crimes and crimes against national and international security

(2) Other tribunals could be established on the proposal of the Supreme Court and endorsement of the president

(3) Each tribunal of the Supreme Court is headed by one of its members approved by the high council of the Supreme Court

Powers of head of the tribunal

Article 43:

Heads of the tribunals have the following duties and powers:

1. Leadership of the activities of the relevant tribunal
2. Holding sessions of the relevant tribunal and chairing them
3. Regulation of the affairs of the relevant tribunal and submission of report to the high council

In the absence of the head of the tribunal, the head of the Supreme Court shall assign one of its members to act as the head.

Judicial advisors

Article 44:

- (1) The Supreme Court has judicial advisors that are assigned to different tribunals when necessary
- (2) The advisors of the Supreme Court are chosen from among people who have competence, knowledge and qualifications and have at least 15 years of experience and actual judicial service
- (3) The number of advisors shall be determined by the Supreme Court and shall be taken into account upon the preparation of the organization and the judiciary budget.

Duties of the advisors

Article 45:

The advisors of the Supreme Court analyze and evaluate the cases and submit their reports to the judicial sessions and are responsible for the accuracy of the reports, analyses and evaluations of the cases.

Manner of activity

Article 46:

The manner of activity of the judicial advisors shall be regulated by a separate regulation.

Reversal of judgment and referral to a subordinate court

Article 47:

(1) If during the examination of a disputed judgment, the tribunal of Supreme Court realizes that the issued decision of the subordinate court is against the law or involves an error in its implementation and interpretation, then it shall reverse the judgment and refer it to the subordinate court for a verdict consistent with the law.

(2) If the error in the implementation of the law or its interpretation does not have any impact upon the verdict and it is basically correct and consistent with the law, then having corrected it, the relevant tribunal can confirm it.

(3) The tribunal of the Supreme Court can also rely upon other inconsistencies noticed even if they are not disputed

(4) If during the examination of a disputed decision, the tribunal of the Supreme Court realizes that the decision of the subordinate court is inconsistent with the law or involves an error in implementation or interpretation, then it shall amend or correct it.

Reference due to falsehood

Article 48:

(1) If the tribunal of Supreme Court reverses the disputed decision due to the falsehood in the verdict or fundamental performance impacting the verdict, then it shall refer the case to the court along with an explicit mention of the reasons.

The court shall re-examine the reversed case by judges that did not take part in the previous verdict.

(2) If the new verdict is again disputed and the tribunal of the Supreme Court accepts the objection, then it shall reverse the verdict and refer the case along with guidelines for re-examination to a similar court. The verdict of the similar court shall be final.

Enforceability of the verdicts and rulings

Article 49:

Verdicts, rulings and guidelines of the superior courts on re-examining the cases of the subordinate courts are enforceable.

General administrative department of the judiciary

Article 50:

(1) The general administrative department functions to better regulate the executive, administrative and judicial affairs and ensure essential reforms and is headed by the general director.

(2) The general director of the judiciary must have the following features:

1. Be an Afghan citizen
2. Must not be younger than 35 years of age upon appointment
3. Be well-educated and have enough experience in the administrative affairs of the justice system
4. Have a good reputation and disposition
5. Must not have been convicted by court of crimes against humanity and felony or violation of political rights

(3) The general director of the judiciary is appointed on the recommendation of the Supreme Court and endorsement of the president.

Professional and administrative institutions

Article 51:

The Supreme Court has professional and administrative institutions that function within the framework of the general administrative department of the judiciary.

The structure and code of conduct of the professional and administrative institutions of the Supreme Court shall be regulated by the relevant regulations and acts.

Chapter Three

Structure, composition and powers of the appeal courts

Structure

Article 52:

An appeal court shall be established in the center of each province.

The appeal court is composed of general director, heads of the tribunals and members.

The general director of the appeal court shall be chosen from among judges that have competence and capacity and at least 10 years of experience.

The general director of the public criminal tribunal shall simultaneously act as the head of the appeal court.

The composition of the tribunals of the appeal courts
Article 53:

The appeal courts have the following tribunals:

1. Public criminal tribunal
2. Public security tribunal
3. Civil and personal matters tribunal
4. Public rights tribunal
5. Trade tribunals

The number of judicial members in each tribunal cannot exceed 6 people.

The Supreme Court can, when necessary, establish other tribunals within the framework of the appeal courts after the endorsement of the president.

Examination of verdicts and rulings
Article 54:

The appeal court shall re-examine the verdicts and rulings of subordinate in accordance with the conditions set forth in this law and other laws.

The appeal court shall consider all the circumstances and facts of the case and can correct, reverse, amend, confirm or overturn the verdicts of the subordinate courts in accordance with the law.

Finality of verdicts and rulings
Article 55:

The verdicts and rulings of the appeal courts are in the following circumstances final and definite:

1. When the two parties are satisfied with the verdict
2. After the deadline for appeal has expired
3. When the value of the thing in question in civil, public rights and personal matters cases is below 200,000 Afghanis and in commercial cases 500,000 Afghanis.
4. When the criminal nature of the case is obscenity or misdemeanor where only cash penalties are announced.
5. Other cases that have been foreseen in the law.

Duties and authorities of head of appeal court
Article 56:

The head of appeal court shall have the following duties and authority:

Guidance and management of the activities of tribunals and related administrative offices
Chairing the judicial sessions of the tribunals, if required.

Temporary assigning of member of one tribunal to another

Assigning one of the judges from appeal court to primary court of the related region, if necessary, or assigning one of the members of the provincial center primary court or district court to another temporarily.

Unifying judicial experiences of related tribunals.

Submitting report on activities of the courts and related tribunals to the Supreme Court

Chairmanship of sessions

Article 57:

Heads of the appeal court tribunals shall chair the sessions of related tribunals. In case, the head of appeal court chairs the judicial session of related tribunal, the head of tribunal shall be considered as member of respective tribunal.

Responsibilities

Article 58:

Head of the appeal court and heads of tribunals shall be individually responsible for their daily duties and they are collectively responsible, along with the attending judges, for the quality of decision, the period of adjudication, correctness of the application of law and the reasoning of the judgments and orders.

Staff and administrative offices

Article 59:

The appeal court and related tribunals shall have the staff and administrative offices whose duties and rules of procedure shall be regulated by separate legislation.

Military Appeal Court

Article 60:

The military appeal court is composed of the following tribunals:

Criminal tribunal for commissioned officers and lieutenants

Criminal tribunal for soldiers

The tribunals of the Military Appeal Court shall consider the cases initially examined and submitted for appeal by the primary military courts. The head of criminal tribunal for officers shall, at the same time, be the deputy chief judge of the military appeal court. The chief judge of the military appeal court shall report on his/her performances to the Supreme Court. The headquarters of the Military Appeal Court shall be located in Kabul city.

Chapter Four
Structure, Composition and Authority of
Primary Courts

Structure of Primary Courts

Article 61:

Each appeal court shall have the following primary courts within its jurisdiction:

Provincial Center Primary Court
Commercial Primary Court
Personal Status (family affairs) Primary Court
Juvenile Primary Court
District Primary Court

Tribunals of municipal primary court

Article 62:

(1) The municipal primary court shall have the following tribunals:

Public Penalty Tribunal
Civil Tribunal
Public Rights Tribunal
Public Security Tribunal
Traffic Crimes Tribunal

(2) The tribunals set forth in clause (1) of this article shall be composed of a head and maximum (4) members. If required, the Supreme Court may, after the approval by the President, establish other tribunals within the provincial center primary court. If needed, the head of provincial center primary court may temporarily assign a member of one tribunal to another.

(3) If needed, the Supreme Court may, after the approval by the President, establish other provincial center primary courts within the provincial appeal courts.

Examination of cases by related tribunals

Article 63:

The municipal primary courts shall, in accordance with provisions of the law, examine the following cases through related tribunals at the primary phase:

Examination of the cases related to public penalty by public penal tribunal
Examination of civil claims between real and corporeal persons by civil tribunal
Examination of disputed civil cases between the real or corporeal persons and the government by the civil rights tribunal
Examination of cases related to public security and interests, trafficking of drugs and other crimes by public security tribunal, in accordance with provisions of the law
Examination of cases related to traffic incidents by traffic crimes tribunal.

Leadership of the tribunals

Article 64:

The head of municipal primary court is responsible for leading and managing the judicial and administrative activities of the tribunals and shall participate in their meetings, if necessary. Heads of municipal primary court tribunals shall lead their respective tribunals' sessions. In case, the head of primary court leads the judicial session of a tribunal, the head of tribunal shall be considered as member of the respective tribunal.

Commercial Primary Court

Article 65:

The commercial primary court shall, based on requirement, be established in each provincial center, which is composed of a head and four members. In the provincial centers where there is no commercial primary court, examination of commercial cases shall be of the authority of civil tribunal of the municipal primary court.

Personal or Family Affairs Primary Court

Article 66:

The personal affairs or family affairs primary court shall, based on the need, be established in each provincial center, which is composed of a head and two members. In the provincial centers where personal affairs primary court has not been established, examination of personal affairs cases shall be of the authority of the civil tribunal of respective municipal primary court.

Juvenile Primary Court

Article 67:

The juvenile primary court shall be established in each provincial center, which is composed of a head and three members. In the provinces where the volume of work is high, more members may be assigned in accordance with the need.

In the absence of head of the court, the duties shall be delegated to one of the most senior members.

In the provincial centers where the juvenile primary court is not established, examination of child abuse cases shall be of the authority of the public penalty tribunal of the municipal primary court and district courts.

In case, a member of the juvenile court is absent, the chief judge of respective provincial appeal court shall temporarily assign a judicial member of the appeal court department to complete the quorum in the juvenile court.

Examination of child abuse cases shall take place in accordance with provisions of the related law.

Authority of District Primary Court

Article 68:

The district primary court shall, in accordance with provisions of the law, examine all cases of public penalty, civil and personal or family affairs, which are filed in this court.

Composition

Article 69:

The district primary court shall be composed of a head and two members. In the districts where the number of members is less, less than three judges can examine the cases. If there are no judges in the district primary court, the chief judge of appeal court shall temporarily assign one of the judges from the appeal court. In the absence of head of the court, the duties shall be delegated to one of the most senior members.

Appointment of Authorized Court in Criminal Cases

Article 70:

(1) An accused shall be tried in a court that has jurisdiction for examining the case in accordance with provisions of this and other laws. In case a person commits numerous crimes the authority for which fall under separate courts, the case shall be examined in a court that has the authority of examining the most serious crimes. In case the committed crimes are at the same level in terms of punishment, the court, which has initiated the accusations against the accused, shall have the authority to try the person.

(2) In case a person commits numerous crimes that in terms of authority fall under two (specialized and public) courts, the examination of crime in terms of their nature shall be of the authority of the respective courts. In case, the committed crimes are of the type of numerous indivisible crimes, the examination of such cases shall be of the authority of the courts that examine the most serious crimes.

(3) The accomplices and accessories of crime shall be tried in the court where the main perpetrator is tried.

Individual and Collective Responsibilities

Article 71:

The heads of provincial centers and district primary courts and heads of tribunals shall be individually responsible for their daily duties and they are collectively responsible for the quality of order, the time of proceedings, the correctness of the correct application of the law and reasoning of judgments and orders with the attending judges.

Finality of the order by Primary Court

Article 72:

The order issued by primary court shall be considered final in the following cases:

- (1) When parties to a litigant agree with the order.
- (2) When the appealing term expires without objection by the parties.

- (3) When the value of claim does not exceed 100,000 Afghanis.
- (4) The verdict for cash penalty in connection to obscenity or cash penalty up to 50,000 Afghani for misdemeanor, provided that imprisonment is specified in the penal code.
- (5) Other circumstances specified by the laws.

Administrative Offices of Courts

Article 73:

The primary courts shall have staff and administrative offices whose duties and rules of procedures shall be regulated by related regulations.

Chapter Five Documents and Deeds Registration Department

Establishment

Article 74:

The department for registration of documents and deeds shall be established within jurisdiction of every appeal court.

The head and members of documents and deeds registration departments shall be appointed from those persons who have judicial authority.

In the provinces and districts where such departments are not established, the municipal provincial and district primary courts undertake the related duties and authority. The documents and deeds registration departments shall have administrative staff and offices, the number of which shall be determined by the Supreme Court, in accordance with the volume of work.

The duties and authority of such departments shall be regulated by related legislation.

Registration of documents and trademarks

Article 75:

The registration of documents and trademarks shall take place by the primary commercial court. In the provinces where commercial courts do not exist, the registration of documents and trademarks shall take place by the tribunals that deal with commercial matters.

Reporting

Article 76:

The heads of primary courts and documents and deeds registration departments shall report on their performance to the respective appeal court.

Military Primary Courts

Article 77:

(1) In order to examine the functional crimes committed by the officials of Ministry of Interior, National Directorate of Security, Border Forces and Representations of the Ministries and institutions with military structures, the military primary court shall be established as follow:

1. Primary Court of Ministry of Interior
2. Primary Court of National Directorate of Security
3. Primary Court of Border Forces
4. Primary Court of Ministries and Institutions with Military structures
5. Provincial Military Primary Court

(2) In the provinces where military primary courts are not established, the related cases shall be examined by the nearest neighboring military primary court.

(3) The courts set forth in clause (1) of this article shall, in accordance with provisions of the law, initially examine the cases addressed to them.

Examination authority

Article 78:

The Military Primary Courts shall have the authority to examine the following crimes:

(1) Crimes that are committed by a military official during discharge of duty or as a result of it.

(2) Crimes that are committed by a civil employee within the military structures during discharge of duty or as a result of it within a detachment, unit and training or educational facility.

(3) Crime of a non-military person working within the civil military units.

(4) Crimes relating to missing, purchase and sale, theft, embezzlement and illegal possession of arm, ammunitions, technology and other military equipments.

Examination of serious crime

Article 79:

In case a number of civil and military persons are accused of committing one or more crime, the examination of their cases shall relate to the court within the jurisdiction of which the serious crime is committed. In case the committed crimes are equal in terms of the punishment specified by the law, the examination of crime shall be of the authority of the military courts. For joint crimes committed by commissioned officers and lieutenants, the examination of case in the appeal phase shall be of the authority of the military appeal court tribunal for commissioned officers and lieutenants crimes.

Authority of Military Courts in Victim Right Claim
Article 80:

Crimes the examination of which is of the authority of military courts, the victim's right claim resulting from them shall, in accordance with provisions of criminal code of procedure, also fall under the authority of military courts.

Chapter Six
Affairs relating to Judicial Judges and Staff

Conditions for Judicial Appointment
Article 81:

(1) A person meeting the following eligibility criteria shall be appointed as a judge on the recommendation of the high council of Supreme Court High and approval of the President:

1. Minimum 10 years citizenship of the Islamic Republic of Afghanistan upon appointment.
2. Not convicted to a crime or deliberate misdemeanor by order of a competent court.
3. Have Bachelors degree in Islamic studies, law or have certificate or equivalent from the government official Islamic study centers or religious schools.
4. Not afflicted by infectious diseases or disabilities that prevents him/her to carry out the duty.
5. Have completed age 20 upon appointment to the judicial cadre.
6. Have passed the judicial internship successfully.

(2) In case the number of eligible candidates is more than what is required, the Supreme Court may adopt special conditions for recruitment.

(3) Persons who have been appointed as judges before the enforcement of this law shall be excluded from the provision set forth in clause (6) of this article and be appointed based on merit and ncompetency.

Oath of Office
Article 82:

The judge shall, before assuming office, take the following oath of office in presence of the Supreme Court High Council:

"I swear in the name of the great and just Allah that I will fulfill the judicial duty faithfully, honestly and impartially and will respect and implement the Islamic Laws, Constitution and other laws of the country and keep the confidentiality of my duty. And will not embark upon, directly or indirectly, treason, deny rights, injustice, breaking of the law and bribery".

The text of oath shall, after being signed by the judge, be kept in the court where the person works.

Appointment and Transfer of Judges and Staff
Article 83:

The personnel affairs of judges and other staff of the judiciary in higher- grade levels and over shall take place on approval of the High Council of Supreme Court and endorsement of the President. The Personnel affairs of the judges in level one and below and the professional and administrative employees of the judiciary in level one to five and the individual contractors in level two and above, shall take place on the recommendation of general administrative manager and approval of head of Supreme Court. The personnel affairs of professional and administrative employees of the judiciary in level six and below and the individual contractors in level three and below, shall take place on recommendation of the head of personnel and approval of general administrative manager of the judiciary.

Transfer of Judges
Article 84:

A judge shall not be transferred within three years of the service, unless requested by himself with justified reasons accepted by the Supreme Court or as decided by the administration. The transfer of a judge shall usually take place every three years in the month of Hout and shall come into force at the beginning of the year.

Reinstate of resigned judge
Article 85:

A resigned judge returning to the Supreme Court shall be reappointed at the same level as applicable at the time of resignation. The cases set forth in article (73) of this law shall be excluded from this provision.

Retirement of Judges
Article 86:

(1) The judge shall retire in the following cases:

1. After completing age (65)
2. Permanent disabilities or prolonged illness that hinders performance of duty
3. Other cases specified in the legislation.

(2) The Supreme Court may, as required, extend the service of judges at the retirement age set forth in clause (1) of this article, on the basis of their knowledge and academic

and professional experiences, for a maximum period of ten more years before separation. The approval for extension of service shall be reviewed annually.

Application of Labor and Civil Servants Law

Article 87:

The conditions regarding personnel affairs and functional responsibilities of judges and other staff of the judiciary that are not specified in this law, shall be applied in accordance with the provisions in the labor and civil servants law and other related legislations.

In addition to the legislations set forth in clause (1) of this article, the status of judicial decisions by the judges shall also be considered for promotion of judges.

Rights, Privileges and Rewards

Article 88:

In observance of the provision in article (155) of the Constitution, the law provides adequate salary for the head and members of the Supreme Court, judicial counselors and judges.

Professional Privilege

Article 89:

The judicial cadre privilege shall be paid to the judges. The determination related to professional level, condition of promotion and amount of privileges are to be regulated by separate legislation. The privilege paid to the judicial cadre is part of the salary.

Appreciation letters

Article 90:

The first degree appreciation letter to the judges and administrative staff of the judiciary shall be awarded on the recommendation of head of the Supreme Court and approval of the President, or directly awarded to them by the President.

The second and third degree appreciation letters, acknowledgement letter and cash rewards to the judges and administrative staff of the judiciary shall be awarded on recommendation of heads of Supreme Court tribunals, general administrative manager of the judiciary, chief judges of appeal courts or heads of the Supreme Court departments and approval of the head of Supreme Court, or it shall directly be awarded to them by head of Supreme Court.

Chapter Seven Penal responsibility

Arrest of Judge

Article 91:

(1) A judge may not be arrested, detained or prosecuted without order of the President, except for obvious crime.

(2) If a judge is accused of a duty-related crime, the inspection panel shall, after issuance of order by head of the Supreme Court, complete investigation of the case, and the review panel of the Research and Studies Department shall review the case and submit the request for temporarily duty separation of the judge to the Supreme Court.

(3) In case the accusation is justified, the High Council of Supreme Court shall, after reviewing the papers and hearing of defense statement, approve the temporarily separation and obtains approval of the President for removal of the judge, in accordance with the provision in Article (133) of the Constitution, and send the judge to the court.

(4) The trial of the accused shall take place by the High Council of Supreme Court. The procedure for examining, punishment and other issues related to the case shall be regulated by separate legislation.

Chapter Eight Judicial Supervision Body

Structure

Article 92:

The judicial supervisory body shall be established and function within the Supreme Court.

Composition

Article 93:

The Judicial Supervision Body shall be composed of a head, professional members and administrative staff, the number of which shall be determined by the Supreme Court, in accordance with the volume of work.

Prosecution of Functional Crimes of the Judges

Article 94:

The Judicial Supervision Body shall perform its duties under the head of Supreme Court in close collaboration with the inspection and review departments. This body shall be responsible for prosecution of functional crimes of the judges and enforce the judicial orders accordingly.

Function of Judicial Supervision Body

Article 95:

The Judicial Supervision Body shall regulate its activity in accordance with separate regulation approved and enforced by the High Council of Supreme Court.

Personnel Affairs of Military Courts Officials
Article 96:

The personnel affairs of judges and administrative staff of military courts in Brigadier General level and over shall take place on approval of the High Council of Supreme Court and endorsement of the President. The personnel affairs of military courts judges in Colonel level and below shall take place on recommendation of respective authority, approval of the High Council of Supreme Court and endorsement of the President. The personnel affairs of the administrative officers of military courts in Colonel level and below shall take place on the recommendation of respective authority and approval of the President.

Consideration of Status of Decision by Judges in Promotion
Article 97:

In addition to the conditions set forth in Civil Servants and Officers Personnel Affairs Laws, the status of decisions by the judges shall also be considered for promotion of judges.

Payment of Remuneration and Privileges in Accordance with Legislative Provisions
Article 98:

Payment of remuneration, privileges, salary, promotion, determination of grade or level, recreational, annual and sick leaves and other affairs relating to personnel affairs of judges, staff and other military officials of the judiciary, shall take place in accordance with provisions of the Civil Servants and Officers Personnel Affairs Laws and other respective legislations.

Privilege of Judicial Cadre of Military Judges
Article 99:

The military judges shall also be entitled to judicial cadre privileged salary like other judges, according to the law.

Obligation of Judges and Officials of Military Courts
Article 100:

The judges and officials of military courts are bound to respect, and benefit from the rights and privileges set forth in this law and other legislations.

Chapter Nine
Miscellaneous Provisions

Judges uniform

Article 101:

The judges shall dress up in special uniform during the sessions as described in the related legislation.

Identification Card

Article 102

The judges shall have special identification card, the specifications of which are determined by the Supreme Court.

Stamp Seal

Article 103:

The Supreme Courts tribunals, Primary and Appeal Courts, Deeds Departments, General Administrative Directorates of Judiciary and Central Administration Units of the Supreme Court shall have special stamp seals.

Security of Judges and Courts

Article 104:

(1) The Ministry of Interior and other relevant authorities shall ensure the safety and security of the judges, their offices and the courts.

(2) The authorities set forth in clause (1) of this article shall enforce the definite and final decisions of the courts.

Asset registration

Article 105:

Judges of the courts and officials of documents and deeds registration shall, in accordance with the law, have to register all their moveable and immovable assets before assuming the duty.

Protocol Authority

Article 106:

In official ceremonies, the head of Supreme Court shall stand on the right side of the President after the Vice-presidents, members of the Supreme Court shall stand next to the ministers, chief judges of appeal courts shall stand on the right side of the governors and heads of district courts shall stand on the right side of the district governors.

Special Publication

Article 107:

(1) The Supreme Court shall have special gazette, called Mizan (scale) and Judicial Magazine.

(2) As deem appropriate by the Supreme Court, the final decisions of the courts shall be published and disseminated to ensure unified jurisprudence and studying and research.

Professional Counselor
Article 108:

The Supreme Court shall have two professional counselors. The duties, authority and procedures for their work shall be specified by a separate regulation approved by the High Council of Supreme Court.

Drafting of the Laws
Article 109:

The Supreme Court shall prepare the military code of procedures and propose it to authorized authority for processing.

Entry Into Force
Article 110:

This law shall come into force from the date of its ratification and published in the official gazette. By the enforcement of this law, the law on the structures and authority of the Judicial Courts, published in the official gazette no. (851), dated 1384/2/31 and other laws inconsistent with any of its provisions shall be nullified.

Wolesi Jirga (House of Representatives)

Amendments by Wolesi Jirga in the Law on Structure and Authority of Judiciary	
Original text	Amended text by Wolesi Jirga
Terms Clause (12), article (4): Supreme Court: is the highest and final judicial organ, which oversees the cases in terms of correct implementation of the law.	Supreme Court: is the highest and final judicial organ, which supervises the cases in terms of correct implementation of the law <u>and, if required, issues the final verdict.</u>
Clause (16), article (4): The definition of Appointment as a Judge (inselak) should be added.	Appointment as Judge (inselak): is the authority of issuing a judicial order, which is granted by the President to the persons meeting the requirements of this law as a judge.
Clause (20), article (4): Appeal Court: is a legal entity, which examines and discharges the cases in terms of form and nature on the secondary phase.	Appeal Court: is a legal entity, which examines and discharges the cases in terms of form, nature <u>and legality</u> on the secondary phase.

<p><u>Examination procedure</u> Clause (1), article (9): Generally, the cases in the courts shall be examined into two judicial phases (primary and appeal) in terms of nature, quality and content, unless the law provides three or a single phase.</p>	<p>The Supreme Court shall, in order to make sure that the law is correctly implemented, examine the cases set forth in clause (1) of this article and shall, as per circumstance, confirm, breach, cross, cancel, modify <u>and correct</u> the orders by lower courts.</p>
<p>Clause (2), article (9): The Supreme Court shall, in order to make sure that the law is correctly implemented, examine the cases set forth in clause (1) of this article and shall, as per circumstance, confirm, breach, cross, cancel or modify the orders by lower courts.</p>	<p>The Supreme Court shall, in order to make sure that the law is correctly implemented, examine the cases set forth in clause (1) of this article and shall, as per circumstance, confirm, breach, cross, cancel, modify <u>and correct</u> the orders by lower courts.</p>
<p><u>Examination of Cases by Judges</u> Clause (1.3), article (10): In the supervision phase by one or more than one judges from the Supreme Court.</p>	<p>In the <u>third</u> phase by one or more than one judges from the Supreme Court, <u>in accordance with provisions of this law.</u></p>
<p>Clause (2), article (10): The order for execution, hudud (prescribed punishment) and retaliation in all judicial phases <u>in appeal phase</u> shall be issued by the consensus of three judges.</p>	<p><u>Clause (2), article (10):</u> The order for execution, hudud (prescribed punishment) and retaliation in all judicial phases shall be issued by the consensus of three judges.</p>
<p><u>Openness of the proceeding</u> Article 11: The proceeding in the Afghan courts shall be held publicly and everyone has the right to attend it with due consideration of the provisions in the law, unless the court advise the proceeding to be held secretly to the best interest of the parties or to ensure the public order. The execution order shall be announced publicly in any cases.</p>	<p>The proceeding in the Afghan courts shall be held publicly and everyone has the right to attend it with due consideration of the provisions in the law, unless the court advise the proceeding to be held secretly to the best interest <u>and request</u> of the parties or to ensure the public order. The execution order shall be announced publicly in any cases.</p>
<p><u>Independency in issuance of order</u> Clause (2), article (15): is extra.....</p>	<p>The Supreme Court shall be accountable for answering the written and verbal questions by the Wolesi Jirga on the breach of law by the judges in their final decisions.</p>
<p>Authority of suggesting and interpreting the laws Clause (2), article (28): 2. Interpretation of the Constitution, laws and legislative decrees based on the request by government or courts.</p>	<p>2. Interpretation of laws and legislative decrees based on the request by government or courts.</p>

<p><u>Duration for revision</u> Article 36: The duration of request for revision on the legal cases between real and corporeal persons shall be three months from the date of issuance of the final order. The criminal and public rights cases shall be excluded from this provision.</p>	<p>The duration of request for revision on the legal cases between the real and corporeal persons shall be three months from the date of <u>announcement</u> of the final order. The criminal and public rights cases shall be excluded from this provision.</p>
<p><u>Appointment and transfer of Judges and Staff</u> Article 83: The personnel affairs of judges and other staff of the judiciary in levels above the grade and over shall take place on the approval of the Supreme Court High Council and endorsement of the President.</p> <p>The Personnel affairs of the judges in level/grade one and below and the professional and administrative employees of the judiciary in level/grade one to five and the individual contractors in level/grade two and above shall take place on the recommendation of general administrative manager and approval of head of the Supreme Court.</p>	<p>The personnel affairs of the judges above and beyond the level/grade shall take place on the recommendation of the Supreme Court and approval the President.</p> <p>The judges in level/grade one and lower on the recommendation of general manager and approval of the high council and endorsement of the chief justice.</p> <p>The employees and individual contractors shall take place in accordance with the civil servants law.</p>
<p><u>Appreciation letters</u> Clause (2), article 90: (2) The second and third degree appreciation letters, acknowledgement letter and cash rewards to the judges and administrative staff of the judiciary shall be awarded on the recommendation of heads of the Supreme Court tribunals, general administrative manager of the judiciary, chief judges of appeal courts or heads of the Supreme Court departments and approval of head of the Supreme Court or shall directly be awarded to them by head of the Supreme Court.</p>	<p>(2) The second and third degree appreciation letters, acknowledgement letter and cash rewards to the judges and administrative staff of the judiciary shall, <u>in accordance with the bills</u>, be awarded on the recommendation of heads of the Supreme Court tribunals, general administrative manager of the judiciary, chief judges of appeal courts or heads of the Supreme Court departments or shall directly be awarded to them by head of the Supreme Court.</p>
<p><u>Asset registration</u> Article 105: Courts' judges and officials of documents and deeds registration departments shall, in</p>	<p><u>Members of the Supreme Court</u>, courts' judges and officials of documents and</p>

<p>accordance with the law, have to register all their moveable and immoveable assets before taking office.</p>	<p>deeds registration departments shall, in accordance with the law, have to register all their moveable and immoveable assets before taking office.</p>
<p><u>Proposal of the Laws</u> Article 109: The Supreme Court shall organize the Military Code of Procedures and propose it to authorized authority for legal processing.</p>	<p>The Supreme Court shall organize <u>the laws relating to the military and non-military courts</u> and propose them to authorized authority for legal processing.</p>