

ANDORRA

## **Qualified Law on the Constitutional Court**

enacted on 2 and 3 September 1993

### **TITLE I Nature of the Constitutional Court and scope of its jurisdiction**

#### **Chapter I - Nature of the Constitutional Court**

##### **Article 1**

The Constitutional Court is a collegiate judicial body which is the highest interpreter of the Constitution and ensures, by decisions and judgments delivered in proceedings and cases governed by this Qualified Law, that the Constitution shall occupy the highest position in the hierarchy of laws.

##### **Article 2**

1. The jurisdiction of the Constitutional Court covers the entire territory of the Andorran State; it is superior in its order and in the exercise of its powers as defined in the Constitution and in this Law; its decisions are binding on public authorities and individuals and its judgments have binding force.
2. The doctrine interpreting the Constitution interpretation developed by the Court and forming the basis of its judgments is also binding on the various bodies of ordinary jurisdiction.

##### **Article 3**

1. The Constitutional Court is subject only to the Constitution and to this Law. The precedents laid down by the Constitutional Court bind the Court in its subsequent interpretation of the Constitution; however, they may be amended by a reasoned decision taken by an absolute majority of its members.
2. For the purposes of the preceding paragraph, a precedent is presumed to exist where at least two identical cases have been resolved with the same decision and are based on the same doctrine.

##### **Article 4**

1. Without prejudice to the international conventions and treaties validly ratified by Andorra, no appeal may be brought before another judicial organ against the decisions and judgments of the Constitutional Court.

2. The jurisdiction of the Constitutional Court takes priority over that of the ordinary courts. A case which has been brought before the Constitutional Court cannot at the same time be examined by another court. Where the Constitutional Court declares admissible a case which has first been brought before an ordinary court that court ceases to deal with it.

## Article 5

The decisions and judgments of the Constitutional Court are issued on behalf of the Andorran people and published in the Official Gazette of the Principality of Andorra.

## Chapter II - Jurisdiction and functions of the Constitutional Court

### Section 1: Jurisdiction of the Court

## Article 6

The Constitutional Court has jurisdiction in the following matters:

1. Direct actions challenging the constitutionality of legislation, legislative decrees and regulations of the General Council.
2. Interlocutory proceedings in which an ordinary court seeks a ruling on the constitutionality of one of the above mentioned provisions.
3. The prior review of the constitutionality of international treaties.
4. Delivering a preliminary opinion at the request of the Coprinces on the compatibility of legislation with the Constitution.
5. Disputes over constitutional powers between the General Council and the Government, as general organs of the State, and the Comuns as organs of the parishes, or between the Comuns themselves.
6. Disputes on constitutional powers between the Coprinces, the General Council, the Higher Council of Justice and the Government, whether both parties claim jurisdiction or both decline jurisdiction.
7. Appeals for protection.

## Article 7

1. The decisions and judgments of the Constitutional Court delivered during the procedures or cases referred to in the foregoing article always state the reasons on which they are based.

2. The statement of the reasons for the decisions and judgments determining procedures or appeals must include a clear and precise account of the Court's interpretation of the content of the relevant constitutional provisions and the grounds on which the law or regulation at issue in the dispute is or is not compatible with the Constitution.

3. The decision or judgment determining a case, which has been declared admissible, may not contain considerations different from those submitted by the parties in their respective claims.

## Article 8

1. In determining the constitutionality of the law or regulation referred to it the Constitutional Court applies the Constitution in accordance with the instructions and values expressly contained therein and determines whether such law or regulation is valid or void without passing judgment on the expediency of the measures taken by the public authorities.

2. Where the constitutionality of a general legal law or regulation in its entirety, or of certain provisions thereof, is challenged and the Court finds that there is only one interpretation which is compatible with the Constitution and one or more other interpretations which are incompatible therewith, it declares that the law or regulation in question is temporarily inapplicable until the organ which issued it has corrected the unconstitutional elements. The new law or regulation issued corrects the previous law or regulation although it remains subject to the general system of checking for constitutionality.

### Section 2: Internal regulatory and administrative functions

## Article 9

In the performance of its internal regulatory and administrative functions, the Court:

- a. Declares any factors, which disqualify the members of the Court from holding office, whether they exist initially or arise during the term of office.
- b. Exercises disciplinary jurisdiction over the members of the Court.
- c. Declares the cases in which judges cease to hold office and declares the existence of physical incapacity in accordance with the terms of Article 15.2 of this Law.
- d. Sends communications and, where necessary, requests to the organs competent to appoint new judges.

- e. Organizes and allocates the work of the Court staff.
- f. Where appropriate, conducts disciplinary proceedings in respect of offenses committed by the above mentioned persons in the performance of their duties.
- g. Administers the budget allocated to the Court.
- h. Reports to the General Council and the Government on the functioning and needs of the Court.
- i. Approves the Internal Operational Rules.

## **TITLE II - Composition of the Court and legal status of its members**

### Article 10

1. The Constitutional Court comprises four judges, one of whom is nominated by each Coprince and two by the General Council from among persons over the age of 25 years with recognized knowledge of legal and institutional matters.
2. The judges nominated by the General Council are elected by a majority of three fifths of the number of General Councilors, in accordance with the provisions of the Rules of Procedure of the Chamber.
3. In each case the nomination of a judge must be reasoned to an extent sufficient to guarantee that the person is suitable for that office.
4. The constitutional judges are appointed by the Coprinces and the appointments are published in the Official Gazette of the Principality of Andorra.

### Article 11

Where, of necessity, a person who does not possess Andorran nationality is appointed a judge, that person enjoys the status of ex officio nationality throughout his term of office in accordance with the provisions of the Qualified Law on Nationality.

### Article 12

The office of constitutional judge is incompatible with:

- a. The exercise of any other public office attached to a State or Parish institution, irrespective of whether it is an elective office, a post in the civil service or a contractual office.

b. The exercise of activities associated with the representation, management or defense of, or the provision of advice in connection with, the private interests of third parties in Andorran territory.

c. Any office associated with the direction of political parties, trade unions or associations, whether national or foreign.

d. Any other activity susceptible of posing a threat to independence and impartiality in the performance of their duties.

### Article 13

While in office constitutional judges are independent and irremovable and are not liable to any penalty except on the grounds and in the form provided for in this Law. Any judge who considers that his independence is threatened or his duties disrupted by the action of a public body or by individuals shall inform the president of the Court and the latter seeks the assistance of the ordinary courts in order to deal with the threat or disruption.

### Article 14

1. The term of office of constitutional judges is eight years from the date of publication of their appointment.

2. In accordance with the rotation system provided for in this Law one constitutional judge leaves office every two years and is replaced by another judge nominated by the body which chose the outgoing judge.

3. A constitutional judge who replaces a judge who leaves office before the end of his term is appointed for the remainder of that term.

4. Where a judge's post is vacant the body which is to nominate his replacement shall elect that replacement within a maximum period of one month.

5. Save as provided for in paragraph 3 of this article, no constitutional judge may be elected for a consecutive term.

### Article 15

1. A constitutional judge ceases to hold office in the following circumstances: upon expiry of his term of office, voluntary resignation or death, because of personal or legal incapacity, if convicted of an intentional offense or if the Court imposes a disciplinary penalty for an offense described as "very serious".

2. Each ground for incapacity set out in the preceding paragraph is assessed by the Court in plenary session and brought to the knowledge of the body which

nominated the judge in question so that it may nominate a new judge. In all cases failure by a judge to perform his duties for a period of six consecutive months is regarded as a ground for incapacity.

#### Article 16

Constitutional judges shall be subject to civil, criminal and disciplinary liability.

#### Article 17

Cases involving civil and criminal liability for acts or omissions in the performance of their duties are brought before the Higher Court of Justice in accordance with the substantive and procedural laws applicable to members of the ordinary judiciary.

#### Article 18

1. In respect of serious and very serious offenses disciplinary liability is determined by the Constitutional Court in plenary session and the unanimous votes of the other members. In respect of slight offenses liability is determined by the president of the Court or, where appropriate, the vicepresident.

2. The following are slight offenses:

- Lack of consideration and respect towards other members of the Court, the Court staff or persons appearing in the proceedings, in whatever capacity.
- Imprudent delay in performing the duties arising out of their office.

3. The following are serious offenses:

- Failure to observe the requirement of secrecy of the deliberations.
- Failure by reporting judges to state the reasons for the opinions which they submit.
- Manifest and repeated negligence in the resolution of the cases within their jurisdiction.
- Public criticism of or disagreement with the decisions and judgments of the Court.
- Issuing warnings, compliments or rebukes to the bodies and authorities of the State.

- Unwarranted absence from two or more plenary sessions of the Court or from two or more sessions formally called by the president.
- Infringement of the parties' right to conduct the proceedings at any stage thereof.
- Repetition of slight offenses where the penalty imposed has not yet lapsed.

4. The following shall be very serious offenses:

- Failure to observe the grounds for disqualification provided for in this Law.
- Unwarranted dereliction of judicial duties for more than two months.
- Repeated or further commission of serious offenses.

#### Article 19

1. It is always a requirement of the disciplinary function that the person concerned shall be heard and given the opportunity to defend himself during the investigation of his case.

2. Slight offenses are punishable by an oral or written warning; serious offenses are punishable by suspension from office without pay for not less than fifteen days and not more than three months; very serious offenses are punishable by the definitive termination of duties and office.

3. Penalties are entered in the records of the Court established for that purpose. They are removed or lapse only in the following circumstances: for slight offenses, where the offending member does not incur another penalty during a period of six months; and for serious offenses, where no further penalty is incurred during a period of two years.

4. The penalty may be challenged in single instance litigious administrative proceedings before the Higher Court of Justice.

#### Article 20

Judges' remuneration shall be paid by the State budget. Their remuneration consists of a fixed amount per annum, which is the same for all members of the Court, and a sum which varies according to the amount of work undertaken, the number and duration of sessions and the number of procedures and appeals dealt with by each member. The budget makes provision for the headings intended for the operation of the Court and the Government issues a decree determining the arrangements for the judges' remuneration.

### **TITLE III - Functioning of the Constitutional Court**

## Chapter I - Organs of the Court: Jurisdiction and functions

### Article 21

The Constitutional Court exercises its jurisdiction and its internal regulatory and administrative functions through the president, the vicepresident, the reporting judges and the Court in plenary session.

### Article 22

1. The plenary session of the Court, as a collegiate body, is the highest body of the Constitutional Court, comprising the four constitutional judges.
2. Notwithstanding the provisions of the preceding paragraph, where the Court sits as a disciplinary tribunal, or in the absence of one of the four judges, it comprises three judges.

### Article 23

The Court in plenary session is responsible for determining:

- a. Whether to admit all the cases submitted to it, irrespective of whether or not they fall within the compulsory jurisdiction of the Court, including those submitted out of time or those which fail to satisfy the essential procedural requirements as to evidence of locus standi, legal representation or authority to act, or as to the introduction of the action and the claims.
- b. All situations where the action fails on the ground that the parties have failed to appear, waived their claims or conceded defeat, because the action has lapsed or for any other reason prematurely terminating the proceedings.
- c. Any allegations of bias against the constitutional judges.
- d. Any reasons advanced by one of the judges for standing down because of previous involvement in the case.
- e. Any appeals by way of petition submitted during the proceedings.
- f. The judgments, decisions and opinions resolving the substance of the proceedings.

### Article 24

The Court in plenary session, acting in its regulatory and administrative capacity, is responsible for:

- a. Determining the situations envisaged in paragraphs (a) and (c) of Article 9 and paragraph (2) of Article 15 of this Law.
- b. Exercising its disciplinary function in cases involving serious and very serious offenses.
- c. Determining the funds made available to the constitutional judges and necessary for the performance of their duties.
- d. Resolving internal administrative appeals against decisions of the president or, as the case may be, the vicepresident
- e. Determining the content of the annual Report to the General Council on the situation of constitutional justice in Andorra.
- f. Approving the Internal Operating Rules of the Court.
- g. Appointing the reporting judges in accordance with the provisions of this Law.

## Article 25

The reporting judges are responsible for:

- a. Determining and conducting any proceedings allocated to them, in all judicial matters which do not fall within the jurisdiction of the Court in plenary session.
- b. Proposing a reasoned opinion as to the decision or judgment to be approved by the Court in plenary session or, where appropriate, drafting the resolution or decision expressing the majority judgment delivered.
- c. Making use of their casting vote where the votes are equally divided in plenary sessions in the cases allocated to them.

## Article 26

1. The president is the individual authority responsible for the direction, management and representation of the Constitutional Court.
2. The office of president of the Court is held for two years by its members in rotation, according to a rotation system established as follows:
  - Upon appointment, at the appropriate date, the new judge fills the office of vice-president for two years and at the end of that time accedes to the office of president.
  - Should the president finally terminate his office while serving, he is replaced by the vice-president who completes his predecessor's term of office. He then holds

office as president for two years.

- Should the vice-president come to terminate his office before its expiry, the next judge eligible is vested with the office of vice-president for his predecessor's unexpired term, after which he accedes to the office of president.

3. The president's relinquishment of office and the taking of office are conducted before a single plenary session of the Court.

## Article 27

The president is responsible for:

a. Representing the Constitutional Court before public and private institutions.

b. Determining the agenda, convening plenary sessions of the Court and directing the deliberations.

c. Transmitting and ordering the publication of the decisions and judgments taken by the Court in plenary session.

d. Installing the constitutional judges appointed during his term of office and, where appropriate, declaring that a judge is leaving office.

e. Directing the Court staff.

f. Managing the budget and authorizing extraordinary expenditure.

g. Preparing the Court's annual memorandum for the purpose of submitting it for the approval of the Court in plenary session.

h. Carrying out all the activities necessary for the proper regulation and administration of the Court.

## Article 28

1. The vicepresident of the Constitutional Court carries out the duties of the president in the event of the latter's physical incapacity or where those duties are expressly delegated to him.

2. The office of vicepresident is held by the constitutional judge who, by virtue of the body which nominated him, is due to occupy the presidency during the following term.

3. The outgoing vicepresident leaves office and the new vicepresident takes office in the same way as provided for in Article 26.3 of this Law.

## **Chapter II - The Court staff**

### Article 29

1. The formalities associated with the material management and implementation of the Court's jurisdiction are performed by the members of the permanent administrative office at the service of and dependent on the Court.

2. The posts in this office are:

- Clerk to the Court

- Officer Attorney

### Article 30

1. Appointments to and the civil service status of these posts is determined in accordance with the Rules of Procedure of the Government, which fixes the number of posts to be filled according to the needs of the Court. In all cases those appointed to the posts of Clerk to the Court and Officer Attorney must be law graduates.

2. The work of the above mentioned officers is controlled and allocated by the Internal Rules of the Court, which also determine the disciplinary responsibility required of all persons in the service of the Court.

3. Without prejudice to the president of the Court's jurisdiction to investigate disciplinary cases, administrative decisions concerning the Court staff shall be a matter for the Government.

## **Chapter III - The system of sessions and the allocation of cases**

### Article 31

1. The Court, as a collegiate body, acts in plenary session sitting as a single Chamber.

2. At least three judges must be present before decisions can be validly taken and in judicial matters one of these must be the reporting judge.

3. Decisions are taken by a majority of votes. Where the matter under discussion is judicial and the votes are evenly divided the reporting judge shall have the casting vote.

4. In non judicial matters, where the votes are evenly divided the decision cannot be taken.

## Article 32

1. The deliberations and votes are not made public.
2. At each session a report on the decisions taken is drawn up without mentioning the content of the deliberations. For the purpose of drawing up the report the vicepresident of the Court or, where appropriate, the youngest judge acts as secretary .
3. The Clerk to the Court attends sessions where the president deems it appropriate.
4. Where the president of the Court so decides, or upon application by two of the judges present, voting is by secret ballot in writing.

## Article 33

1. Ordinary sessions of the Court are called by the president with at least seven days' notice; the agenda is attached to the notice calling the session. At least one session is held every two months. During the session the cases which have been received by the Court are allocated and the Court debates and takes decisions in the cases pending before it, both at the resolution stage and at the admissibility stage.
2. Extraordinary sessions are called by the President on his own initiative or at the request of two judges with at least three days' notice, where reasons of necessity so require. Sessions attended by all the members of the Court but not called beforehand are also regarded as extraordinary sessions; during these sessions the members of the Court may decide unanimously to take decisions.

## Article 34

1. During ordinary sessions the judicial cases submitted to the Court are allocated to the judges by drawing lots; the judge to whom a case is allocated is the reporter for that case. When the lots are drawn, each judge draws a number between 1 and 4 from a bag, whereupon the cases are allocated in strict order of registration.
2. Before the cases are allocated, the Court in plenary session must describe the nature of each case.
3. Without prejudice to the first paragraph of this article, the Court may decide at any stage of the proceedings to join a number of cases on the ground that the subject matter is the same or similar. Where this occurs the judge to whom the case was first allocated acts as reporter.
4. Non judicial matters are dealt with by the President in accordance with the provisions of this Law and the Rules of the Constitutional Court.

## **TITLE IV - Constitutional proceedings and cases**

### **Chapter 1 - Provisions common to all proceedings**

#### Article 35

1. The proceedings set forth in Article 6 of this Law are always introduced upon application by a party. Unless the applicant is the Attorney General's Department or a court it shall be represented and defended by a lawyer who is a member of the Andorran Bar.

The interests of the Andorran State are represented and defended before the Constitutional Court by the Andorran lawyers attached to the Government Legal Service, without prejudice to the Government's right, where necessary, to secure the services of other lawyers.

2. Without prejudice to the parties' right to conduct the proceedings, the Court may of its own motion demand any actions which it deems necessary for the proper conclusion of the proceedings.

#### Article 36

1. Constitutional proceedings are filed at the seat of the Constitutional Court within the time limits prescribed by this Law and are introduced by a document of claim containing:

a. The identity of the applicant, evidence of locus standi and, where appropriate, the name of the person representing him and his authority to do so.

b. A statement of the facts giving rise to the alleged infringement of the Constitution, the act or law or regulation against which or on which the claim is based, and the person or organ to whom or to which the facts are attributed.

c. The legal basis for the claim.

d. A precise definition of the claim.

2. The document setting out the claim or application must be accompanied by any available documents in support of the facts alleged and, depending on the case, what is considered the relevant evidence adduced.

3. The replies of the defendant or defendants, or of the party or parties affected by the action, are subject to the same procedural arrangement as that applied to the applicants.

4. The fact that the Court declares that the action has lapsed because one of the parties has failed to appear, abandoned its claims or conceded defeat during the proceedings does not prevent the proceedings from being pursued and the final decision from being taken.

#### Article 37

1. Where one of the formalities specified in the preceding Article is not observed the application is declared inadmissible, without prejudice to the Court's right to require the applicant to remedy the formal defect within not more than six days.

2. The inadmissibility of the claim also occurs through manifest non competence of the Constitutional Tribunal, through dealing with a case which has acquired the character of a device and through the manifest lack of constitutional content of the infraction denounced.

#### Article 38

The admissibility or inadmissibility of the claim or application is determined, once the reporting judge has been heard, by a decree taken by the Court in plenary session. An appeal may be filed against a decree declaring an action inadmissible within six working days of service of the decree. No further appeal may be made against the decision on the appeal.

#### Article 39

1. In all proceedings the Court delivers its decisions in the form of an order, a decree or a judgment. An order is used in respect of procedural questions which do not affect the substance of the case; a decree implies a resolution which does not directly or indirectly affect the substance of the case; a judgment is delivered solely in constitutional proceedings and is final.

2. No appeal may be made against orders or judgments. In the case of decrees other than a decree determining the proceedings described in Article 67 of this Law, an action by way of petition (súplica) may be brought before the Court in plenary session within six working days.

3. Where one of the parties considers that an order affects the substance of the case, that party may bring an action by way of petition before the Court in plenary session within the time limit mentioned in the preceding paragraph. The Court must deliver its resolution in the form of a decree; no further appeal may be made against that decision.

#### Article 40

1. A challenge against the reporting judge on the ground of bias, or a claim that he has acted in breach of his duty, shall be admissible where the reporting judge has a direct and personal interest in the case or where at the material time he held a post in the body which performed the act or created the law or regulation complained of.

2. A challenge against the other members of the Court on the ground of bias is never admissible.

#### Article 41

1. Constitutional justice is free of charge. However, the material costs incurred as a result of the parties' claims, such as the costs of defense and representation, costs in respect of the documents requested, legal assistance, applications for witness orders and, in general, all the costs occasioned by the procedural steps which the Court orders in reply to their applications shall be born by the parties.

2. A party whose application is considered unreasonable or reckless may be ordered to pay the costs.

#### Article 42

The time limits prescribed in this Law for taking the various steps are binding on the parties and the Constitutional Court. However, in case of necessity, and provided that those time limits are not prescribed in the Constitution, the Court may agree, at the initiative of the reporting judge acting on his own motion or upon application by one of the parties, to reduce or extend these time limits by issuing a reasoned decree to that effect.

#### **Chapter II - Proceedings where unconstitutionality is alleged**

#### Article 43

1. In the case of actions where unconstitutionality is alleged, the Constitutional Court reviews the compatibility with the Constitution of the laws, legislative decrees and Rules of Procedure of the General Council or the individual provisions thereof.

2. These proceedings are introduced by a direct action submitted by one fifth of the ex officio members of the General Council, by the Head of the Government or by three Comuns, or by an interlocutory application in writing from an ordinary court.

#### Article 44

1. After one of the two above mentioned types of proceedings has been admitted, and provided that the action does not lapse for any reason, the Constitutional Court

takes a decision declaring the laws and regulations referred to it constitutional or unconstitutional.

2. Any laws and regulations declared unconstitutional are null and void.

3. Where these laws and regulations are declared compatible with the Constitution they cannot subsequently be challenged on the ground that they infringe the same constitutional provisions.

#### Section 1: Direct actions alleging unconstitutionality

#### Article 45

1. A direct action against laws and legislative decrees on the ground that they are unconstitutional may be brought within thirty days of the date on which the law or regulation in question was published by one fifth of the members of the General Council, the Head of Government or three Councils.

2. An action against the Rules of Procedure of the General Council may be brought only by one fifth of its members.

3. In the event of termination of the mandate of the councilors due to the causes envisaged in Article 51.1 of the Constitution, their legitimation for lodging the direct appeal of unconstitutionality is extended to the date of constitution of the new General Council. Members of the General Council who have lodged a direct appeal of unconstitutionality while they have been legitimated to do so, shall maintain legitimation for all acts relating to the processing of the aforementioned appeal until such time as a firm resolution has been ruled on it, even after the constitution of the new General Council.

#### Article 46

1. The action begins by an application which must include the formalities set out in Article 36 of this Law.

2. Where the applicants are three or more Comuns they must attach to the application a document certifying the decisions taken by the respective collegiate bodies and showing the decision to bring proceedings to challenge the law or regulation in question.

3. In the case provided for in the preceding paragraph, or where the proceedings are brought by at least one fifth of the members of the General Council, the application must be a joint application and all its terms must be shared by all the applicants. All the steps associated with the action are attributable to all the joint applicants and where one of them withdraws the action fails if the requisite number of Comuns or members of the General Council is no longer present.

## Article 47

1. The fact that the application is declared admissible does not interrupt the application of the law or regulation referred to the Court.
2. Once the application has been admitted by the Constitutional Court the reporting judge issues an order transmitting a copy thereof to the president of the body which laid down the law or regulation referred to the Court and to the Attorney General's Department, so that they can enter an appearance and reply to the application within 15 days at the latest.
3. Their replies to the application must contain the allegations of fact and law which they consider relevant; where applicable, they must include the means and forms of evidence appropriate to their interests; they must also be accompanied by documentary evidence of the conditions of their representation before the Court and authority to act.
4. Where the Attorney-General's Department and the body which enacted the law or regulation referred to the Court jointly acknowledge all the applicant's claims the Court takes a decision declaring said law or regulation unconstitutional, without taking any further steps. Where the claims are acknowledged in part the case continues but the decision must mention the effects of the acknowledgment in accordance with the terms indicated.

## Article 48

1. Once the replies have been received the reporting judge issues an order giving all the parties a common period of seven days within which they must execute and adduce the evidence. The reporter admits the replies which he deems appropriate to the parties' claims and rejects those which he considers inappropriate, there being no appeal against his decision; he then sets the dates and forms of execution within the next seven days.
2. Once the evidence has been adduced and the case transferred to the parties, the parties may submit their pleadings by means of a document within a further period of seven days.

## Article 49

Once the procedural steps have been completed the Court must hear and determine the case within fifteen days of the day on which the parties' pleadings were submitted and in any event within no more than two months from the date on which the action was admitted.

## Article 50

The decision of the Court is made known to the parties and sent for publication in the Official Gazette of the Principality of Andorra, when it takes effect.

## Article 51

1. A decision declaring that a law or regulation referred to the Court by means of the action provided for in this section is unconstitutional in whole or in part must declare that the law or regulation is absolutely null and void and that any effects created while it was valid are canceled. For that purpose a table depicting the validity of the laws and regulations repealed by the provisions declared unconstitutional must be published as an annex to the decision and the parties concerned have a period of not more than 15 days to apply to the public authorities to be restored to the legal position affected by those provisions.

2. Notwithstanding the provisions of the preceding paragraph, legal situations created by decisions against which no appeal lies and which have binding force may not be amended except in the case of positive retroactivity and cases where a subjective right has been acquired.

### Section 2: Interlocutory proceedings based on unconstitutionality introduced by the ordinary courts

## Article 52

In the exercise of their judicial functions, the Batlles (judges of first instance), the Court of Batlles, the Tribunal de Corts (criminal court) and the Higher Court of Andorra are entitled to apply for interlocutory proceedings to be opened in respect of laws, legislative decrees and regulations having statutory force on the ground that they are unconstitutional, irrespective of the date on which they entered into force.

## Article 53

1. An application for judicial review by the Constitutional Court of the constitutionality of such a law or regulation is admissible where, at any stage in ordinary judicial proceedings, the court hearing the proceedings considers on its own initiative or on the initiative of one of the parties that one of the laws and regulations mentioned in the preceding Article which the court must apply in resolving the principal case or any step whatsoever taken therein is contrary to the Constitution.

2. This view that the law or regulation in question is unconstitutional must be based on the following factors: it must be impossible to interpret the law and regulation in question in a way which is consistent with the Constitution; the court must provide a reasoned explanation of the need to apply the law or regulation in resolving the main case or the step in question; and the law or regulation must not

have been declared constitutional in any resolution or decision taken by the Constitutional Court, as provided for in Article 44.3 of this Law.

3. Before filing the document introducing the action provided for in the first paragraph of this Article with the Constitutional Court the court in question must consult the parties and the Attorney General's Department where it is represented in the proceedings. When the parties have been heard the court, on its sole responsibility, issues a decree containing its decision whether or not to lodge the application. No appeal may be made against the decision taken in that decree; where the decision is negative, however, the application may where appropriate be renewed during subsequent stages of the proceedings.

#### Article 54

Where the applicable law or regulation regarded as contrary to the Constitution entered into force prior to the Constitution the court may choose between bringing the matter before the Constitutional Court and declaring at the appropriate point in the proceedings that the laws or regulations are repealed. In any event a declaration that the law or regulation is repealed does not mean that the law or regulation enacted prior to the Constitution is null and void, but simply states that it is without force and the reasons why this is so.

#### Article 55

1. Once the court has agreed to refer the matter to the Constitutional Court as provided for in the preceding provisions it must draw up a separate certificate setting out the steps taken for that purpose and submit to the Constitutional Court a document to which are attached that first document and a statement of the reasons for its doubts as to the constitutionality of the law or regulation in question and also the constitutional provisions which it considers have been infringed, like the formalities required by Article 36 of this Law.

2. The main case or interlocutory matter, as appropriate, follows its course until the judgment or resolution stage, at which point the procedure is frozen until the Constitutional Court has pronounced the decree resolving the matter or decision. If the step which led to the proceedings being brought before the Constitutional Court concerns the setting aside of actions, no decision on the principal cause may be taken until the Constitutional Court has taken its decision.

#### Article 56

1. Upon receiving the document and the separate certificate provided for in the preceding Article, the Constitutional Court issues a reasoned decree declaring the action on the ground of unconstitutionality admissible or inadmissible. The action

by way of petition (súplica) mentioned in Article 39.2 of this Law is available against a decree declaring the action inadmissible.

2. When the action has been declared admissible and the proceedings have commenced, the parties thereto are the court which brought the action, the body which laid down the law or regulation referred to the Constitutional Court and the Attorney General's Department. The parties to the judicial proceedings in question may appear as joint assistants.

3. Where the challenge concerns laws and regulations which predate the Constitution the General Council shall be a party to the proceedings irrespective of which body enacted the laws.

#### Article 57

1. The investigation of the interlocutory proceedings until a decision is taken follows the same procedures as those provided for in connection with a direct action on the grounds of unconstitutionality.

2. The decision of the Constitutional Court is binding on the court which referred the matter to it. In this case, however, the principle laid down in Article 8.2 of this Law that a decision dismissing an action challenging the constitutionality of a provision is temporarily inapplicable, which is binding on the court, is precluded, so that the court can hear and determine the main case.

#### Article 58

1. Decisions dismissing the alleged unconstitutionality produce the same effects as those produced by decisions issued in direct actions.

2. Decisions declaring the law or regulation referred to the Constitutional Court unconstitutional in whole or in part take effect on the date on which they are published in the Official Gazette of the Principality of Andorra. Save in cases of favourable retroactive application, the existing effects produced by this law or regulation before they were declared null and void endure until new laws and regulations have been created to regulate the pre-existing legal situations.

#### **Chapter III - Preliminary procedure for checking the constitutionality of international treaties**

#### Article 59

International treaties approved by the General Council or concluded by the Government in accordance with the provisions of Article 64 of the Constitution may be subject to a review of constitutionality upon application by one or both Coprinces, one fifth of the members of the General Council or the Head of Government.

## Article 60

1. The procedure is begun by a document requesting an opinion on the constitutionality of the treaty in question. This document must be submitted to the Constitutional Court together with the formalities required by Article 36 of this Law within the customary period between the eighth and fifteenth day which the Constitution allows to the Coprinces to express the consent of the State.
2. In the event of the termination of the mandate of the General Councilors due to the causes envisaged in Article 51.1 of the Constitution, their legitimation for filing an application for a ruling of constitutionality is extended until the date of constitution of the new General Council. Members of the General Council who have filed an application for a ruling of constitutionality while they have been legitimated to do so, maintains legitimation for all the acts relating to the processing of the aforementioned application until such time as the Constitutional Court issues the corresponding ruling, even after the constitution of the new General Council.
3. The filing of the document with the Constitutional Court interrupts the ratification of the treaty until the Court has issued its opinion, with the effects provided for in Article 62 of this Law.

## Article 61

1. Once the document has been admitted the Constitutional Court orders that the priority procedure be followed and passes on the document to the General Council or the Government, depending on whether the treaty to be reviewed is covered by paragraph 1 of Article 64 or paragraph 2 of Article 64 of the Constitution, so that they can enter an appearance and reply within not more than 10 working days.
2. The reporting judge must assemble all the reports and documents considered necessary to explain his draft opinion and in all cases present them to the Court in plenary session not more than 15 working days after the date on which the document in reply was registered. The Court issues its opinion on the constitutionality of the treaty within three days of the presentation of the draft opinion.

## Article 62

1. The ruling of the Constitutional Court must determine the compatibility with the Constitution of the clauses of the treaty or agreement referred to it and, where applicable, the due completion of the negotiation procedure provided for in the Constitution.
2. If the opinion delivered contains any declaration of unconstitutionality, the

treaty may not be ratified nor may the State's consent be given in the case of agreements. Where unconstitutionality is not due to a procedural defect, the Court must indicate the constitutional provisions infringed and the substance of the reform in case the provision in the second paragraph 2, section 2, of Article 101 of the Constitution is applicable.

**Chapter IV - The procedure where the Coprinces seek a preliminary opinion on the compatibility of legislation with the constitution**

Article 63

The provisions and allocations of jurisdiction of Articles 45.2, second paragraph, 46.1(e) and 98(b) of the Constitution with regard to the prior opinion on the constitutionality of legislation are implemented in a single procedure regulated by this Chapter.

Article 64

The laws approved by the General Council as described in Articles 45.1 (g) and 63 of the Constitution may be submitted by one or both Coprinces for a review of their constitutionality by means of a joint or individual document seeking the opinion of the Constitutional Court.

Article 65

1. The document must be filed between the eighth and fifteenth days of the period provided for the approval of legislation in accordance with Article 45.2 of the Constitution and must contain the formalities required by Article 36 of this Law.
2. The filing of the document requesting an opinion interrupts the period during which the law is to be approved.

Article 66

Once the document has been admitted by the Constitutional Court the procedure to be followed must comply with the provisions of Articles 47 paragraphs 2 and 3 and 48 of this Law.

Article 67

1. The opinion delivered by the Constitutional Court in the form of a decree declares whether the law is compatible or incompatible in whole or in part with the Constitution according to the requests set out in the document containing the application.

2. Where the opinion has been sought by each of the Coprinces acting independently, the Court must answer each and every one of the applicants' claims in a single document

3. Once the opinion has been approved the Court shall notify it to all the bodies which were party to the proceedings and order that it be published in the Official Gazette of the Principality of Andorra.

## Article 68

1. Where the proceedings were introduced by one of the Coprinces a declaration by the Court that the law referred to it is wholly constitutional does not prevent the applicant from refusing to approve the law in accordance with the provisions of paragraph 2 of Article 45 of the Constitution.

2. Where the procedure was introduced by both Coprinces a declaration by the Court that the law is constitutional leads to its promulgation with the approval of at least one of the Coprinces.

3. Where the Court declares that the law referred to it is unconstitutional in whole or in part the approval of one or other Coprince is inadmissible, subject to the provisions of the next paragraph.

4. Where the law is found to be unconstitutional in part, the remaining provisions are presumed to be valid. The General Council may seek the Coprinces' approval for the valid provisions so that they can be published as a law.

## **Chapter V - Disputes over jurisdiction between the constitutional organs of the state**

### **Section 1: Disputes over jurisdiction between the General Council, the Government and the Comuns, or between the Comuns themselves**

## Article 69

1. Where the acts, resolutions or normative provisions of the General Council or the Government encroach upon the jurisdiction which the Constitution reserves to the Councils, or where the Councils exercise jurisdiction reserved to the General Council, the Government or another Council, the injured organs may bring proceedings to have the dispute over jurisdiction resolved by the Constitutional Court.

2. An action of this type is also admissible where the failure by a general body of the State or a Council prevents another body from exercising its own jurisdiction, or impedes or adversely affects the exercise thereof, or infringes a subjective right of individuals.

3. In the event that jurisdictional encroachment is attributed to a law of the General Council or to a legislative decree of the Government, the conflict is substantiated through the case of unconstitutionality regulated by Chapter II of Title IV of this Law in all its points, including that of active legitimation.

#### Article 70

For the purpose of determining the constitutional nature of and resolving the jurisdictions at issue the Court applies, in addition to the provisions of the Constitution, the provisions of the qualified law or laws which delimit the powers of the Councils, define their economic and fiscal powers and ensure the State's contributions to their budgets.

#### Article 71

1. Save as provided for in Article 69.3 of this Law, before the organ affected by the act, resolution or provision in question brings the dispute before the Constitutional Court it must demand that the body responsible suspend the alleged encroachment or annul the resolution or provision complained of.

2. The aforementioned demand must be made within 15 working days of the date on which the organ making it was notified or became aware of the act, resolution or provision. If the body on which the order is served does not respond within the next 15 working days the claim is presumed to have been rejected.

#### Article 72

1. The dispute over jurisdiction is begun by filing a document of claim with the Constitutional Court within 20 working days of service of the express rejection of the demand or of the date of its implied rejection.

2. In addition to the general conditions set out in Article 36 of this Law, the document must contain the evidence in support of the demand made according to the terms set forth in the preceding Article and, where appropriate, must contain an express application for the suspension of the exercise of the jurisdiction at issue.

#### Article 73

The Constitutional Court may refuse to admit the document of claim for the following reasons, in addition to the general reasons;

- a. Where it considers that the jurisdiction at issue is not constitutional in nature
- b. Where the dispute must be investigated by different procedures
- c. where a decision concerning the same jurisdiction has already been issued.

## Article 74

1. After admitting the document of claim and receiving the replies, the Court takes the decision concerning the suspension of the effects of the impugned act, resolution or provision in the form of a decree and in accordance with the general rules.
2. In any event it is appropriate to declare that these effects are suspended where if they were to remain in force the other party could suffer harm which would be difficult to resolve or irreparable or where the exercise of the jurisdiction would be likely to end during the proceedings if no further steps were to be taken, so that the dispute would become devoid of purpose.

## Article 75

The decision attributes the jurisdiction at issue to one of the parties by determining the subject matter and scope thereof and rules on the validity of the legal measures enacted in the exercise of that jurisdiction. Where appropriate, damages are claimed before an ordinary court.

## Article 76

1. Where the applicant is one of the aforementioned public bodies, any disputes arising from failure to exercise jurisdiction are dealt with in accordance with the provisions of this section.
2. The document of claim must demand that the other body exercise the jurisdiction. For the rest, the same rules are applied.
3. The document of claim must specify the causal link between the alleged failure to exercise the jurisdiction and the applicant body's inability to exercise its own jurisdiction. For the rest, the same rules are applied.
4. Where the body called into question for failing to execute its jurisdiction is a Comú, the Court takes into account, in addition to the Constitution and the qualified laws mentioned in Article 70 of this Law, the laws which transferred State jurisdiction to the Parishes.
5. The decision attributes the jurisdiction and order that it be exercised; it also takes whatever measures may be necessary to ensure that it will be enforced.

## Article 77

Where the applicant is an individual the dispute proceeds in accordance with the provisions on negative disputes over jurisdiction set out in the following section.

## Article 78

1. A positive dispute over jurisdiction or attributions between the general organs of the State is brought before the Constitutional Court where one of the bodies considers that another is encroaching upon the jurisdiction recognized to it by the Constitution. The Coprinces, the General Council, the Higher Council of Justice and the Government have locus standi to bring a dispute over jurisdiction before the Constitutional Court.

2. A negative dispute over jurisdiction or attributions may be introduced where one of the aforementioned bodies has failed to exercise its jurisdiction. In addition to the aforementioned bodies, natural and legal persons acting to defend an individual subjective right also have locus standi to bring such a dispute before the Constitutional Court.

## Article 79

A positive dispute over jurisdiction follows the procedure set out in Articles 69 and 71 through 75 of this Law.

## Article 80

1. Any constitutional body mentioned in this section may demand that another body exercise an attribution or jurisdiction conferred on it by the Constitution.
2. Such a demand may be made in respect of any failure by the bodies concerned to exercise constitutional attributions which they are expressly required to exercise by the Constitution or a qualified law and which impose a duty to act, where such failure is prejudicial to the general interest or the normal functioning of the institutions of the State.
3. Without prejudice to the political responsibility consequent thereupon, this type of demand is never applicable in the event of failure to exercise discretionary powers or those which must be regulated by law or legislative decree.

## Article 81

Where appropriate, the provisions of Section 1 of this Chapter and, in particular, of Articles 71, 72 and 76 - in the latter case paragraphs 1, 2 and 5 - are applicable to negative conflict disputes brought by the aforementioned constitutional organs.

## Article 82

1. Where a natural or legal person files a claim based on the existence of an individual subjective right with one of the aforementioned bodies and that body declines jurisdiction because it considers that jurisdiction belongs to another body, the person concerned submits the same claim to the latter body within no more than 15 working days from the date of notification of the decision. Where the second body declares that it does not have jurisdiction the applicant may introduce a negative dispute over jurisdiction before the Constitutional Court.

2. Jurisdiction may not be declined by silence. Where the body on which the claim described in the preceding paragraph is served fails to reply within one month of service thereof it is presumed to regard itself as having jurisdiction, and by exercising that jurisdiction it may recognize or reject the subjective right claimed. Silence does not prevent an action from being brought in the ordinary court against an body which has tacitly accepted jurisdiction.

#### Article 83

The dispute must be brought before the Constitutional Court, within 15 working days from the date of notification of the negative decision of the second body described in the preceding paragraph, in a document which satisfies the general requirements of article 36 of this Law and contains documentary evidence that the procedure for submitting the relevant claims described in the preceding article has been followed.

#### Article 84

The proceedings are conducted in accordance with the provisions of articles 69 and 70 to 75 of this Law. The decision of the Constitutional Court attributes jurisdiction to one of the bodies concerned, so that the claim can be resubmitted to that body on a legal basis, without prejudice to the possibility of claiming damages before an ordinary court.

#### **Chapter VI - The appeal for protection**

#### Article 85

By the appeal for protection the Constitutional Court, in its capacity as supreme judicial authority, guarantees the rights recognized in Chapters III and IV of Title II of the Constitution other than the right laid down in article 22.

#### Article 86

Except in the situations described in articles 95 and 96 of this Law, the appeal for protection shall be brought against decisions of the final instance of the ordinary courts dismissing applications during the urgent priority procedure provided for in article 41.1 of the Constitution.

## Article 87

1. The respondents or assistants in the proceedings mentioned in the preceding Article have locus standi to bring an appeal for protection.
2. The respondents and assistants in the appeal for protection are the defendants and assistants in the earlier proceedings.

## Article 88

1. The appeal for protection is introduced by a document within 15 working days of the date of service of the decision appealed against, in accordance with the general requirements of Article 36 of this Law. The appellant asks the Court to set the decision aside and also, where applicable, to suspend its effects, by reiterating the claim for judicial protection of the right in question, the breach of which shall be presented in the same terms as before the ordinary court.
2. An appeal for protection which alters the content of the claim for protection of the right or rights presented during the aforementioned urgent and priority procedure is inadmissible.

## Article 89

1. Once the aforementioned document has been presented, the Constitutional Court requisitions the decision appealed against from the court concerned, so that the case can be transferred to the Constitutional Court within three working days, and appoints a reporting judge.
2. In the light of these actions the Constitutional Court takes its decision, in the form of a decree, on the admissibility of the appeal. The appeal by way of petition (súplica) described in Article 38 of this Law is available against a decree declaring the appeal inadmissible.

## Article 90

1. Once the appeal has been admitted and, where applicable, the decision on the suspension of the effects of the judgment appealed against has been delivered, the Court transmits the appeal to the respondent and the assistants and to the Attorney General's Department, so that they can submit any relevant claims within not more than 15 working days.
2. Once the claims have been received, the parties and the Attorney General's Department have six working days to produce their pleas.

## Article 91

1. Without prejudice to the provisions of Article 35.2 of this Law the Court regards as established facts those described as such in the case appealed against.
2. The Court determines the case within two months of the date of admission of the appeal.

#### Article 92

1. The appeal may be allowed in whole or in part.
2. Where the appeal is allowed in whole the judgment appealed against and all its effects are set aside and the Court declares that there has been a breach of a constitutional right and takes the measures necessary to restore the right to the appellant. Where the breach is materially irreparable the Court determines the nature of the liability incurred by the person responsible for the breach so that damages can be claimed before an ordinary court.
3. The appeal is allowed in part where the Court considers that one or more of the findings in the judgment appealed against are valid. As regards the right infringed, the conditions set out in the preceding article also apply here.
4. Where the appeal for protection is dismissed the appellant is ordered to pay the costs.

#### Article 93

Without prejudice to the provisions of the following article, judgments delivered by an ordinary court in all other proceedings are not subject to review by the Constitutional Court and are binding in accordance with the laws governing procedure.

#### Article 94

1. If an infringement of any of the rights set out in Article 10 of the Constitution occurs in the course of judicial or preliminary proceedings, the person whose right has been infringed must allege this breach in defence of his right before an ordinary court by making use of the statutory remedies and appeals.
2. When no further appeal can be lodged or there is no further means of defending the constitutional right infringed, the person whose constitutional right to jurisdiction has been infringed may lodge an *empara* appeal for protection before the Constitutional Court within fifteen working days from the day after notification of the last judicial decision of dismissal or from the date on which he had knowledge of the judicial decision which violated the constitutional right to jurisdiction.

3. The Public Prosecutor's Office may also lodge an *empara* appeal before the Constitutional Court, either of its own motion or at the behest of the party concerned, in defence of the fundamental right to jurisdiction against judicial acts or omissions which infringe that right, once the means of defence through ordinary channels have been exhausted, within the time prescribed above.

4. The document filing the appeal must contain explicit mention of the actions brought through ordinary channels in defence of the right infringed, and a copy thereof must be attached.

5. The Constitutional Court, when a document petitioning for protection is lodged by a person affected by the infringement of the fundamental right to jurisdiction, before deciding on its admissibility, must request a report from the Public Prosecutor's Office, to be delivered within not more than fifteen working days. This report is not mandatory. Failure to issue the report within the prescribed time does not suspend the time allowed for the Court to rule on the admissibility of the appeal for protection.

#### Article 95

1. Provisions, resolutions and measures of the General Council without statutory force which infringe the rights described in Article 85 of this Law may be challenged by the persons concerned by an appeal for protection.

2. The document challenging the rule in question and the appeal for protection must be produced within 15 working days of the date of notification or, where applicable, publication of the provision, resolution or measure, in accordance with the general requirements of Article 36 of this Law.

#### Article 96

1. The Court's admission or dismissal of an application is subject to the general rules of the *empara* appeal set out in this Chapter.

2. Challenging of the acts, resolutions and provisions of the General Council includes, where relevant, the procedure for taking evidence.

3. The decision terminating the proceedings must allow or dismiss the claim, in the latter case with the general pronouncements made as provided for by Article 92.2 of this law.

#### Additional provision

The provisions which govern ordinary judicial proceedings also apply to the proceedings governed by this Law.

The first, second and third transitional provisions were repealed by Qualified Law 5/2006 amending the Qualified Law on the Constitutional Court of 19 May 2006.

Casa de la Vall, 3 September 1993.

We, the Coprinces, approve and promulgate this Law and order that it be published in the Official Gazette of the Principality of Andorra. .

François MITTERAND

Joan MARTI ALANIS

President of the French Republic

Bishop of Urgell

Coprince of Andorra

Coprince of Andorra