

## **The Constitutional and Administrative Law Act of 1996**

In pursuant the provision of section 27 of the Fifth Constitutional Decree of 1991 the President of the Republic has issued the Provisional order hereunder provided.

### Chapter 1

1. This provisional degree shall be cited as the "Constitutional and Administrative Law Act 1996" and shall come onto force from the date of signature.

### Interpretation

2. In this Act unless the context otherwise requires.

"Supreme Court" means the Constitutional Division of High Court.

"Constitutional Division" means the Constitutional Division of the High Court concerned with the hearing of constitutional and administrative petitions.

"Competent Judge" means the judge of the High Court authorized to hear the administrative objections in the first degree.

"Administrative Decision" means a decision made by an administrative authority that is a public authority that has the specific legal effect of allowing or denying the exercise of a right or duty of any person or persons, including the refusal or omission of an administrative authority to make a decision that it is legally bound to make.

"Objection" means an objection submitted by an aggrieved person in accordance with the provisions of this Act concerning an infringement of the national constitutional system or a violation of human rights, objections to the constitutionality of laws, and objections to the exercise of authority emanating from law.

"Executive Acts" mean the acts of the President of the Republic in accordance with section 5 of the Third Constitutional Decree of 1995.

### Chapter II

#### Constitutional Objections

##### Objection in the Acts of the President of the Republic and Council of the Ministers and Ministers

3.1. There shall be submitted by a petition to the Constitutional Division every objection to the acts of the President of the Republic regarding the exercise of his authority which is a direct source is any provision in the constitution or any law claiming the infringement of the Constitutional human rights provided for in the constitution the petition shall include in addition to the general particulars of the petition of the suit the act, authority, the right concerned and how it has been violated infringed .

National Council of Minister or any government of any state or any national or federal Minister concerning the exercise a provision in the infringement of the Constitutional national system regime or the human rights provided for in the constitution provided that the plaintiff shall include in addition of the general particulars of the petition of the suit the act , authority , the right concerned and how it has been violated ,infringed for the purpose of sub-section (1) it shall be considered an infringement to the national regime the exercising of an authority or a federal authority has been provided for in the constitution or the law .

3.2. Notwithstanding the provisions of sub-section 1, the executive acts of the President of the Republic, done in accordance with the provisions of the Constitution, may not be the object of an objection in accordance with the provisions of this section that results in the non-execution of the acts, but shall result in an order for compensation.

#### Request for protection of constitutional right

4. A claim for protection of constitutional right is made through a petition to the constitutional tribunal and must contain the following information:

0. details of the Constitutional right claimed to be abused and the details and circumstances that led to the abuse;
0. details of time and place of those circumstances;
0. an affidavit that the petitioner to the best of his knowledge has no other alternative through which to petition, or no other appeal in civil or criminal proceedings, with details of this claim;
0. the value of compensation claimed, if any.

#### Claim of Unconstitutionality

5. If there is a claim of unconstitutionality of a law or legislative clause or action according to the text of clause (3) in Court and if the Court has assessed the validity of the claim then the court shall set a date for the portig to present the case to the high court .

If the claim of unconstitutionality is presented to the high court during the time set by the court to which the petition was untially made then the court shall halt the proceedings until the high court rules during period of three months .If the case is not raised to the high court during the set period or if the high then the claim becomes null and void .

#### Constitutional Remedy

6. An application for constitutional remedy shall lie to the Constitutional Division of the High Court and shall be in the form of a petition that includes in addition to the general particulars required the following:

0. a statement of the right alleged to have been infringed and of the facts alleged to constitute the infringement;
0. a statement as to the time and place of such facts;
0. a declaration that the applicant to the best of his knowledge and belief has no other sufficient remedy whether by way of appeal or other civil or criminal proceedings and a short statement of the grounds for such belief;

0. a statement of the value of the relief claimed.

#### Plea of Unconstitutionality

5.1. If a plea of the unconstitutionality of any law or legal provision or act is raised before any court in accordance with the provision of section (3) and such courts satisfied of the genuineness of the plea it shall fix a time within which the party interested may institute a suit in the supreme court.

5.2. If a suit is instituted within the time so fixed the court before which the plea is raised shall stay the proceedings pending the final disposal of the suit in the supreme court and if no suit is instituted within the time so fixed the plea shall be considered as nugatory.

#### Amendment and Rejection of a Petition

6.1. Where the petition is not drawn up in the manner prescribed the constitutional circle may reject it or return it for amendment within such time as may be prescribed by the constitutional circle.

6.2. If the petition is not amended within the time fixed by the court in accordance with sub-section (1) the petitions shall be rejected.

#### Summary Dismissal of a Petition

0. The Constitutional circle shall dismiss the application and record the reasons for such dismissed where it appears to it,
  0. that the applicant has no right or direct interest in instituting the suit;
  0. that the petition do as not contain any justifiable issue to be decided;
  0. that the petition does not disclose any clear infringement;
  0. that the applicant has not exhausted all the remedies available to him.

#### Admitting the Suit

8. Where the petition is presented in the proper form the constitutional circle shall make an order allowing it and directing payment of the prescribed fees unless the applicant is excused from payment by it the constitutional circle order .

#### Notices

9. The Government shall be regarded as interested party in any constitutional suit or petition and the attorney General shall be summonsed .

#### Joiner of other Persons

10. Where it appears to the constitutional circle that any person has a right or a direct interest in the result of the suit or petition the constitutional circle may at any stage of the suit or petition direct that such persons be joined as a defendant.

#### Procedures

11. In a suit for a declaration of the unconstitutional human rights the same procedures as provided in the civil procedures Act 1983 and determinacy a civil suit shall be followed except the notice provide for in section .

## Disposal of a Suit

12. Where it appears to the constitutional circle that the matter in issue can be determined on the written submission of—the parties the constitutional circle may deal it according to such submission unless one of the parties applies to be heard in person or by an advocate.

## Reference of questions of facts to trial Courts

13. If a suit is instituted and section 5(2), and it appears to the constitutional circle that the parties are at issue upon any question of fact which can be determined in the trial court it may refer such question to such court for hearing and determination, the court to which any question of fact has been referred under sub-section (1) shall hear and determine such question and return the record to the constitutional circle the record to the constitutional circle.

To the constitutional circle on receiving the proceeding the proceeding the constitutional circle shall proceed to hear and determine such question and any other questions not referred to the trial court.

## Judgment

14. The judgment shall contain the decisions of the constitution question the relief awarded if any other orders made by the court.

## Publication

15. The Judgment of the constitutional circle on questions of constitutionality of laws and acts shall be published

## Part 2

### Interpretation of the constitution and its Procedures

16.1. The constitutional circle shall be competent to interpret the constitution of the Attorney –General.

16.2. The Attorney- General may of his own motion or on the application of the interested parties submit an application for interpretation if he is satisfied that the nature and importance of the provisions submitted require such interpretation to ensure consistency in their application

### Contents of the Application

17. For the purpose of section 16 the application shall contain a statement as to the provisions submitted for interpretation and the grounds which necessitate such interpretation.

### Disposal of the application

18. The constitutional circle shall hear and determine the application on the documents

contained in the record notwithstanding the provisions as subsection 1 on the Attorney-General to file further statements or explanations .

### Effect of the Constitutional judgment

19. The judgment of the Constitutional Division shall have the same binding effect of an ordinary judgment of a court of law.

## Part III

### Administrative Judiciary judicial review of administrative Decisions

#### Procedures on Application

20.1. An application to review an administrative decision shall be submitted by a petition to the competent judge made by the president of the Republic the National Council of minister or the government of any state or any National or federal Minister .

An application to review an administrative decision shall be lie to the court of Appeal and shall be in a form of a petition made by any other public authority not mentioned in sub-section (1).

20.2. The petition mentioned in sub-sections (1) (2) shall includes in addition to the general particulars required in the plant statement of the nature of the decision subject to review and the grounds there of .

Where the decision required to be reviewed is appealable to a competent administrative authority the application shall specify the result of such appeal and the date thereof.

20.3. The application shall be accompanied by a copy of the decision required to be reviewed.

#### Time for Review

21.1. An application for review shall be made within 60 days from the application of the decision in the Gazette or in departmental circular or from the date of communication to the parties interested which ever is earlier .

Where the decision is applicable to a competent administrative authority time commences from the date of final disposal of the appeal.

21.2. The non-disposal of the administrative authority in the appeal within 30 days from the date off it is submission shall be considered as a refusal /rejection .

#### Stay of Execution

22. The submission of an appeal in accordance with the provisions of section 20 day to the competent judge or the appeal court as the case may be shall not operate to stay the execution of the decision appealed against provided that the competent judge or the appeal court as the case may e application of the parties concerned order the stay of execution may be irreparable or can not be compensated or that the stay of execution

shall not result in any injury to the parties .

### Conditions for Accepting the Application

23.1. An application for review shall not be accepted,

- where the applicant has personal-interest;
- where the applicant has not exhausted all the modes of redress available to him by law;
- unless the decision is based on discretionary power of the authority made the decision;
- unless the application is based on incompetence of the body issuing it or is based on an abuse of authority or a defect in form or a departure from the law or a mistake in the application or interpretation law.

### Claim for Compensation

24. The competent judge or appellate court may decide upon claims for compensation for damages arising out of administrative decisions without limits as to value and where the claims was submitted as an original claim or incidental to a claim for setting aside an administrative decision.

### Procedures in Hearing the Application

25. In the submission hearing and disposal of the application, the same rules and procedures shall apply as in a civil suit.

### Appeal

26. The decision of an appellate court or a Competent Judge shall made to the Administrative Division within 15 days from the date of its communication to the applicant, by a petition submitted to the Administrative Division, and it shall contain a statement as to the reasons for the appeal and the grounds therefore. The Administrative Division shall make its decision within one month from the date of the submission of the petition. The same rules of the procedures shall be applied as are provided for in the Civil Procedures Act of 1983.

### Execution of a Judgment

27. The judgment made in a review for an administrative decision shall be setting aside the decision or the subject to review making in order preventing and administrative.