

Organic law n° 2013-13 dated 2 May 2013, establishing a provisional authority for the supervision of judicial justice.

In the name of the People,
The National Constituent Assembly having adopted,
The President of the Republic enacts the following organic law:

General Provisions

Article one - Shall be established, according to the law herein, an independent provisional authority which shall supervise the judicial authority enjoying administrative and financial autonomy and replacing the higher council of judiciary, called "provisional authority of judicial justice". It is designated in the law herein by the expression "authority".

The authority shall fix its internal regulation organizing its operating methods.

Art.2 - The authority rules on the professional career of magistrates concerning their appointment, promotion, transfer and discipline. It issues an advisory opinion over the draft-laws related to the operating of justice as well as to the reform paths of the judicial justice system. The authority may submit on its own initiative any proposal and recommendation deemed necessary to promote legal action.

Art. 3 - The deliberations of the authority are valid only in the presence of at least of two third parties from its members. In case the quorum is not reached, a new meeting shall be held within a deadline of 10 days, on condition that the third party of its members shall be present, in which case, the deliberations are considered as valid.

The authority makes its decisions to the majority of its present members' votes, except for the case of a waiver of immunity, in which it makes its decisions to the absolute majority of its members. In case of equal votes, the president has the casting vote.

The authority's audiences are confidential when it rules on the questions of immunity and discipline. The decision issued for this purpose shall be reasoned.

The decisions may be reviewed before the administrative tribunal in accordance with the provisions of law n° 72-40 dated 1st June 1972, related to the administrative tribunal.

Art. 4 - The authority submits every six months, a report on the progress of its work to the president of the assembly charged of legislation, to the President of the Republic and to the Head of the Government.

(1) Preparatory works :

Discussion and adoption by the national constituent assembly during its session held on 24 April 2013.

Chapter I

The composition of the authority

Art. 5 - The authority is composed of five magistrates appointed considering their quality, ten elected magistrates and five members who do not have the quality of magistrate, as follows:

- The first president of the court of cassation: president
- The general attorney within the court of cassation: member,
- The general attorney director of judicial departments, member,
- The general inspector at the Ministry of Justice: member,
- The president of the property court: member,
- Four elected magistrates of first grade: members,
- Three elected magistrates of second grade: members,
- Three elected magistrates of third grade: members,
- Five university law professors, having a minimum of fifteen years of seniority , among them two shall absolutely be lawyers within the court of cassation having a ten years seniority and cumulating education and the profession of lawyers : members.

The candidates at the authority other than the magistrates shall be competent, impartial and honest.

The candidates are presented to the commission of elections within the terms and according to the fixed methods.

The commission of elections shall present the candidates other than the magistrates to the national constituent assembly office within a deadline not exceeding the day of the results' declaration of the magistrates' elections.

The national constituent assembly shall hold a plenary assembly within a deadline of three days to proceed to the election to the absolute majority of votes of the members of the assembly.

The representative aspect of women magistrates shall be taken into consideration in the composition of the authority.

Art. 6 - An independent commission proceeds to the organization, the supervision and the control of elections of the authority, and this is within the framework of an electoral congress. The mission of the aforesaid commission is ended with the declaration of the final elections' results.

The commission is composed of fifteen members chosen and appointed by the national constituent assembly office among the candidates willing to achieve this mission. The commission shall compulsory include nine magistrates in connection with three magistrates representing each

grade, as well as six members of the national constituent assembly.

The candidates shall be presented to the national constituent assembly office within a maximum deadline of 7 days as from the date of publication of the law herein in the Official Gazette of the Republic of Tunisia. The office of the national constituent assembly shall rule on within the seven following days.

The choice of the magistrates is made on the basis of seniority in the grade and in case of equality; the priority is given to the eldest.

The commission chooses among its members, one president and one reporter through a consensus and, if not, through election of the majority of votes of its members, taking into consideration the prohibitions mentioned in articles 8 and 9 of the law herein.

The Ministry of Justice puts on the disposal of the independent commission charged of the supervision of the authority's elections, all human and material means for the implementation of the electoral process in a transparent and honest way.

Art. 7 - Every magistrate in active duty or in secondment in the date of elections has the right to vote.

Art. 8 - In order to run as a candidate to the authority's elections, every magistrate in active duty who has not been subject of disciplinary sanctions, except for the sanctions linked to the freedom of meeting and expression, and provided that he/she is not in state of secondment or he/she is not laid off. The magistrates of first grade shall have a seniority of at least four years from the date of their applications.

May not be candidates :

- The members of the authorities offices representing the magistrates unless they resign
- The magistrates members of the commission of elections

Art. 9 - It is prohibited, to run as a candidate to the elections of the authority for:

Any magistrate having been member of one of the previous higher councils of judiciary , or having obtained the non justified material or professional privileges except for those who have been subject of a transfer or any other abusive measure by reason of their positions,

Any magistrate having called for the previous president to stand as a candidate for presidential elections, having glorified him, defended his regime or contributed to promote his image in international forums and seminars, or even having practiced activities within the dissolved constitutional democratic rally,

Any magistrate having participated in political trials or liberties subject of general amnesty enacted by decree-law n°1 dated 19 February 2011, as well as any magistrate having participated in a common law trial, on condition that the proceedings had been led on the basis of a syndical or political activity, and that the concerned magistrate took advantage from it through a promotion or a functional post.

Art. 10 - Each candidate to the authority's elections shall submit to the commission of elections, a sworn

statement asserting that he is not subject of the prohibitions enumerated in the previous article. He shall also submit a sworn statement concerning his properties. Every statement contrary to the truth shall be considered a false statement liable to the penalties provided for by criminal code.

Art. 11 - The magistrates elect the members of the authority, each according to the grade to which they belong, and this, on the basis of free, direct and secret suffrage in accordance with the first-past-the-post-system.

Shall be declared as elected, the magistrates having obtained the larger number of votes on the level of each grade. In case of equal vote, the priority goes to the eldest magistrate.

Every ballot paper comprising a number superior to the one assigned to each grade is considered invalid.

Chapter 2

The functions of the authority

Section I – The supervision of the professional career of the magistrates

Art. 12 - The authority is charged of the preparation of the magistrates' movement concerning their appointment, promotion or transfer as well as the declaration of the list of vacations in different functional posts for each grade. It receives the transfer requests as well as the applications to fill the aforesaid posts.

The authority shall examine the requests for appointment and transfer on the basis of international standards of the independence of judiciary.

The magistrate may not be transferred out of his post, even within the framework of a promotion or an appointment in a new functional post, without an expressed written consent.

The provisions of the previous paragraph do not prevent the transfer of a magistrate according to service requirements. It is understood by service requirements, the necessity grew out to fill a vacancy or to appoint magistrates to new legal posts or to deal with the increase of the work volume within one of the tribunals or to promote in judicial, the newly established tribunals.

All the magistrates are equal to meet the requirements of the service necessity. A magistrate may not be called for to change his post for service requirement only if the absence of other magistrates willing to join the post in question is established.

The magistrates exercising in the nearest judicial district, are called for this purpose, having resort to alternation or drawing names in need be.

In this case, the duration of activity for service requirements may not exceed one year unless the magistrate expresses his explicit consent to keep the post in which he has been transferred or appointed.

Art. 13 - The authority is relevant for the examining of transfers of justice auditors holding a graduation from the higher institute of judiciary in their posts.

It also examines the requests for resignation and early retirement as well as the requests for a waiver of immunity.

Art.14 - The appointment and the designation of magistrates are carried out on the basis of a proposal from the authority in accordance with the provisions of article 17 of the constituent law n°2011-6 dated 16 December 2011, relating to provisional organization of public authorities. The promotions and transfers are made by decree of the head of the government on the basis of an opinion conform to the authority.

The movement of the magistrates shall be published in the Official Gazette of the Republic of Tunisia within a deadline of seven days.

Art.15 - The reconsideration against the decisions of promotion, transfer and appointment in the functional posts shall be carried out before the authority within a maximum deadline of seven days as from the date of publishing the decree with regard to the Official Gazette of the Republic of Tunisia.

The authority rules on the reconsiderations within a maximum deadline of seven days as from the date of their submission. These decrees may be reconsidered before the administrative tribunal in accordance with the provisions of law n°72-40 dated 1 June 1972, relating to the administrative tribunal. The relating litigation shall be sorted out within a deadline not exceeding six months.

Section 2 – **The discipline**

Art.16 - When it rules on the disciplinary files, the authority is composed of the following:

- The first president of the court of cassation: president
- The general prosecutor at the court of cassation: member,
- The prosecutor general director at the Ministry of legal services: member,
- The general inspector at the Ministry of Justice: reporter without voting rights,
- Three elected magistrates from the same grade than the magistrate who is referred to the discipline council: member.

The authority which composition is mentioned above, shall examine the disciplinary files of the magistrates within the judiciary, and this, in accordance with the legislation in force.

The authority taken by the disciplinary file which has been transmitted by the Minister of Justice on the basis of a report elaborated by the general inspection. The president is bound to call for the authority to meet within a maximum deadline of fifteen days as from the date of transmission of the file. The authority shall rule on the disciplinary file

within a maximum deadline of one month as from the date of its submission.

The disciplinary decisions may be reviewed in accordance with the provisions of paragraph 4 of article 3 of the law herein. These decisions are transmitted to the Minister of Justice in order to be implemented after the expiry of the reviewing deadline or when the decision is made final.

Art. 17 - The reporter shall inform the concerned magistrate brought before the council of discipline and shall call for him to attend the meeting of the authority, and this, by a registered letter with acknowledgement of receipt or by a direct deposit of the convocation, within a maximum deadline of 15 days before the meeting date. It is up to him/her to examine his/her file, to provide supporting documents and his/means of defense, and to be assisted by a lawyer or by another person that he/she chooses.

The absence of the magistrate without sufficient reason and after having received the convocation, may not suspend the work of the authority which will continue the examination of the file in accordance with the provided documents.

Art. 18 - In case the facts attributed to the judge require his/her call, the authority may, by a justified decision, prevent him/her from active duty.

If these facts consist a crime or an intentional offense and likely to be prejudicial to the honor, the authority is bound to apply the legal procedures of the waiver of immunity, and to transmit his/her file to the Public Ministry and suspend the disciplinary procedures till a final judgment is rendered.

Transitional provisions

Art.19 - The functions of the authority come to an end and it is automatically dissolved with the adoption of the new constitution, provided that the constitutional institution charged of the supervision of judicial justice takes its functions.

Art.20 - Shall be repealed, all the provisions contrary to the organic law herein. The provisions of law n°67-29 dated 14 July 1967, relating to the judicial organization, to the higher council of judiciary as well as to the status of judicial and which are not in contradiction with the organic law herein remain in force.

The organic law herein shall be published in the Official Gazette of the Republic of Tunisia and enforced as law of the State.

Tunis, 2 May 2013.

The President of the Republic
Mohamed Moncef Marzougui