



STRUCTURE AND FUNCTIONING OF THE JURISDICTIONAL AND ADMINISTRATIVE ACTIVITIES OF THE CONSTITUTIONAL COURT OF SPAIN

I. INTRODUCTION.

The purpose of this document is to provide a global overview of the administrative organisation, the jurisdictional activities and the functioning of the Constitutional Court of Spain. To this end, this report will outline, firstly, the position of the Court in the Spanish constitutional system, paying special attention to the composition and the prerogatives of this constitutional organ (II). Next, it will examine the organization of the Court in its capacity of a jurisdictional organ (III). The exposition will be completed through a presentation of the different organs, services and units that structure the administrative organization of the Court (IV). Finally, we shall make a reference to the different types and ways of recruitment of the staff at the service of the Constitutional Court (V).

Throughout this presentation, it will be given special importance to the regulations contained in the Spanish Constitution (CE) of December 6th 1978¹; in the Organic Law 2/1979, dated October 3rd, on the Constitutional Court² (“*LOTC*”); and the Regulation on the Organization and the Staff of the Court, adopted by Resolution of the Plenary of the Constitutional Court on July 5th 1990.

¹ The website www.tribunalconstitucional.es offers translated versions of the Constitution in regional languages, including Catalan, Basque, Galician and Valencian. Other versions in German, Arabic, French, English, Italian and Portuguese and sign language are also available.

² The Court’s website provides translated versions in French, English, Italian and Portuguese.

II. THE STATUS OF THE CONSTITUTIONAL COURT IN THE SPANISH CONSTITUTIONAL SYSTEM: COMPOSITION AND PREROGATIVES.

The Constitutional Court is regulated under articles 159 to 165 of the 1978 Spanish Constitution, which has been configured under Title IX, named “*On the Constitutional Court*”. From a strictly systematic standpoint, it is worth pointing out that the Court is not included among the organs that constitute the Judicial Power (Title VI, articles 117 to 127). Likewise, it is worth mentioning that the constitutional rules governing the Court are laid down immediately before the articles on the “*Constitutional reform*” (Title X, articles 166 to 169).

Hereafter, we shall outline the composition (a) and the jurisdictional attributions or prerogatives of the Court (b), based on the constitutional provisions that deal with these issues aspects. References to the Organic Law of the Constitutional Court will complete any additional information where applicable.

a. Composition of the Court (articles 159 and 160 CE): appointment, tenure and leave of the Magistrates.

In accordance with article 159.1 of the Spanish Constitution, “*The Constitutional Court shall consist of twelve members appointed by the King. Of these, four shall be nominated by the Congress by a majority of three-fifths of its members, four shall be nominated by the Senate with the same majority, two shall be nominated by the Government, and two by the General Council of the Judicial Power*”.

In relation to the Magistrates appointed upon proposal by the parliamentary Chambers, it is worth noting that article 16 of the Organic Law of the Constitutional Court adds two additional rules of indubitable interest: firstly, its first paragraph establishes that “*The Magistrates proposed by the Senate shall be elected among candidates submitted by Legislative Assemblies of the Autonomous Communities in the terms provided by the House’s Rules*”. Secondly, the second paragraph provides that “*The candidates proposed by the Congress and the Senate must appear previously before the appropriate Committee in the terms provided by the respective Houses’ Rules*”.

As for the Magistrates appointed upon proposal by the Senate, it must be noted that the Rules of that Chamber provide that the President of the Senate shall address the Parliaments of the Autonomous Communities so that these may propose up to two candidates (thus making up to a maximum of 34 candidates); if enough candidates are not put forward by the regional parliaments, the Committee of Appointments of the Senate may complete the proposals made by the Legislative Assemblies of the Autonomous Communities.

In accordance with article 16.2 of the Organic law of the Constitutional Court, the candidates proposed by both Chambers must appear, prior to their eventual appointment, before the committees of appointments of each Chamber (as for the Congress of Deputies, this committee is named Consultative Commission on Appointments).

Article 159.2 of the Spanish Constitution sets certain limitations to the liberty of appointment enjoyed by the organs that propose the candidacies of the members of the Constitutional Court. Indeed, it provides that “*Members of the Constitutional Court shall be appointed among magistrates and prosecutors, university professors, public officials and lawyers, all of whom must have a recognised standing with at least fifteen years’ practice in their profession*”. The prerogative to assess compliance with these requirements belongs to the Plenary of the Court, as provided by article 10.1 i) of its Organic Law. This assessment constitutes an additional guarantee of the validity of the appointment. Indeed, if the Court considers that a given candidate does not fulfil these requirements (either because they are not lawyers of a recognised standing or because their professional practice has lasted under fifteen years), the candidacy may not be submitted to the King’s ratification.

According to article 159.3 of the Constitution, the Magistrates “*of the Constitutional Court shall be appointed for a period of nine years and shall be renewed by thirds every three years*”. The Organic Law of the Constitutional Court completes this provision concerning two points. On the one hand, article 16.4 contains a prohibition, since “*No Magistrate may be nominated to the King for a second consecutive term unless he or she had held office for the period of not more than three years*”. On the other hand, article 16.5 provides that “*In case of a delay in the renewal by thirds of the Magistrates, the time delay in the renewal shall be reduced from the term of office of those appointed*”.

In order to guarantee the independence of the Magistrates of the Constitutional Court, article 159.4 of the Constitution establishes a severe regime of professional incompatibilities. In this vein, Magistrates may not fulfil any “*position of a representative nature*”, nor can they hold any “*political or administrative office*” or any “*management position in a political party or a trade union*”. The same constitutional provision states that the condition of Magistrate is incompatible with “*holding any position as a judge or a prosecutor, as well as with any professional or business activity*”. In addition, “*Incompatibilities for members of the Judicial Power shall also apply to members of the Constitutional Court*”.

The regime of incompatibilities that binds the Magistrates is further detailed under article 19.1 of the Organic Law of the Constitutional Court, which reads as follows:

“The office of Magistrate of the Constitutional Court shall be incompatible with the functions of:

- 1) Ombudsperson (“Defensor del Pueblo”);*
- 2) Deputy or Senator;*
- 3) with any other political or administrative office in the State, the Autonomous Communities, the provinces or any other local entities;*
- 4) With any jurisdictional function or any activity whatsoever associated with judicial service or the Public Prosecutor Office;*
- 5) With any form of employment in the courts of any other jurisdiction;*
- 6) With management responsibilities in political parties, trade unions, associations, foundations and professional boards and with any form of employment in their service;*
- 7) With professional and commercial activities. For any other matter, the incompatibilities that apply to members of the Judiciary shall also be applicable to the members of the Constitutional Court”.*

The same Organic Law of the Constitutional Court has completed this regime of incompatibilities with two further interesting provisions.

Firstly, it has provided a transitory retributive regime which compensates the eventual losses incurred by Magistrates on the occasion of the termination of their office. In particular,

article 25.1 of the Organic Law states that Magistrates who have served a minimum of 3 years “shall be entitled to a one-year transitional allowance equivalent to that accruing to them on leaving office”.

Secondly, the LOTC sets an absolute prohibition concerning eventual appearances before the Court by former Magistrates: “*Those who have served as a Magistrate or legal counsel in the Constitutional Court shall be barred from practising in the Court as an advocate*” (article 81.3). Concerning the Counsels (“*Letrados*”) of the Court, article 97.2 circumscribes the temporary scope of this prohibition to “*the three years immediately after termination of their duties*”).

Following their appointment, Magistrates “*shall be independent and enjoy fixity of tenure during their term of office*” (article 159.5 of the Constitution). This double guarantee of independence and irremovability has a further development under several articles of the Organic Law of the Court:

- a) Firstly, article 4 of the Organic Law expressly prohibits any organs from raising a question to challenge its jurisdiction or prerogatives, or from issuing a ruling concerning the Court’s resolutions. Thus, the law guarantees the indemnity of the Constitutional Court’s rulings.
- b) Secondly, article 22 defines the legal principles that inspire the action of Magistrates (“*The Magistrates of the Constitutional Court shall perform their duties in accordance with the principles of impartiality and dignity that are inherent to their office*”) and guarantees their irremovability (“*they cannot be prosecuted for opinions expressed in the exercise of their duties*”).
- c) Furthermore, article 22 itself requires an organic law adopted by the Parliament to regulate situations of Magistrates, since it provides that “*they shall be irremovable and may be dismissed or suspended only under one of the legal grounds established by this Law*”. The Organic Law of the Court thus constitutes the so-called *lex consumens*, given that it is the only one which may regulate the causes of suspension or dismissal of Magistrates.

The legal grounds for the leave or dismissal are enumerated under article 23.1:

“The following shall be grounds for dismissal of Magistrates of the Constitutional Court: firstly, resignation accepted by the President of the Court; secondly, expiry of their term of office; thirdly, existence of any of the grounds of disability applicable to members of the Judiciary; fourthly, any incompatibility that may arise; fifthly, failure to perform the duties of their office with the requisite diligence; sixthly, failure to maintain the reserve pertaining to their office; seventhly, being found responsible in civil proceedings for malicious acts or being convicted of a malicious or a seriously negligent crime”.

Leaves due to causes other than resignation, expiry of the office or death must be approved by the Court (article 23.2 of the Organic Law).

Article 24 regulates the cases of suspension: *“Magistrates of the Constitutional Court may be suspended by the Court, as a preliminary measure, in cases of indictment or to allow the time indispensable to establish whether any of the grounds for termination defined in the previous Article exists. Suspension must be approved by three quarters of the members composing the full Court”.*

The Constitution itself barely addresses the internal organization of the Court, since it only alludes to its President, which *“shall be appointed by the King among its members, on the proposal of the full Court itself, for a term of three years”* (article 160). Next, it subjects any further development to the content of the Organic Law that regulates *“the functioning of the Constitutional Court”* (article 165).

b. Prerogatives of the Constitutional Court (articles 161 to 163 of the Constitution): individual guarantees and constitutional procedures.

The *jurisdictional prerogatives* of the Constitutional Court of Spain are enumerated under article 161 of the Constitution. According to its first paragraph, the Court enjoys jurisdiction to rule on:

“a) against the alleged unconstitutionality of acts and statutes having the force of an act. A declaration of unconstitutionality of a legal provision having the force of an act and that has already been applied by the Courts, shall also affect the case-law doctrine built up by the latter, but the decisions handed down shall not lose their status of res judicata.

b) Individual appeals for constitutional protection (“recursos de amparo”) against violation of the rights and freedoms contained in section 53(2) of the Constitution, in the circumstances and manner to be laid down by law.

c) Conflicts of jurisdiction between the State and the Self-governing Communities or between the Self-governing Communities themselves.

d) Other matters assigned to it by the Constitution or by organic acts”.

Furthermore, two additional prerogatives must be noted. Firstly, article 161.2 of the Constitution provides that *“The Government may appeal to the Constitutional Court against provisions and resolutions adopted by the bodies of the Self-governing Communities, which shall bring about the suspension of the contested provisions or resolutions, but the Court must either ratify or lift the suspension, as the case may be, within a period of not more than five months”.*

Secondly, article 163 refers to the so-called question of unconstitutionality in the following terms: *“If a judicial body considers, when hearing a case, that a regulation having the force of an act which is applicable thereto and upon the validity of which the judgment depends, might be contrary to the Constitution, it may bring the matter before the Constitutional Court in the circumstances, manner and subject to the consequences to be laid down by law, which shall in no case have a suspensive effect”.*

For its part, the so-called *“amparo”* appeal allows to provide a remedy to the violations of fundamental rights that citizens may have endured. However, the reform of the admissibility stage of this appeal, carried out by an Organic Law dated May 27th 2007, has reinforced the objective aspect of this appeal. Indeed, that Law established it is no longer sufficient to prove that a breach of a fundamental right has taken place for the Court to rule on the merits of the appeal; in parallel,

it is also necessary that the appeal at stake possesses a “*special constitutional relevance*”. This concept has been spelled out by Judgement 155/2009, dated June 25th.

The Organic Law on the general electoral regime, dated June 19th 1985, introduced a new modality of the *amparo* appeal related to electoral matters, which was characterized by its shorter jurisdictional procedural stages. This specific legal recourse allows to challenge the decisions of the electoral Administration which announces the lists of candidates and of elected representatives in all the electoral processes that take place in Spain. In this respect, the *amparo* appeal on the announcement of candidates must be filed within two days and the Court must rule within five days. Likewise, the terms concerning the announcement of elected representatives is of three days, and cases brought before the Court must be ruled on within fifteen days. This electoral *amparo* turns the Constitutional Court also into a court of electoral guarantees.

The appeal of unconstitutionality (“*recurso de inconstitucionalidad*”) facilitates the legal resolution of controversies that originally have a political nature (that is to say, which are related to the public interest). This justifies the attribution of active standing, concerning this type of appeal, to the President of the central Government, to the Spanish Ombudsman, to 50 senators or 50 members of Congress, and to the Governments and Parliaments of the Autonomous Communities. The Organic Law of the Constitutional Court itself contained, in its original wording, an *ex-ante* appeal of unconstitutionality against organic laws and status of autonomy. However, it was abrogated by an Organic Law dated June 7th 1985. However, an Organic Law dated September 22nd 2015 partially re-established this venue for the projects of statutes of autonomy and their reforms.

The question of unconstitutionality (“ *cuestión de inconstitucionalidad*”) facilitates the collaboration between the Court and the ordinary judicial organs for the sake of the depuration of the legal order. Judges and courts are bound by the law, they may not omit its application – unlike their prerogatives not to apply administrative regulations they deem illegal. However, they may challenge their conformity to the Constitution. The Constitutional Court does not hold - in Spain - the monopoly to examine the constitutionality of the legal acts of parliament, but it does hold the so-called “monopoly of expulsion”. This means that it is the only organ empowered to declare the invalidity of a legal act when the constitutionality review leads to a negative outcome. The

Constitutional Court itself may raise a so-called internal question of unconstitutionality of a prejudicial nature whenever it considers it is necessary – to rule on an *amparo* appeal.

For their part, so-called conflicts (leaving aside the conflict in defence of the local autonomy) deal with legal controversies that may arise concerning norms or regulations without the standing of a legal act, or with administrative acts. Since its original 1979 version, the Organic Law of the Constitutional Court regulates, not only conflicts of prerogatives (either positive or negative) that oppose the central State to the Autonomous Communities, but also the conflicts that may arise between several constitutional organs: the Government, the Congress of Deputies, the Senate and the General Council for the Judiciary. Likewise, it belongs to the Court to rule on the constitutionality of international treaties. The Government, the Congress of Deputies or the Senate may address the Court so that it rules on the matter before Spain as a state becomes a party to an international agreement. Besides, the authorization contained in article 161.1 d) of the Constitution prompted lawmakers to introduce, through an Organic Law dated April 21st 1999, an additional constitutional procedure, i.e. the conflict in defence of local autonomy, which allows local entities (municipalities, provinces and islands) to challenge state and regional laws that they consider to be contrary to the principle of local autonomy the Constitution accords them.

Finally, Organic Law 1/1990, dated February 19th, amending the organic laws of the Constitutional Court and on the Judiciary, charged extended the constitutional review attributions of the Constitutional Court with three new constitutional procedures: the appeal against tax regulations adopted by the so-called “*foral*” provinces of the Basque Autonomous Community, the prejudicial question of validity concerning those same rules and the conflicts in defence of the “*foral*” autonomy. The constitutionality of this legal reform of the jurisdictional realm of the Court was validated by Judgement 118/2016 of the Constitutional Court, dated June 23rd.

In addition to these jurisdictional prerogatives, article 2.2 of the Organic Law of the Constitutional Court grants this organ a limited power to adopt regulations concerning its self-organization. According to this provision, “*The Constitutional Court may establish rules governing its own functioning and organisation and the organisation of its staff and services within the framework of this Law. Such rules, which must be approved by the full Court, shall be published in the Official State Gazette (“Boletín Oficial del Estado”) with the authorisation of its President*”.

In the exercise of this power, the Court has adopted not only its general Regulation on the Organization and the Staff (dated July 5th 1990; and updated on July 23rd 2015), but also the following resolutions:

- a) On the functioning of the Court during vacation periods (dated June 15th 1982, last version of January 18th 2001).
- b) On free legal aid applicable to *amparo* procedures (dated June 18th 1996).
- c) On the processing of appeal concerning electoral *amparo* appeals (dated January 20th 2000).
- d) On the opening hours of the General Registry of the Court (dated January 18th 2001).
- e) On the substitution of Magistrates in order to reach the quorum (dated January 20th 2005).
- f) On automated files involving personal data (dated December 21st 2006; last version dated April 28th 2010).
- g) On the Protocol for the prevention of and reaction against sexual and gender harassment in the Constitutional Court (dated May 27th 2014).
- h) On the creation of a Unit for Equality in the Constitutional Court (dated May 27th 2014).
- i) On the exclusion of data concerning personal identity from the published jurisdictional rulings (dated July 23rd 2015).
- j) On the regulation of the General Registry and the creation of an electronic registry of the Court (dated September 15th 2016).

III. THE ORGANIZATION OF THE CONSTITUTIONAL COURT IN THE EXERCISE OF ITS JURISDICTIONAL FUNCTIONS.

The following pages outline the structure of the Constitutional Court in the exercise of its aforementioned jurisdictional functions. In this respect, we might distinguish the different types of composition of the Court (a) from the organs that provide material or legal support to the exercise of that jurisdictional function (b). The following exposition relies primarily on the regulation contained in the Organic Law of the Constitutional Court and on its Regulation on organization and staff.

a. Jurisdictional organs.

According to article 6.1 of its Organic Law, the Constitutional Court exercises its jurisdictional functions in several capacities or types of formation: as a Plenary Session (i), through its Chambers (ii) or through its Sections (iii). The Organic Law does not conceive the exercise of jurisdictional functions through unipersonal or single-judge organs. Likewise, it must be noted that, even though the procedures before the Court are mostly written either the Plenary or the Chambers may resolve to call hearings (article 85.3).

i. The Plenary Session: composition and prerogatives.

The Plenary of the Constitutional Court of Spain is formed by the 12 Magistrates of the institution. It is chaired by the President of the Court or, in case of absence, by the Vice-president. If both are absent, the Presidency will be fulfilled by the Magistrate ranking highest in seniority of tenure and, in the event of equal seniority, by the oldest among those Magistrates (article 6.2).

Except for the case of motions to disqualify Magistrates, the common prerogative to rule on motions belongs to the organ that has ruled on the main procedure to which the incidental request is linked to. This applies, among others, for the adoption of precautionary or suspensive measures, the judicial resolutions to lift or confirm the suspension of a regional rule or act when the President of the Government has invoked article 161.2, and the motions for enforcement.

According to article 10.1 LOTC, it belongs to the Plenary of the Court to rule on the following matters:

- “a) Constitutionality or unconstitutionality of international treaties.*
- b) Constitutional review of laws and other regulations having the force of law, others than mere case-law application, of which knowledge may be deferred to the Chambers at the moment of the admission of the appeal. Assuming the Chambers the knowledge of the appeal; the full Court shall mark the applicable case-law.*
- c) Questions of constitutionality which assumes, the others shall be deferred to the Chambers according to an objective turn.*
- d) In constitutional conflicts of jurisdiction between the State and the Autonomous Communities or between the Autonomous Communities themselves.*
- d bis) In any preliminary action of unconstitutionality against Drafts of Statutes of Autonomy and reform proposals of the Statutes of Autonomy.⁸*
- e) In contestations within the scope of Article 161, number 2 of the Constitution.*
- f) In conflicts in defence of local self-government.*
- g) In conflicts between the constitutional bodies of the State.*
- h) Annulments in defence of the Court’s jurisdiction provided in Article 4.3.*
- [...]*
- n) Any other matter within the Court’s jurisdiction brought before it by the Plenary on the recommendation of the President or three Judges, and any other matters assigned to it explicitly by an organic law”.*

Thus, according to the regulation currently in force, the Plenary deals primarily with the constitutional review of international treaties – prior to Spain entering the treaties as a party – and of laws, either through the *ex-ante* control or through the appeals of unconstitutionality and the questions of unconstitutionality whose resolution it assumes (since the ordinary prerogative to rule on questions of unconstitutionality belongs to the Chambers). Likewise, the resolution of

constitutional conflicts (conflicts of prerogatives and conflicts in defence of the local autonomy) is also part of the Plenary's jurisdiction, although it must be noted that the Plenary Session may defer these appeals (conflicts and challenges against regional provisions) to the Chambers (article 10.2).

As an incidental function of a jurisdictional character, the Plenary Session also is competent to resolve the motions to disqualify Magistrates [article 10.1 k)].

In addition, in line with the content of the aforementioned article 10.1 n), article 13 of the Organic Law provides that "*when a Chamber considers necessary to change on any point the constitutional case-law previously established by the Court, the matter shall be submitted to the full Court's decision*". This is a guarantee that aims to preserve the coherence of the Court's case law by granting exclusive competence to change that jurisprudence to the type of composition that includes all the Magistrates serving the Court.

Among its specific rules of functioning, the following are the most noteworthy:

- a) Article 14 of the Organic Law provides that "*The full Court may give a ruling when at least two-thirds of its members are present at that particular time*". The quorum of two thirds does not refer to the legally established number of Magistrates, but to the effective number of members of the panel at the time the ruling is adopted.
- b) In accordance with article 90.1, decisions are adopted by a majority of members of the organ at stake – in this case, of the Plenary –.
- c) The President holds the casting vote or quality vote (article 90.1, *in fine*), which allows him or her to break eventual ties.
- d) Magistrates may express their divergent views through a dissenting opinion (which will be joined to the majority's grounds and to the operative part) or a concurring opinion (when the discrepancy affects to the legal grounds but not the conclusion reached by the majority). Article 90.2 provides that these opinions be published together with the relevant ruling in the "Official State Gazette".

ii. The Chambers: composition and prerogatives.

According to article 7.1 of its Organic Law, the Constitutional Court “*shall consist of two Chambers. Each Chamber shall comprise six Magistrates appointed by the full Court*”. The President of the Court is also the President of the First Chamber, and the Vice-president chairs the Second Chamber. Both hold the casting vote.

It belongs to the Chambers to rule on *amparo* appeals (article 48) and on the unconstitutionality proceedings that the Plenary submits to them (appeals of unconstitutionality) or that it does not take for itself (questions of unconstitutionality). The same applies to constitutional conflicts (conflicts of prerogatives and conflicts in defence of the local autonomy) that the Plenary delegates to the Chambers (article 10). As a general rule, the Chambers may only adopt rulings when at least two thirds of their members at a given moment are present (article 14).

The distribution of cases between both Chambers is carried out according to a shift established by the Plenary upon proposal of the President (article 12). The case allocation aims at guaranteeing an equilibrated workload for both Chambers. In the case of electoral *amparo* appeals, the division of work is carried out by attributing to each of the Chambers the resolution of all the challenges that belong to one of the two stages of the electoral procedure: i.e. one of the Chambers will rule on the *amparo* appeals against the announcement of candidates, then and the other one will rule on the appeals against the proclamation of elected representatives, in any type of elections.

iii. The Sections: composition and prerogatives.

There are four Sections in the Constitutional Court, each of which is composed by a President and two Magistrates (article 8.1). Sections no. 1 and no. 2 are composed by the Magistrates of the First Chamber, and Sections no. 3 and no. 4 are composed by the Magistrates that make up the Second Chamber.

Sections are in charge of “*the ordinary arrangements and the judgment or proposal, as appropriate, on the admissibility or rejection of constitutional processes*” (article 8.1). In the particular context of *amparo* appeals, article 50 of the Organic Law orders its admission for

examination on the merits whenever all three members of a Section agree. When the admissibility - even if a majority was obtained - does not reach unanimity, the Section shall transfer the decision to the Chamber for its judgment.

An Organic Law dated May 24th 2007 makes it possible for Sections to render judgements on the merits concerning *amparo* appeals.

b. Organs for the support of the jurisdictional function.

The exercise of jurisdictional functions belongs exclusively to different Magistrate panels of the Constitutional Court, which have been referred to in the previous paragraphs. However, there are several other organs that act in support of the Court so as to facilitate its activity. These organs are: the General Secretariat (i), the Justice Secretariats (ii) and the General Registry (iii).

i. The General Secretariat: prerogatives.

In accordance with article 98 of its Organic Law, the Constitutional Court shall have a Secretary General elected by the Plenary Session and appointed by the President from among the legal counsels, whose chiefship shall exercise without prejudice to the powers vested in the President, the Court and the Chambers.

Article 25 of the Regulation on Organization and Staff of the Court identifies two main prerogatives of the General Secretary, which are both exercised under the authority and the instructions of the President, and directly linked to the exercise of the jurisdictional functions of the Court: “a) To act, in his or her capacity as Chief Counsel, as the Chief of the Counsels of the Court, with no prejudice to the powers that belong to the President, the Vice-president, the Plenary and the Chambers”, and “b) To support the President in the task of jurisdictional scheduling, in accordance with the guidelines that the Plenary may eventually establish; likewise, in the framework of that scheduling, to assume the distribution, high coordination and the general organisation of the work of the legal counsels on jurisdictional matters, or on any other legal or constitutional matter, with no prejudice to article 62.2 a) of this Regulation or to the powers that

belong to the Magistrates drafting the rulings”. In addition, article 62.2 a) also refers to the Counsels that personally advise each of the Magistrates (“*letrados colaboradores*”).

The General Secretariat has an auxiliary role at the stage of admissibility of *amparo* appeals. This function is carried out through the figure of the coordinator Counsels, and through the active presence of both the General Secretary and the Deputy General Secretary, particularly at the periodic meetings they hold with the Counsels according to their area of legal expertise (these groups are constituted along the lines of the jurisdictional orders that exist in Spain, i.e. civil, criminal, administrative and social matters).

1. The Counsels: functions and organization of their work.

In accordance with article 97.1 of its Organic Law, the Constitutional Court “shall be assisted by Counsels”, who “shall assume the functions of research, reporting and legal counsel that are assigned to them in respect of the areas on which the Court is to rule” (article 44.2 of the Regulation on Organization and Staff).

There are two ways for the recruitment of Counsels which differentiates between those:

- a) *“Selected on the basis of a competitive examination among public officials who had gained access to a body or group level A in their capacity as law graduates, according to the Rules of the Court”.*
- b) *“being discretionarily nominated following the temporary appointment regime, by the same Court, in accordance with the conditions established at its Rules, among lawyers, university professors, judges, members of the Public Prosecutor Office or public officials, who had gained access to a body or group level A in their capacity as law graduates”.*

In the case of the Counsels of temporary adscription (“*Letrados de adscripción temporal*”), article 44.1 of the Regulation on Organization and Staff reserves this way of access to the following professionals:

- a) *“University professors of legal disciplines that have developed research and teaching functions for at least five years. Unless they are public employees proper, they must have obtained, from the relevant public organism, the authorization to become a non-tenured PhD-holding professor in public or private universities”.*
- b) *Judges or Prosecutors that have developed their functions during, at least, five years.*
- c) *Public officials who have gained access to a body or group level A in their capacity as law graduates, and that have worked during, at least, five years.*
- d) *Attorneys with a minimum of ten years of professional practice”.*

The Counsels of temporary adscription are appointed for a period of three years, eventually liable to two subsequent renewals. All these decisions are subject to decisions adopted by the members of the Plenary through an absolute majority vote (article 53.3 of the Regulation).

Each Magistrate may request the Plenary to appoint up to two Counsels in a capacity of personal collaborators (*“Letrados colaboradores”*). These Counsels shall henceforth be functionally ascribed to that Magistrate and shall not be subject to the aforementioned regime of temporary renewals. They shall leave their position two months after the end of their collaboration with the Magistrate.

The organization of the work of these collaborating Counsels belongs to the Magistrate, and that of the other Counsels belongs to the General Secretary, under the orders and in accordance with the guidelines set out by the President of the Court. The Counsels shall elaborate the legal reports that they are required, as well as the drafts that assist the Magistrates in the fulfilment of their jurisdictional functions.

ii. The Justice Secretariats: functions.

There are three Justice Secretariats (*“Secretarías de Justicia”*) at the Constitutional Court: the Registrar assigned to the Plenary Session (*“Counsel of the Justice Administration”*) and the four other Registrars assigned to the Four Sections of both Chambers.

According to article 101 of the Organic Law of the Constitutional Court, *“The Registrars shall safeguard the authenticity of the judicial documents in the Court and the Chambers and shall perform the duties, on behalf of the Court or the Chamber to which they serve, which are conferred to secretaries under the organic and procedural legislation of the courts”*.

The Justice Secretariats served by the Registrars are units of procedural support at the service of the organs of the Court. This support takes various form in the jurisdictional procedures, in the impulsion of the processing and the document management of constitutional proceedings, including the communications to the procedural parties, and in the notification of the rulings adopted by the Court. The Registrars are responsible of the Court’s Judicial Archive, which gathers all the documents relating to the cases that have still not been resolved.

The digitalization of the Justice Administration and the substitution of paper as the exclusive format for jurisdictional proceedings does not alter the essence of the functions of the Registrars. In the case of the Constitutional Court, the introduction of the electronic judicial files dates back to the Resolution of the Plenary of the Constitutional Court dated September 15th 2016, whereby it regulates the general registry and the electronic registry of the Court. This regulation was completed by the Resolution of the General Secretariat whereby it sets the sphere of application of the Electronic Registry of the Constitutional Court. On December 23rd 2016, the Constitutional Court and the Ministry of Justice concluded a partnership agreement for the integration of the Constitutional Court into the LexNet judicial platform in respect of electronic notifications and communications.

iii. The General Registry: functions.

In accordance with article 30 of the Court Regulations, every brief or piece of writing addressed to the Court, or that is submitted by the latter, shall be processed through its general registry, placed under the supervision of the Registrar of the Plenary Session.

The same provisions regulates the internal distribution of the registry according to the following rules:

“a) The briefs linked to jurisdictional matters shall be submitted to the relevant Registrar.

b) Any other brief, whenever it is not to be treated directly by the general registry, shall be addressed at the appropriate unit or service of the Court”.

In sum, the General Registry of the Constitutional Court is, at the same time, a justice registry and an administrative registry. It receives both jurisdictional briefs as well as any other document that deals with the Court’s non-jurisdictional activity (contracts, internships, etc.).

IV. THE ADMINISTRATIVE ORGANIZATION OF THE CONSTITUTIONAL COURT.

In addition to its strictly jurisdictional functions, the Constitutional Court relies on the following organs to perform a set of auxiliary administrative activities. This organization is made up of the so-called Governmental Plenary Session (*“Pleno gubernativo”*) (a), the Presidency (b), the Government Board (*“Junta de Gobierno”*) (c), the General Secretariat (d) and the other Services (e), as well as the different organs such as the comptroller, the Data Protection Officer and the Public Procurement Contracting Board (f).

a. The Governmental Plenary: composition and prerogatives.

The Governmental Plenary has the same composition as the jurisdictional Plenary, with the only exception that the General Secretary may also attend as a non-voting member. The General Secretary assumes the functions of secretary of the Governmental Plenary.

The Organic Law attributes the following functions to the Governmental Plenary: “scrutiny of compliance with the formalities required for the appointment of Magistrates of the Constitutional Court” [article 10.1 i)], “dismissal of the Magistrates of the Constitutional Court in the circumstances provided for in Article 23 of this Law” [article 10.1 l)], adoption and reform of the Court’s rules [article 10.1 m)] and of the budget (article 10.3).

In the same vein, article 2 of the Regulation on Organization and Staff adds the following functions:

- “a) To establish the list of staff members and to propose to the Parliament its modification through the budgetary law;*
- b) To approve the so-called list of working positions of the Constitutional Court;*
- c) To adopt the workday and the schedule of the staff;*
- d) To appoint and remove the General Secretary and, eventually, the Deputy General Secretary;*
- e) To adopt the regulations on the recruitment procedures for the incorporation to the Group of Counsels of the Constitutional Court;*
- f) To appoint the Counsel that shall join the Court under a regime of temporary ascription;*
- g) To rule on the incompatibilities regulated by article 96.3 of the Organic Law of the Court;*
- h) To rule on the leave or dismissal of the Counsels in the cases provided by the Regulation;*
- i) To approve the budgetary project of the Court for its incorporation to the General Budget of the State, and to propose or adopt, as appropriate, the modifications to make to that budget, whenever that power does not directly belong to the President of the Court;*
- j) To establish the guidelines for the implementation of the budget, and to fix the limits above of which the expenditure authorizations must be granted by the Plenary and, eventually, the Government Board;*
- k) To control the fulfilment of the guidelines for the implementation of the budget and to overview its settlement, as formulated by the General Secretary;*
- l) To decide on the questions affecting the Magistrates that are not directly attributed to the President;*
- m) To appoint the Comptroller at the service of the Court, to freely rule on his or her dismissal, and to rule, upon proposal of the President, on the discrepancies that may arise between the General Secretary and the Comptroller;*
- n) Any other power that this Regulation or any other rule adopted by the Court attribute to the Court”.*

As a general rule, the Governmental Plenary adopts its decisions by simple majority, and the President holds the casting vote (article 11.1 of the Regulation); the administrative resolutions shall be “immediately enforceable, unless otherwise provided at the time they are adopted (article 11.2). In particular, article 12 regulates the possibility to entrust the drafting of the resolution to one or several Magistrates, or even to commissions or to commissioners appointed to this end.

As a reminder of what described earlier, the Governmental Plenary of the Court has approved several regulations on different matters related to the Court's functioning; namely, on changes due to vacation, on free legal aid for amparo proceedings, on the processing of electoral procedures, on the substitution of Magistrates, on the regulation of files containing personal data, on the creation of a unit for equality and against sexual harassment and harassment based on sex, and on the electronic registry.

b. The Presidency.

In accordance with articles 160 of the Spanish Constitution and 9.1 of the Organic Law, the Plenary of the Constitutional Court elects a President among its members and, subsequently, proposes the appointment to the King. Together with the President (i), we shall refer to the Vice-president (ii) and to the Cabinet of the Presidency (iii), since all of them contribute to the appropriate fulfilment of the functions that belong to the Presidency of the Court.

i. The President.

The President is elected either by an absolute majority at the first vote, or by a simple majority at the second vote. If a tie took place, a second vote will be carried out and, if the tie persisted, the candidate with a higher seniority will receive the nomination. In the event of an ultimate tie, the oldest among the candidates will receive the nomination (article 9.2 of the Organic Law). The President is elected for a period of three years, which may be renewed only once (article 9.3).

Article 16.3 of the Organic Law provides that the election of the President and the Vice-president shall take place after each partial renewal of the Court. Particularly, it provides that “*if the three year term for which they were appointed as President and Vice-President does not coincide with the renewal of the Constitutional Court, such term of office shall be extended to the end at the time of such renewal occurs and the new Magistrates take up the post*”.

In accordance with article 15 of the Organic Law, the President “*represents and convenes the Court, chairs over its Plenary and convenes the Chambers; takes appropriate steps to ensure the functioning of the Court, the Chambers and the Sections; informs the Houses [of the Parliament], the Government and the General Council of the Judiciary of any vacancy that occurs; appoints counsels, announces competitions to fill the seats of the officials and personal staff position and exercises administrative authority over the staff of the Court*”.

The panoply of the prerogatives held by the President is competed by the provisions contained in articles 14 and 15 of the Regulation on the Organization and Staff.

The first of these provisions enumerates three distinct groups of governmental attributions: firstly, as a general rule, it attributes to the President the right to call meetings of the Plenary and of the Government Board, and “*to establish their schedules, to preside over their deliberations and to enforce the resolutions that may be adopted*”. Secondly, it enumerates several functions related to the staff, with a particular reference to Counsels (for instance, “to call a recruitment procedure in order to fill the vacancies of the Group of Counsels of the Constitutional Court”, to appoint the staff at the service of the Court or to enforce disciplinary measures). Finally, it equally belongs to the President “*to exercise the functions of the public procurement organ*”, coupled with a possibility to delegate those attributions to the General Secretary [article 16.1 b)]. Article 15 also provides that the President holds several prerogatives on matters related to security and the management of the Court’s fleet of vehicles.

Likewise, it was mentioned above that the President presides the Plenary, the First Chamber and the Section no. 1.

Among the resolutions of a governmental nature that are adopted by the President, two are particularly noteworthy: the Resolution whereby certain prerogatives are delegated onto the General Secretary, and the Resolution whereby the composition of the public procurement board is settled.

ii. The Vice-president.

According to article 9.4 of the Organic Law of the Constitutional Court, it belongs to the Plenary to elect a Vice-president through the procedure established by article 9.2 for the election of the President, and for a concomitant period of three years. It belongs to the Vice-president to “*replace the President in the event of vacancy or absence or for any other reason*” (article 9.4 *in fine*). If the Vice-president is somehow prevented from exercising his or her powers, the functions of the Presidency shall be fulfilled “*by the most senior Magistrate and, in the event of an equal seniority, by the oldest one among them*” (article 17 of the Regulation on the Organization and Staff).

In addition to the eventual substitution of the President, the Vice-president presides over the Second Chamber and the Section no. 3.

iii. The Cabinet of the Presidency.

Article 18 of the Regulation on the Organization and Staff refers to the Cabinet of the Presidency, which is the administrative organ in support of the President, who himself or herself discretionarily appoints the Chief of the Cabinet. Among other functions, the Cabinet is in charge of “*managing the particular Secretary of the President*”, “*managing the relations of the Court with the media, to provide any necessary measure, concerning the updating of the institutional site in relation to the information provided about the Court’s functions and activities*” and “*providing the appropriate instructions on protocol and managing the organization of any acts or visits of an institutional nature that may take place at the premises of the Court*” (article 18.2 of the Regulation).

c. The Government Board: composition and prerogatives.

The Government Board, an organ of the Court regulated under articles 20 to 23 of the Regulation on Organization and Staff, is composed by the President, the Vice-president, two Magistrates – one for each Chamber, who are renewed annually – and, as a non-voting member, the General Secretary, who performs the tasks of Secretary (article 20). The Board meets when the

President convenes it or upon proposal of any of its members. Its resolutions, which are adopted according to the general rules on majority votes, are subsequently communicated to the other Magistrates.

According to article 21 of the Regulation, this organ fulfils several functions on matters related to the staff (such as calling for the provision of the vacancies) and on budgetary and financial management (it rules on expenditures decisions which exceed a given level).

d. The General Secretariat.

The General Secretary is a Counsel selected by the Plenary Session and appointed by the President of the Court (article 98 of the Organic Law).

Among his various functions, the General Secretary acts as chief of the Counsels (article 98) and, in additions, he performs, “*under the authority and the instructions of the President*”, the following tasks:

- “a) The management and coordination of the Court services and the chiefship of staff.*
- b) The compilation, classification and publication of the Court’s constitutional doctrine.*
- c) The preparation, execution and settlement of the budget, assisted by technical staff.*
- d) Any other function assigned by the Rules of the Court”.*

These provisions are thoroughly developed and detailed by article 25.1 of the Regulation on Organization and Staff. In addition to the functions that belong to him in his capacity as a non-voting member of the collegiate organs of a governmental nature (Governmental Plenary and Government Board), and to the delegated functions on matters of public procurement, the General Secretary performs the following tasks, as enumerated by article 25.1 of the Regulation:

- “a) To act as the Chief Counsel among the Counsels of the Court, with no prejudice to the attributions belonging to the President, to the Vice-president, to the Plenary or to the Chambers.*
- b) To support the President in the task of jurisdictional scheduling, in accordance with the guidelines that the Plenary may eventually establish; likewise, in the framework of that scheduling, to assume the distribution, high coordination and the general organisation of the work of Counsels on jurisdictional matters, or on any other legal or constitutional matter, with no prejudice to article 62.2 a) of this Regulation or to the powers that belong to the Magistrates drafting the rulings.*
- c) To assume the direction and the coordination of the services of the Court, with no prejudice to the direct responsibility of the Counsels that hold the position of Chief of each service or unit.*
- d) To assume the position of Chief of the staff of the Court and responsible of their disciplinary regime, exercising the prerogatives not attributed to the President.*
- e) To propose the regulations for the recruitment procedures for the vacancies referred to under article 21 a) of this Regulation.*
- f) To rule on the requests for authorization required to carry out teaching or research activities, when they do not last for more than ten days.*
- g) To assume the management of the credits needed for the expenditures listed under the Budget of the Court.*
- h) To issue the authorizations for expenditures.*
- i) To order the payments.*
- j) To collect, classify and publish the constitutional case law of the Court, with no prejudice to the provisions under article 34.2 of this Regulation”.*

The mentions made by the provisions of the regulations must be considered to refer to the particular services that exist at the Court in any given moment.

Next to the General Secretary (who will be selected among the Counsels that have a minimum seniority of three years at the service of the Court), the Plenary may elect a Deputy General Secretary. She or he will not only substitute the General Secretary in the event of an absence, vacancy or illness, and assume the functions delegated onto him or her by the General Secretary, but will also assume “*the distribution, coordination and general management of the Counsel’s work at the admissibility stage of the new cases, by delegation of the General Secretary and upon approval by the President and the Plenary, with no prejudice of the prerogatives of the drafting Magistrates*”. The Regulation foresees that, in the performance of this task, the Deputy General Secretary may be assisted by coordinating Counsels (article 26.2 of the Regulation).

The General Secretary has adopted two resolutions that are particularly noteworthy: the aforementioned Resolution, dated February 24th 2017, whereby he determines the application sphere of the electronic registry of the Court; and the Resolution, dated January 24th 2017, on the assignation of a ECLI identifier to the jurisdictional rulings of the Constitutional Court that are bound to be collected in the databases of constitutional doctrine, or that are published by the “Official state gazette”. ECLI, as an acronym for European Case Law Identifier, is an European identifier on case law created by the Council of the European Union, that facilitates the search and use of jurisdictional rulings in any national and supranational database, thus providing a single searching criterion under common parameters to all countries that have adopted it.

e. The other Services of the Court.

The Constitutional Court includes several units or services, all of whom are under the aegis of the General Secretariat: the Management (i), Library and Documentation (ii), Constitutional Doctrine (iii), Informatics (iv), and Research and Studies (v). The Annual Report of the Constitutional Court provides an overview of the activities of each of these service. Its digital version may be consulted through the Court’s website.

i. The Management Service. General Archive.

In accordance with article 27 of the Regulation on Organization and Staff, it belongs to the Management Service “*to develop the functions related to the economic and accounting management, to the management of human and material resources, to the management of the staff, to the conservation and the maintenance of the facilities, the direction of the General Archive and of the other services of a general nature that have not been assigned to other units or services of the Court*”. In particular, the Chief Manager assists the General Secretary “*in the exercise of his prerogatives when these have a financial or economic nature or are related to the staff*”.

The Management Service assumes the direction of the General Archive, a unit which harbours all the documents collected, generated or conserved by the Court in the exercise of its prerogatives and activities. Indeed, it constitutes its “*documental possession*” (article 31 of the Regulation). Jurisdictional documents must be organized in accordance with the guidelines provided by the Registrars, since they are the ones in charge of it.

The Chief Manager is assimilated to the Counsels and, in the event of an absence, of the latter shall substitute him or her. The Chief Manager is appointed by the President upon proposal of the Government Board.

ii. The Library and Documentation Service.

In accordance with article 33 of the Regulation, the Library and Documentation Service is in charge of the “*management of the Library of the Court and of any document that may be necessary for the Court to perform its task. Likewise, it provides scholarly support to the President and the Magistrates in nay institutional act or meeting in which they participate*”, as well as of “*the elaboration and enforcement of the publishing programs of the Court*”.

The Library of the Court, which is run by a Counsel (“*Letrado Jefe*”), holds nowadays 500.000 bibliographical records (documents, books, publications and any other records of human communication), approximately.

iii. The Constitutional Doctrine Service.

The Constitutional Doctrine Service is run by a Senior Counsel and is in charge of “*the planning and management of the publication and edition, through different means, of the jurisdictional resolutions and the case law of the Court*”, and of “*jurisdictional statistics*” (article 34 of the Regulation).

Particularly, it belongs to this Service to prepare the jurisdictional rulings for their publication in the “Official State Gazette” and the maintenance of the databases of the Court, as well as the elaboration of the “Gazette of Constitutional Case Law”. All this material is available at the website of the Court.

iv. The Informatics Service.

The Informatics Service, which is also under the direction of a Counsel, carries out “*the organization and management of the informatics system of the Court, and assures the preservation of its security and communications*”. Likewise, “*it assumes the technical support provided to its users*” (article 34 *bis* of the Regulation).

Because of its external relevance, the management and maintenance of the websites of the Constitutional Court and of the Ibero-American Conference on Constitutional Justice are particularly noteworthy.

v. The Research and Studies Services.

According to article 32 of the Regulation, “*the Research and Studies Service shall schedule and elaborate any work on scholarly, jurisprudential or legislative matters that may be necessary in view of the Court’s functions*³”.

³ Despite this provision of the Regulation, this Service has not been set up.

f. Other organs: the Comptroller, the Data Protection Officer and the Public Procurement board.

The figure of the Comptroller is regulated under article 39 of the Regulation. It provides that he or she shall “*intervene in relation to the economic content on which the General Secretary must rule, issuing a conforming or non-conforming advice in written*”. The Comptroller is also in charge of “*advising on budgetary matters of the Constitutional Court*”.

The Data Protection Officer is not a figure included in the legal rules that govern the Court’s functioning, but rather on the Regulation of the Organic Law on data protection, which defines it as the person or persons that are responsible, by virtue of an order of the person assuming responsibility for electronic files, of the “*coordination and control of the applicable security measures*”. The Responsible of Security is in charge of the coordination and control of the measures established by the internal instructions adopted by the General Secretary. The Responsible of Security must receive communications on any incidence that may affect the security of the files containing personal data, such as the access to files with personal data by non-authorized staff, even if that access is fortuitous or unintentional; the knowledge by a third party of a user’s identifying number or password; the modification of data by unknown or unauthorized persons; or non-authorized access to the facilities where computing systems and supports are located.

The Public Procurement Desk is a collegiate organ of an eminently technical composition, whose mission is to guarantee the appropriate development of public procurement procedures. It aims to determine the most economically advantageous offer for the Court through the analysis of the offers provided to the Court by private undertakings, in the framework of an adjudication procedure. It proposes a candidate for the allocation of a public contract to the organ of public procurement (i.e. the General Secretary, which acts by virtue of a delegation of the President).

V. THE STAFF AT THE SERVICE OF THE CONSTITUTIONAL COURT: TYPES AND WAYS OF RECRUITMENT.

This exposition of the structure and functioning of the Constitutional Court will end with a brief overview of the classification criteria of the staff at the service of the Court (a) and its different ways of recruitment, with a special reference to the Counsels (b).

a. Types of staff.

In accordance with article 43.1 of the Regulation, “*the staff at the service of the Constitutional Court may be a tenured public servant or a public employee subject to labour law, either temporary or permanent*”.

Among the public employees appointed with a temporary nature, several positions must be noted, *inter alia* the Chief of the President’s Cabinet (article 18.1 of the Regulation), as well as other persons “*appointed for the exercise of non-permanent functions based on personal trust or special advice, all of which shall be governed by the Court’s job positions list (“relación de puestos de trabajo”)*”. The Supreme Court has defined these “job positions lists” as a “*technical instrument by virtue of which a Public Administration organizes its staff in accordance with the needs of its unit, and which specifies the organization and essential features of each job position, the requirements demanded for its fulfilment and the complementary retributions*”⁴. Temporary personnel is freely appointed and shall leave the Court together with the person which appointed them (article 98).

With regard to civil servants, article 43.2 provides that, with the exception of the Counsels and the Chief Manager, “*civil servants at the service of the Constitutional Court shall be civil servants of the Justice Administration or of the ordinary Public Administration, ascribed to the*

⁴ In accordance with article 61.1 of the Regulation: “the job positions list of the Court shall include, jointly or separately, the positions fulfilled by the public servants at the service of the Court, as well as the positions that may be fulfilled by permanent or temporary public employees subject to labour law”. It is important to note, as a sign of the rationalising aim of these job positions lists, that article 61.3 provides that”.

Court by virtue of this Regulation or missioned to the Court on a temporary leave". Thus, the Regulation excludes the creation of groups of civil servants that are exclusive to the Court.

In addition, article 49 of the Regulation authorizes the recruitment of personnel under a labour law regime *"for the provision of vacancies that do not entail a direct or indirect participation in the exercise of the attributions of the Court, and whose functions are peculiar to tasks of an administrative support nature"*.

The laws and regulations governing the personnel are the following ones:

- a) Firstly, the Organic Law of the Constitutional Court and the Regulation on Organization and Staff, as well as the resolutions adopted by the competent authorities of the Court.
- b) Secondly, the civil servants that come from the ordinary Public Administration are subject to the common legislation governing the legal regime of public employees and public servants; the civil servants that come from the Justice Administration – Registrars and the staff of the Registries, i.e. members of the groups of civil servants named *"Procedural and administrative management"*, *"Procedural processing"* and *"Jurisdictional assistance"* – are subject to the Organic Law of the Judiciary.
- c) Thirdly, the staff subject to labour law is governed by the common labour legislation and by the collective agreements concluded between the Court and the union representatives of these workers.

b. Types of recruitment procedures for the staff. In particular, in relation to Counsels.

Articles 52 and the following ones regulated the recruitment procedures of the staff at the service of the Court.

The first of these articles – 52.1 – distinguishes the general legal regime of the civil servants and other public employees (who join the Court *"through a public call for a recruitment process, be it according to the general rules or by discretionary designation"*, and the temporary public employees, which join the Court *"by virtue of a discretionary decision [of the relevant public*

authority]”. In the particular case of Counsels, they may join the Court through a public recruitment procedure or through an appointment of the Court in accordance with article 44 of the Regulation. In the case of civil servants, the ordinary path for incorporation is their ascription to the Court and, in the case of staff subject to labour law, they may be hired when so authorized by the President (article 59).

In the case of Counsels, there are two ways of incorporation to the Court:

- a) Through a public recruitment procedure, in which case they become permanent Counsels of the Court.
- b) Under a regime of temporary ascription, which may last up to nine years.

As far as the second group is concerned, article 44.1 of the Regulation provides that the following persons may be appointed as temporary Counsels of the Court:

- “a) University professors of legal disciplines that have developed research and teaching functions for at least five years. Unless they are public employees proper, they must have obtained, from the relevant public organism, the authorization to become a non-tenured PhD-holding professor in public or private universities”.*
- b) Judges or Prosecutors that have developed their functions during, at least, five years.*
- c) Public officials who have gained access to a body or group level A in their capacity as law graduates, and that have worked during, at least, five years.*
- d) Attorneys with a minimum of ten years of professional practice”.*

The Counsels subject to a regime of temporary ascription are elected through an absolute majority vote of the Court, upon proposal of three Magistrates (article 53.3), for a period of three years that might be renewed for a maximum of two further periods of three years.

The Counsels under a regime of temporary ascription shall leave the Court by their own will, upon resolution of the Plenary adopted upon proposal of the President, on the grounds of their retirement or because of a supervening loss of their condition of civil servants (article 53.6).