

DIFFERENCES BETWEEN THE CONSTITUTIONAL COURT and THE SUPREME COURT OF JUSTICE

(DIFERENCIAS ENTRE CORTE DE CONSTITUCIONALIDAD Y CORTE SUPREMA DE JUSTICIA)

This document is intended to serve as an introductory comparison between the Guatemalan Constitutional Court and the Supreme Court of Justice. It is based on a document prepared for NISGUA in Spanish, and then translated and clarified by NISGUA staff and volunteers. The original Spanish document is available by clicking on the title above.

CONSTITUTIONAL COURT

Mandate of the Constitutional Court: The Constitutional Court is a permanent tribunal whose purpose is the defense of constitutional order. It operates independently of other State agencies.

Functions of the Constitutional Court: The Constitutional Court

- a) has jurisdiction to hear challenges to laws or general regulations, which are objected to as unconstitutional in whole or in part,
- b) has jurisdiction to hear, in its capacity as the Special Protections Tribunal, actions for injunctions or stays filed against the Congress, the Supreme Court of Justice, the President or the Vice President,
- c) hears on appeal all of the injunctions or stays introduced before any of the lower courts. If the appeal is against a ruling on an injunction or stay of the Supreme Court of Justice, the number of Constitutional Court judges hearing the case expands by two,
- d) hears on appeal all of the challenges to laws deemed unconstitutional in individual cases, in any judgment, in reversals or in cases that question existing laws,
- e) issues opinions regarding the constitutionality of treaties, agreements, and bills at the request of any branches of the State,
- f) resolves issues regarding conflict of jurisdiction in constitutional matters,
- g) compiles the constitutional doctrine and principles that are established as a result of rulings on injunctions or stays and the constitutionality of laws, including keeping the bulletins and journals of jurisprudence up-to-date,

h) issues opinions about the unconstitutionality of laws that have been vetoed by the Executive on grounds of their unconstitutionality, and

i) acts, issues opinions, passes judgment, or hears those matters of its jurisdiction as established by the Constitution.

Composition of the Constitutional Court: The Constitutional Court is comprised of five judges, each of whom has a designated substitute. When matters of unconstitutionality are heard against the Supreme Court of Justice, the Congress, the President or the Vice President, the number of sitting judges increases to seven. The additional two judges are chosen by drawing from among the substitutes.

Judges serve five-year terms. The following bodies each appoint one judge to serve on the Constitutional Court:

- a) The Supreme Court of Justice,
- b) Congress,
- c) The President as representative of the Council of Ministers,
- d) The Superior Advisory Council of Professors at the University of San Carlos, and
- e) The General Assembly of the College of Attorneys.

At the same time primary judges are appointed, their respective substitutes are chosen and all are then presented to Congress. The new composition of the Constitutional Court goes into effect ninety days after presentation to Congress.

Requirements for Judges of the Constitutional Court: To be a judge of the Constitutional Court, one must satisfy the following requirements:

- a) be Guatemalan by origin,
- b) be a degree-holding lawyer,
- c) be of recognized honorability, and
- d) have graduated from professional-level school at least fifteen years prior to appointment.

The judges of the Constitutional Court enjoy the same privileges and immunities as the judges of the Supreme Court of Justice.

Presidency of the Constitutional Court: The Presidency of the Constitutional Court is rotated for one-year terms, beginning with the oldest judge and continuing in descending order of age.

SUPREME COURT OF JUSTICE

Mandate of the Supreme Court of Justice: The Supreme Court of Justice has jurisdiction in all of Guatemala to hear judicial matters that are appropriate in accordance with the law. It is the highest judicial court.

Functions of the Supreme Court of Justice: The Supreme Court of Justice:

- a) hears petitions for reversal in cases that have proceeded in accordance with the law,
- b) hears challenges to decisions of lower courts that have established law,
- c) and hears complaints against magistrates and judges, the national treasurer, and vice ministers of the State when they are not in charge of said ministry. The Supreme Court has the power to name an investigating judge, who can be a judge of the Supreme Court, of the Appeals Court, or the closest judge of first instance. If the investigating judge is in the same jurisdiction as the accused official or the same court is handling the matter, the official should surrender his or her authority or position for the duration of the investigation or until deemed proper by the Supreme Court of Justice. Once the Supreme Court of Justice decides to proceed with the case, the official remains suspended and the case is handed over to the corresponding court, for prosecution and closure.

The decisions made by the Supreme Court of Justice regarding challenges to rulings by lower courts are final. The Supreme Court of Justice also advocates for cases to be quickly and fully heard and can issue decisions to remove obstacles to such a process.

Composition of the Supreme Court of Justice: The Supreme Court of Justice is comprised of thirteen justices and is organized into chambers that are determined by the Court. Each chamber has a president, as does the larger Court.

The President of the Supreme Court of Justice is also President of the Judicial Branch of the government, whose authority extends to all Guatemalan courts.

In case of a temporary absence of the President of the Judicial Branch or when in accordance with the law he cannot hear certain cases, the other justices of the Supreme Court of Justice are substituted in order of their appointment.

Election of the Supreme Court of Justice: The justices of the Supreme Court of Justice are elected by Congress for five year terms. A list of twenty-six candidates is proposed by a nominating commission. Said

commission is presided over by one of the university Rectors. Other members are the Deans of the Faculties of Law or Legal and Social Science of each university, an equivalent number of representatives elected by the General Assembly of the College of Attorneys and Notary Publics of Guatemala, and by an equal number of representatives chosen by the judges of the Court of Appeals and other courts that are referred to in Article 217 of the Guatemalan Constitution.

The election of candidates requires the vote of at least two-thirds of the members of the Commission.

Once the justices of the Supreme Court of Justice have been selected, they elect, by a favorable two-thirds vote, a president. This single-term position is held for one year.

Organization of the Supreme Court of Justice: The Supreme Court of Justice is organized into chambers and will hear various matters as the Court determines. Each chamber has a president and a certain number of voting members, as considered appropriate by the Court. The matters submitted to a Chamber hearing are presented by the President of the Chamber and resolved by a majority vote. In case of a tie, the President of the Supreme Court of Justice joins the corresponding chamber and emits the tie-breaking vote.