



Strasbourg, 25 February 2008

CDL(2008)014
Engl. only

Opinion no. 464 / 2008

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON JUDGES OF SERBIA

LAW ON JUDGES

Chapter One

PRINCIPLES

Independence

Article 1

A judge is independent in his actions and decision taking.

A judge shall adjudicate and render judgement on basis of the Constitution, laws and other general acts, ratified international treaties, generally accepted rules of international law and his own conscience.

Tenure and Non-transferability

Article 2

A judge discharges his function as permanent, except when elected judge for the first time.

A judge discharges his function in the court to which he is elected.

A judge may not be transferred or assigned to another court without his consent, except in cases provided under this Law.

A judge may be assigned, with his consent, to work in another government organ or institution, in accordance with this Law.

Preserving Confidence in Independence and Impartiality

Article 3

A judge is required to preserve confidence in his independence and impartiality at all times.

A judge is required to conduct proceedings impartially, in accordance with his own assessment of facts and interpretation of law, ensuring fair trial and compliance with procedural rights of parties guaranteed by the Constitution, law and international acts.

This Law shall set forth the services, engagements and actions that are incompatible with judgeship.

Judges shall adhere to the Code of Ethics issued by the High Court Council.

Financial Independence

Article 4

A judge is entitled to a salary sufficient to maintain his independence and support of his family.

The salary of a judge must be commensurate with the dignity of judgeship and the burden of responsibility.

Immunity

Article 5

A judge may not be held accountable for expressed opinion or voting rendered in taking of judicial decision, except in case of criminal violation of law by the judge.

A judge may not be detained in proceedings instituted for a criminal offence committed in performance of judicial function without consent of the High Court Council.

Liability for Damages

Article 6

The Republic of Serbia is liable for damages caused by a judge through unlawful or improper work.

The Republic of Serbia may demand the judge to recompense the paid amount when damages are caused wilfully or by gross negligence.

Right to Association

Article 7

To protect their interests judges shall have the right to associate.

Judges may undertake measures to protect and preserve their independence and autonomy.

Participation in taking decisions of significance for the work of courts

Article 8

A judge is entitled to take part in taking decisions of significance for the work of courts and for determination and allocation of funds for operation of the courts.

Right to Advanced Professional Education and Training

Article 9

A judge has the right and duty to advanced professional education and training at the cost of the Republic of Serbia.

Training of judges is an organised acquiring and developing of theoretical and practical knowledge and skills required for independent, professional and efficient discharge of judge's function.

Training is voluntary unless when certain forms of training are mandatory under law or by decision of the High Court Council in case of change of specialisation, substantial changes in regulations, introduction of new work techniques and in order to eliminate deficiencies in the work of a judge noticed during performance evaluation.

The content of training program is defined in respect of the professional experience of a judge.

The High Court Council shall stipulate and oversee implementing of the training program that is conducted by an institution competent for judicial training in accordance with law.

Election and Termination of Office and Number of Judges and Lay Judges

Article 10

The National Assembly and the High Court Council respectively decide on election and termination of function of judge and court president, in accordance with this Law.

The Supreme Court of Cassation has fifteen judges.

The High Court Council defines the number of judges and lay judges for every court, following approval obtained from the minister responsible for the judiciary, except in case referred to in paragraph 2 of this Article.

The High Court Council reviews every five years the required number of judges and lay judges for every court.

The High Court Council may at its own initiative or at the proposal of court president, president of a directly superior court, president of the Supreme Court of Cassation and the minister responsible for the judiciary review the required number of judges and lay judges also before expiry of the five-year period.

Chapter Two STATUS OF A JUDGE

I. PERMANENCY OF JUDGESHIP

1. Concept

Article 11

Judgeship is permanent.

Judgeship shall last continuously from first election as judge until retirement. Prior to the above judgeship may terminate only under conditions provided under this Law.

Exceptionally, a person elected judge for the first time is elected to a period of three years.

2. Reduction of Number of Judges and Abolishing of Court

Article 12

Judgeship shall not terminate if number of judges is reduced.

If a court is abolished a judge continues to discharge his function in a court of same type and same instance, or approximately same rank.

The High Court Council decides in which court a judge continues to discharge function.

3. Suspension of Judgeship

Grounds for Suspension

Article 13

A judge shall be suspended from office if remanded in custody.

A judge may be suspended from office when proceedings for his dismissal or criminal proceedings for a dismissible offence have been instituted.

Decision on Suspension

Article 14

The court president decides on mandatory suspension of a judge, while the mandatory suspension of a court president is decided by the president of the directly higher court.

Non-mandatory suspension is decided by the president of the Supreme Court of Cassation.

The suspension of the president of the Supreme Court of Cassation is decided by the General Session.

Duration of Suspension

Article 15

A judge is suspended from office until revocation of detention, conclusion of dismissal proceedings or conclusion of criminal proceedings.

The High Court Council may reinstate a judge prior to conclusion of dismissal proceedings.

Right to Complaint

Article 16

A judge has the right to file complaint with the High Court Council, within three days. The High Court Council shall take decision on the complaint within eight days.

II. NON-TRANSFERABILITY OF A JUDGE

1. Concept

Article 17

A judge shall have the right to discharge his office in the court to which he is elected.

A judge may be transferred or assigned from one to another court, another state body or institution only with his consent.

Consent shall be in writing and must precede decision-taking on transfer or assignment.

Exceptionally, a judge may be transferred to another court in case of abolishing of a court, abolishing the prevalent part of the jurisdiction of the court to which he is elected or reduction of the number of judges in the court to which he is elected, on basis of the decision of the High Court Council.

Exceptionally, a judge may be assigned without consent to another court of same type or directly lower instance up to one year, on basis of final decision pronouncing a disciplinary sanction in compliance with this Law.

2. Transfer

Article 18

A judge may be transferred to another court of same type and same instance.

A judge continues to discharge his function permanently in the court to which he is transferred.

The High Court Council issues the decision on transfer.

3. Assignment to another court

Article 19

A judge may be assigned to work only in another court of same type and same or directly lower instance for maximum one year.

Exceptionally, a judge may be assigned to a directly higher-instance court if meeting the statutory requirements for election as a judge of the court to which he is assigned and if his performance evaluation is "outstanding" over the past three years.

A judge is assigned to court in which the lack, overburdening, recusal of judges or other reasons frustrate or inhibit the work of the court.

The High Court Council issues the decision on assignment.

4. Assignment to another state body or institution

Article 20

A judge may be assigned to discharge professional tasks in the High Court Council, the ministry with competence for the judiciary and the institution competent for judicial training.

Assignment specified in paragraph 1 of this Article is carried out at the recommendation of the head of the body and/or institution to which the judge is assigned, following opinion obtained from the president of the court wherein the judge holds office, with the written consent of the judge.

Assignment may not exceed three years.

The High Court Council issues the decision on assignment.

III. MUTUAL INDEPENDENCE OF JUDGES

1. General

Article 21

A judge is free in holding his views, facts and law in all matters under his deliberation.

A judge is not required to justify to anyone, even other judges and the president of the court, his understanding of fact and law, except in the reasoning of the judgement or when so particularly stipulated by law.

2. Immutability of Type of Work and Random Allocation of Cases

Immutability of Annual Work Load

Article 22

A judge is entitled to have his workload defined by annual work schedule and not to have it changed during the year.

Exceptionally, due to election of a new judge, longer absence of a judge or vacated judge's position, the type of work of a judge may be changed during the year.

The annual work schedule and changes thereof are determined with a view to exigencies of the court and the capacity of the judge to successfully discharge allocated duties.

Random Allocation of Cases

Article 23

Cases are allocated to a judge according to schedule that is independent of personality of parties and circumstances of the legal matter.

Cases are entrusted to a judge on basis of the court schedule of tasks, in accordance with the Court Rules, exclusively on basis of designation and number of the case file.

No one has the right to establish panel of judges and allocate cases by bypassing the work schedule and order of receiving of the cases.

Derogation

Article 24

Derogation from the order of receiving of cases is possible only due to justified preclusion of a judge.

A case may be taken from a judge only due to prolonged absence or dilatoriness, in accordance with the Court Rules.

Right to Objection

Article 25

A judge is entitled to object the annual schedule of work, change of type of work, derogation from the order of received cases and taking away of cases with the administrative-judicial panel of the directly superior court, within eight days from the day becoming aware thereof.

Objection of a judge of the Supreme Court of Cassation is deliberated by the General Session.

A party or person with legal interest also have the right to object in respect of taking away of a cases, within eight days from the day of becoming aware thereof.

The administrative-judicial panel of the court conducting the proceedings decides on the objection specified in paragraph 3 of this Article.

The decision on the objection is taken within eight days from the date of submission.

Duty to Notify the President of the Directly Higher Court

Article 26

A court president is required to notify in writing the president of the directly higher court of any derogation from the order of received cases.

3. Notification of Duration of Proceeding

Article 27

A judge shall notify the court president of reasons for failing to conclude first-instance proceedings within six months and shall there from notify him monthly of the progress of proceedings.

A judge gives first notice of proceedings under legal remedy to the court president after one month, and the next every fifteen days.

The court president is required to notify the president of the directly higher court of every first-instance proceedings that has not been concluded within two years.

A court president is required to notify the president of the Supreme Court of Cassation of every proceeding on legal remedy that has not been concluded within six months.

Deadlines for notification in enforceable, non-contentious and other non-contestable matters are defined by the Court Rules.

Duty to notify under this Article runs from the day of receiving the case in the court.

4. Right of Judge to Complaint

Article 28.

A judge may file complaint with the High Court Council for violation of any right for which this Law does not provide a particular remedy.

The High Court Council rules on the complaint within eight days and promptly notifies the court president, president of the directly higher court and the president of the Supreme Court of Cassation of the decision.

IV. RELATIONSHIP OF JUDGESHIP TO OTHER FUNCTIONS, ENGAGEMENTS AND ACTIVITIES

1. Relationship of other functions, engagements and actions with judgeship

Article 29

A judge may not hold office in bodies enacting or enforcing legislation, may not be member of a political party, engage in any paid public or private work, nor extend legal services or advice for compensation.

Other functions, engagements and activities that are contrary to the dignity and independence of a judge or damaging to the reputation of the court are incompatible with judgeship.

The High Court Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court on basis of Court Rules and the Code of Ethics.

A judge shall not require anyone's permission to engage in compensated research and professional activity outside of working hours.

In cases set forth by law or based on decision of the High Court Council a judge may engage in teaching, research and professional activity during working hours.

A judge may be sent on a study and/or other professional visit by decision of the High Court Council, following opinion of the court president, where performance evaluation from the judge's personal file and knowledge of foreign languages shall be particularly taken into account.

A judge may give opinions and professional comments regarding application of regulations only to journals published by the court, the ministry with competence for the judiciary, the High Court Council and judicial training institutions.

2. Incompatibility Deliberation Procedure

Duty to notify and filing of charges

Article 30

A judge is required to notify the High Court Council in writing of any engagement or work that may be deemed incompatible with judgeship.

The High Court Council notifies the court president and the judge that there is incompatibility between the engagement and work with judgeship.

The body competent for initiating proceedings shall file disciplinary charges immediately upon becoming aware that a judge is engaged in service or work or engaging in activities that may be deemed incompatible with his function.

V. PERFORMANCE EVALUATION OF JUDGES

Article 31

Work of all judges and court presidents is subject to regular evaluation.

Performance evaluation involves all aspects of judge's work and/or work of court president and represents the basis for election, mandatory training of judges, allocation to pay grades, dismissal and instituting disciplinary proceedings.

Evaluation is conducted on basis of publicized, objective and single criteria and standards, in a single procedure ensuring participation of the judge and/or court president whose performance is being evaluated.

Criteria and procedure for performance evaluation of judges are set by the High Court council.

Bodies competent for evaluation in courts

Article 32

Bodies competent for performance evaluation of judges are: departmental boards and the Commission of the High Court Council for Performance Evaluation of Judges.

Performance evaluation of judges is conducted by the departmental board.

Performance evaluation of judges in lower instance courts is conducted by departmental boards established in court departments of directly higher instance courts.

Departmental boards comprise the president of the department and two judges, elected by secret ballot at the session of the department to a period of four years.

In courts with larger number of judges a departmental board is established for every 50 judges.

Evaluation by the High Court Council

Article 33

The Commission of the High Court Council evaluates performance of court presidents and judges of the Supreme Court of Cassation and decides on objections of judges to their performance evaluation.

The High Court Council decides on objections to performance evaluation of court presidents and judges of the Supreme Court of Cassation.

The composition and operation of the Commission referred to in paragraph 1 of this Article is regulated by the act of the High Court Council.

Performance Evaluation Period

Article 34

Performance of judges with tenure of office and court presidents is evaluated annually and of judges elected for the first time once every six months.

Performance Rating

Article 35

Performance is rated.

Ratings are: "fails to meet requirements", "satisfactory", "good", "very good" and "excellent".

Rating is entered in the judge's and/or court president's personal file.

A judge and/or court president is entitled to object the rating with the bodies specified in Article 33 hereof, within 15 days from the day of submitting the decision on the rating, which has to be reasoned.

VI. FINANCIAL STATUS OF A JUDGE

Base Salary

Article 36

A judge is entitled to a salary commensurate with the position to which he is elected.

A judge's salary is determined pursuant to base salary.

The base salary is determined by multiplying the coefficient for calculation and payment of salary with the base for calculation and payment of salary.

The Government of the Republic of Serbia determines the base for calculation and payment of salaries of judges.

The coefficient for calculation and payment of salary is determined by classifying a judge into one of five pay grades.

Every pay grade for judges has two pay levels, except the fifth pay grade.

The base salary under this Law is the value that does not include the percentage for years of work.

Pay Grades for Judges

Article 37

Judges are classified into five pay grades, each having salary levels expressed in coefficients.

The first pay grade includes judges in magistrates courts.

The second pay grade includes judges of municipal courts.

The third pay grade includes judges of commercial, district courts and the high magistrates court.

The fourth pay grade includes judges of the Appellate, High Commercial and the Administrative Courts.

The fifth pay grade includes judges of the Supreme Court of Cassation.

Salary levels of Judges

Article 38

The first pay grade shall have salary levels of 2.00 and 2.50.

The second pay grade shall have salary levels of 3.00 and 3.50.

The third pay grade shall have salary levels of 3.50 and 4.00.

The fourth pay grade shall have salary levels of 4.00 and 4.50.

The fifth pay grade shall have salary level of 6.50.

Classification of Judges to Pay Grades

Article 39

The High Court Council issues the decision determining the coefficient.

The decision on the coefficient defines the pay grade to which a judge belongs, salary level and coefficient.

At election a judge is classified to a lower salary level in the pay grade to which he belongs.

A judge classified to a lower salary level of his pay grade and who is twice running rated "excellent" in performance evaluation is classified to the higher salary level of his pay grade.

A judge classified to the higher salary level of his pay grade and who twice running is rated "satisfactory" and "good" in performance evaluation is classified to the lower salary level of his pay grade.

Base Salary of Court President

Article 40

The base salary of court president is determined by increasing the salary of a judge of that court who is classified to the higher salary level by:

- 5%, in courts with up to ten judges;
- 10%, in courts with up to 20 judges;
- 15% in courts with up to 40 judges;
- 20% in courts with over 40 judges.

Base Salary of the President of the Supreme Court of Cassation

Article 41

The base salary of the president of the Supreme Court of Cassation is equal to the salary of the Speaker of the National Assembly.

Base Salary of a Judge Transferred and/or Assigned to Another Court

Article 42

A judge who is transferred and/or assigned to another court, state body or institution is entitled to a base salary of a judge of the court and/or state body or institution to which he is transferred and/or assigned, if more favourable.

The High Court Council stipulates emoluments and other earnings of a judge who is transferred and/or assigned to another court, state body or institution.

A judge under disciplinary sanction of transfer to another court is not entitled emoluments referred under paragraph 2 of this Article.

Increment to Base Salary of a Judge

Article 43

The base salary of a judge adjudicating in criminal offence cases with organised crime and war crime element may be increased up to 100% by decision of the High Court Council.

Chapter Three

ELECTION OF A JUDGE

I. ELECTION REQUIREMENTS

Article 44

A citizen of the Republic of Serbia who meets the requirements for employment in state bodies, who is a law school graduate, who has passed the bar exam and who is deserving of judgeship may be elected judge.

Prohibition of Discrimination

Article 45

Discrimination on any grounds is prohibited in election and nominating for election of a judge.

Required Experience

Article 46

The required professional experience in the legal profession following the bar exam is:

- two years for a judge of a magistrates court;
- three years for a judge of a municipal court;
- for years for a judge of a commercial court;
- six years for a judge of a district court and the High Magistrates Court;
- eight years for a judge of the Appellate Court, the High Commercial Court and the Administrative Court;
- twelve years for a judge of the Supreme Court of Cassation.

Other Requirements for Election

Article 47

Other requirements for the election of a judge are qualification, competence and worthiness.

Qualification means possessing of theoretical and practical knowledge necessary for performing the judicial function.

Competence means possessing of skills that enable efficient use of specific legal knowledge in dealing with cases.

High moral character means appropriate characteristics and a conduct in accordance with such characteristics.

The moral characteristics of a judge include honesty, thoroughness, diligence, fairness, dignity, perseverance, courage and esteem, and conduct in compliance with these characteristics involves upholding of dignity of the judge on and off duty; the awareness of social responsibility; preserving of independence and impartiality; reliability and dignity on duty and off, as well as taking the responsibility for the internal organization and a positive public image of the judiciary.

The criteria for the assessment of qualification, competence and moral character are set by the High Court Council, in accordance with the law regulating the institution that is in charge of judicial training.

II. ELECTION PROCEDURE

Announcement of Election

Article 48

The High Court Council shall publicly announce the election of judges.

The announcement is published in the Official Gazette of Serbia and other media.

Applications

Article 49

Applications are submitted to the High Court Council within 15 days of the public announcement in the Official Gazette of Serbia.

The application is submitted together with evidence of eligibility.

Obtaining of Information and Opinion

Article 50

The High Court Council shall obtain information and opinions about the qualification, competence and moral character of a candidate.

The information and opinions are obtained from the bodies and organisations where the candidate worked as a lawyer, and in the case of a candidate coming from a court, it is mandatory to obtain the opinion of the judges' session of that court.

Nomination of Judges to be Elected for the First Time

Article 51

In case of candidates for judges to be elected for the first time, in addition to qualification, competence and moral character, the High Court Council shall especially take into consideration the type of jobs that the candidate performed after passing the bar exam.

With regard to candidates coming from among judge's assistants, it is mandatory to obtain their performance evaluation.

Before presenting their nominations, the High Court Council shall conduct interviews with the candidates.

The High Court Council shall propose to the National Assembly two candidates for each judge's position.

The decision on the High Court Council's nomination must be reasoned and published in the Official Gazette of Serbia.

A candidate is allowed to file an appeal to the Constitutional Court against the decision specified in para 5 of this article to.

First Election

Article 52

The National Assembly shall elect a first-time elected judge from among the candidates nominated by the High Court Council.

Election to Permanent Function

Article 53

The High Court Council elects judges to be appointed to permanent position.

Appointment of a first-time elected judge whose work during the first three-year term of office is assessed as "very good" or "excellent" to permanent function as mandatoy.

A first-time elected judge whose work during the first three-year term of office is assessed as "not satisfactory" may not be appointed to permanent function.

Every decision on election must be reasoned.

The candidate may lodge an appeal to the Constitutional Court against the decision of the High Court Council referred to in para 3 of this article.

III. TAKING OATH AND TAKING OFFICE

Taking Oath

Article 54

Before taking office, a judge shall take an oath before the National Assembly Speaker.

The President of the Supreme Court of Cassation shall take an oath before the National Assembly.

A judge who is appointed to permanent function shall not take an oath.

Oath

Article 55

The oath reads as follows: „I do solemnly swear that I will discharge my duties in compliance with the Constitution and the law, according to the best of my ability and in the service of truth and justice”.

Taking of Office

Article 56

A judge shall take office at the ceremonial session of all judges of the court he/she has been appointed to.

The previous office of the judge ends with taking of office in the new court.

The judge of a higher court who has been elected as president of a lower court may go back to the function at the higher court after the end of office.

When it is Deemed that a Judge has not been Elected

Article 57

It is deemed that a judge has not been elected if he/she fails to take office without justified reasons within 2 months of election.

The High Court Council issues the decision and notifies the National Assembly in the case of a first-time elected judge.

The judge is entitled to file an appeal to the Constitutional Court against the decision of the High Court Council.

Chapter Four TERMINATION OF OFFICE

1. All Reasons

Article 58

Judge's office ends upon the request of the judge, with retirement age, due to a permanent loss of working ability, if not elected to permanent function or in case of dismissal.

The High Court Council issues the decision on termination of function.

The decision referred to para 2 of this article is published in the Official Gazette of Serbia.

2. Termination of Office upon the Request of the Judge

Article 59

A judge who wishes to resign shall submit a request to the High Court Council.

The request may be withdrawn until such time as the office of the judge is terminated under the decision of the High Court Council or until the expiry of the deadline provided by this Law.

If the decision on the request is not taken within one month, it is considered that the judge's office terminated after the expiry of the one-month period following the submission of the request.

In other cases, judge's office terminates on the date specified in the decision of the High Court Council.

If a judge submits a request for termination of office after a request for dismissal was filed, the former is not considered before the dismissal procedure is completed.

3. Retirement Age

Article 60

Judge's years of service complete with 65 years of age or 40 years of pensionable years of service.

Exceptionally, upon the request of the president of the court, the High Court Council may approve an extension of two years with the consent of the judge.

A judge may have the years of service extended only if it is necessary to complete current cases or old cases that have not been adjudicated for longer than two years.

4. Permanent Loss of Working Ability

Article 61

A judge's office ends if, based on the finding of the professional commission of the competent body, it is established that he/she is incapable of performing function due to the health condition.

The High Court Council shall issue a decision on referring a judge to a mandatory medical examination, following the proposal of the president of the court, the president of the immediately higher court or the judge concerned.

5. Termination of Office of First-time Elected Judge

Article 62

The office of a first-time elected judge who is not elected to permanent function ends with the expiry of the three-year term of office.

6. Dismissal

Reasons for Dismissal

Article 63

A judge is dismissed if convicted for an offence carrying imprisonment sentence of at least six months or for a punishable act that demonstrates that he/she is unfit for the judicial function; in case of incompetence, or due to a serious or repeated disciplinary offence.

A repeated disciplinary offence referred to in para 1 of this article shall mean responsibility for a disciplinary offence that is established for three times.

Specifically on Incompetent Discharge of Function

Article 64

Incompetence shall mean inadequately successful performance of judicial function, i.e. if the judge's performance is evaluated as "disatisfactory" based on the criteria for evaluation.

Power to Initiate and Initiating of Dismissal Procedure

Article 65

Anyone may launch an initiative for the dismissal of a judge.

The dismissal procedure may be instituted by the president of the court, the president of the directly higher court, the president of the Supreme Court of Cassation, the minister in charge of the judiciary, the bodies responsible for performance evaluation or the Disciplinary Commission.

The High Court Council shall determine reasons for dismissal.

Proceedings before the High Court Council

Article 66

The High Court Council shall establish facts and make a decision in the proceedings closed to the public.

The High Court Council may request the necessary information from competent bodies and organizations.

The High Court Council shall carry out the proceedings and take a decision within 30 days from the date of delivering the act that initiates the proceedings.

The decision of the High Court Council must be reasoned.

The Position of the Judge in the Proceedings

Article 67

The judge has the right to be immediately notified of the reasons for initiating the proceedings, to be aware of the content of the case, supporting documentation and the course of the proceedings and to provide explanation and evidence for his/her statements, in person or through a representative.

The judge has the right to present his/her statements in person before the High Court Council.

Appeal with the Constitutional Court

Article 68

The judge and persons or bodies referred to in article 59, para 2 are entitled to file an appeal against the decision of the High Court Council to the Constitutional Court, within 30 days of the delivery of the decision.

The Constitutional Court may reject the appeal or uphold the appeal and set aside the decision on dismissal.

The decision of the Constitutional Court is final.

Decision on Dismissal

Article 69

A final decision on dismissal is published in the Official Gazette of the Republic of Serbia.

Chapter 5

PRESIDENT OF THE COURT

Requirements for the Election of the President of the Court

Article 70

A person with at least three years in the permanent judge's function with the court of the same or higher instance and clear managerial and organizational skills, which is assessed based on the criteria set by the High Court Council, is eligible for the president of the court.

Nomination of Candidates for the President of the Court

Article 71

The High Court Council shall nominate two candidates for the president of the court.

Before presenting nominations, the High Court Council shall obtain opinion about the candidates from the session of all judges of the court whose president is being elected.

Election of the President of the Court

Article 72

The National Assembly shall elect one of the two candidates who are proposed by the High Court Council.

The judge who is elected as president of the court shall perform judge's function in that court.

Term of Office

Article 73

The president of the court is elected for a four-year period and may be re-elected.

The term of office runs from the day of taking office.

Acting President of the Court

Article 74

When the term of office of the president of the court ends, the High Court Council shall promptly propose candidates for the election of the president.

When the term of office of the president of the court ends, the president of the directly higher court shall designate a judge who will perform the function of president until such time as the new president takes office, and not later than one year.

The General Session of the Supreme Court of Cassation shall designate a judge who will perform the function of the president of that court.

Termination of Office of the President of Court

Article 75

The office of the president of the court ends due to the end of judge's function, election as a judge of other court, upon personal request, with the end of the term of office, and dismissal from the position of the president of court.

The National Assembly decides on the termination of office of the president of court.

Reasons for the Dismissal of the President of Court

Article 76

The president of court shall be dismissed in the case of the violations of obligations set out by the provisions governing court administration; violations of the autonomy of judges; violations of rules on allocation of cases; deviating from the rules on the annual calendar of judges; due to a serious disciplinary offence or incompetence.

The president of court is considered to be incompetent if his/her performance is evaluated as „disatisfactory“ based on the criteria for evaluation of presidents of courts.

Proceedings to Establish Reasons for Dismissal of the President of Court

Article 77

Anyone may launch an initiative for the dismissal of the president of court.

The proceedings for establishing the reasons for dismissal are conducted by the High Court Council.

The proceedings are initiated by the president of the directly higher court, the session of all judges whose president is concerned, the minister in charge of the judiciary, the body responsible for performance evaluation or the Disciplinary Commission.

The president of the court and/or other persons who initiated dismissal have the right to file an appeal to the Constitutional Court against the decision on the reasons for dismissal.

Decision on Dismissal of the President of Court

Article 78

The National Assembly shall issue the decision on dismissal of the president of court, following the proposal of the High Court Council, and after the completion of the proceedings for establishing the reasons for dismissal.

Status after Termination of Office of the President of Court

Article 79

The president of court who is not re-elected, who is dismissed or who resigns shall continue to carry out judge's function.

After the termination of office of the judge of a higher court who is elected president of a lower court, he /she has the right to continue judge's function in the higher court.

President of the Supreme Court of Cassation

Article 80

The National Assembly shall elect the president of the Supreme Court of Cassation from among the judges of that court, upon the recommendation of the High Court Council and following the opinion of the General Session of that court and the relevant committee of the National Assembly.

The president of the Supreme Court of Cassation is elected to a five-year term of office without the possibility of re-election.

The office of the President of the Supreme Court of Cassation shall end earlier if he/she requests so, with the end of judge's function, or dismissal based on the reasons prescribed by this Law pertaining to the president of court.

The General Session shall submit the proposal to initiate the dismissal proceedings for the president of the Supreme Court of Cassation.

The High Court Council shall conduct the proceedings to establish the reasons for dismissal and make a decision.

The president of the Supreme Court of Cassation has the right to file an appeal to the Constitutional Court against the decision establishing reasons for dismissal.

The National Assembly shall issue the decision on dismissal of the president of the Supreme Court of Cassation, following the proposal of the High Court Council.

The decision on the termination of office of the president of the Supreme Court of Cassation caused by other reasons is taken by the National Assembly.

Application of Provisions on Judges

Article 81

The provisions of this Law related to the election and dismissal of judges also apply to the election and dismissal of the president of court.

Other provisions of this Law concerning judges also apply to the president of court.

Chapter 6

SPECIAL PROVISIONS ON LAY JUDGES

Requirements for Appointment and Duration of Office

Article 82

A lay judge is required to be a national of the Republic of Serbia, who turned 26 years of age and is worthy of the function of lay judge.

The things considered when appointing a lay judge are sex, age, profession and social status, knowledge, competence, and affinities for specific type of matter.

A lay judge is appointed to a period of five years and may be re-appointed.

Procedure for Appointment

Article 83

The High Court Council appoints lay judges upon the proposal of the minister in charge of the judiciary.

Before making the proposal, the minister shall obtain the opinion from the court to which the lay judge is to be appointed.

Oath

Article 84

A lay judge shall take an oath before the president of the court.

The oath reads as follows: „I do solemnly swear that I will discharge my duties in compliance with the Constitution and the law, scrupulously, dedicatedly, and impartially.”

Suspension from Function

Article 85

The president of court shall suspend a lay judge from office in case that criminal proceedings have been instituted against him for an offence due to which he/she may be dismissed, or if dismissal proceedings have been instituted.

The suspension lasts until the completion of the proceedings.

Incompatibility with other Jobs, Engagements and Activities

Article 86

A lay judge may not be an attorney-at-law or extend legal services or advice for a fee.

Other jobs, engagements and activities that are contrary to the dignity and independence of a judge or harmful to the reputation of the court are also incompatible with the office of a lay judge.

Termination of Office

Article 87

The office of a lay judge terminates if the court where he/she works is abolished, in case of dismissal, or with the end of the term of office.

The proceedings to establish the reasons for termination of office of a lay judge are initiated by the president of the court, president of the directly higher court, president of the Supreme Court of Cassation, and the minister in charge of the judiciary.

The High Court Council shall conduct the proceedings and take a decision.

Reimbursement and Rewards for Lay Judges

Article 88

A lay judge is entitled to the reimbursement of costs incurred while performing function, compensation of lost earnings and reward.

The High Court Council shall define conditions for and the amount of the reimbursement and reward.

Application of Provisions on Judges

Article 89

Provisions on judges also apply to lay judges.

Chapter 7 DISCIPLINARY ACCOUNTABILITY

Disciplinary Offence

Article 90

A disciplinary offence is negligent performance of judge's function or conduct that is inappropriate for judge's function, which is provided by this Law.

Types of Disciplinary Offences

Article 91

Disciplinary offences are a violation of the principle of independence; failure of a judge to ask for disqualification in cases where there is the conflict of interest; unjustifiable delays in drafting of decisions; processing of cases in an order contrary to the order of reception; unjustifiable failure to schedule a hearing; frequent tardiness for hearings; apparently incorrect treatment of the participants to the proceedings and the court staff; non-compliance with the working hours; acceptance of gifts contrary to the regulations on the conflict of interest; engaging into inappropriate relations with parties to the proceedings and their legal representatives; engaging into activities that are incompatible with the judge's function under the law; unjustified prolonging of the proceedings; unjustified non-attendance of mandatory training programmes; provision of incomplete or incorrect information relevant for the work and decision-making of the High Court Council; unjustifiable change in the annual judges' agenda, and the violation of the principle of natural order of judge (free, unguided) in cases other than provided by the law.

A severe disciplinary offence is an offence that caused a serious disruption in the exercise of judicial power or regular duties at the court or a severe damage to the dignity of the court or public trust in the judiciary, and in particular if it results in the statute of limitations due to negligent performance of duty.

Disciplinary Sanctions

Article 92

Disciplinary sanctions are as follows: public caution, salary reduction up to 30% for a period not exceeding one year, transfer of the judge to another court of the same type and the same or lower instance that is at least 50 kilometers from the court he/she was assigned to, for a period not exceeding one year.

A public caution may be pronounced only in the case of the first disciplinary offence.

A disciplinary sanction is imposed in proportion to the gravity of the offence.

The information about the disciplinary sanction is entered in the judge's personal record.

A fine is enforced in an administrative procedure.

Instituting of Dismissal Proceedings

Article 93

If the Disciplinary Commission establishes the responsibility of a judge for a serious or repeated offence referred to in article 63, para 2 hereof, it shall institute dismissal proceedings.

Disciplinary Bodies

Article 94

Disciplinary bodies are the Disciplinary Prosecutor, deputy prosecutors and the Disciplinary Commission, which are set by the High Court Council.

The High Court Council shall appoint the members of the disciplinary bodies from among the ranks of judges.

The High Court Council shall publish an act stipulating the requirements for the appointment, duration of the term of office and manner of termination of office, the method of work and decision-making of the disciplinary bodies.

Disciplinary Proceedings

Article 95

The Disciplinary Commission shall conduct disciplinary proceedings following the proposal of the Disciplinary Prosecutor.

The Disciplinary Prosecutor shall file a motion to initiate disciplinary proceedings based on disciplinary charges that may be filed by anyone.

Disciplinary proceedings are urgent and closed to the public, unless the judge charged does not request that the proceedings be open to the public.

Disciplinary proceedings are subject to limitation after one year.

Decisions of the Disciplinary Prosecutor

Article 96

The Disciplinary Prosecutor may reject disciplinary charges as ill-founded or uphold the charges and file the motion for disciplinary proceedings.

The Rights of the Judge under Disciplinary Proceedings

Article 97

The judge has the right to be promptly notified of the motion of the Disciplinary Prosecutor, to examine the case file and supporting documentation, and to present explanations and evidence for his/her statements, in person or through a representative.

The judge has the right to verbally present his/her statements before the Disciplinary Commission.

Decisions of the Disciplinary Commission

Article 98

Having completed the disciplinary proceedings, the Disciplinary Commission may reject the motion of the disciplinary prosecutor or uphold the motion and impose a disciplinary sanction.

The Disciplinary Prosecutor and the judge who is subject to disciplinary proceedings may file an appeal to the High Court Council, within 8 days of the delivery of the decision.

Decisions of the High Court Council

Article 99

The High Court Council may either uphold or reverse the first-instance decision of the Commission.

The High Court Council shall decide on the appeal within 30 days of receiving the appeal.

The decision of the High Court Council is final.

The final decision on the imposition of a disciplinary sanction is entered in the personal record of the judge.

LAW ON JUDGES**Chapter One****PRINCIPLES****Independence****Article 1**

A judge is independent in his actions and decision taking.

A judge shall adjudicate and render judgement on basis of the Constitution, laws and other general acts, ratified international treaties, generally accepted rules of international law and his own conscience.

Tenure and Non-transferability**Article 2**

A judge discharges his function as permanent, except when elected judge for the first time.

A judge discharges his function in the court to which he is elected.

A judge may not be transferred or assigned to another court without his consent, except in cases provided under this Law.

A judge may be assigned, with his consent, to work in another government organ or institution, in accordance with this Law.

Preserving Confidence in Independence and Impartiality**Article 3**

A judge is required to preserve confidence in his independence and impartiality at all times.

A judge is required to conduct proceedings impartially, in accordance with his own assessment of facts and interpretation of law, ensuring fair trial and compliance with procedural rights of parties guaranteed by the Constitution, law and international acts.

This Law shall set forth the services, engagements and actions that are incompatible with judgeship.

Judges shall adhere to the Code of Ethics issued by the High Court Council.

Financial Independence**Article 4**

A judge is entitled to a salary sufficient to maintain his independence and support of his family.

The salary of a judge must be commensurate with the dignity of judgeship and the burden of responsibility.

Immunity**Article 5**

A judge may not be held accountable for expressed opinion or voting rendered in taking of judicial decision, except in case of criminal violation of law by the judge.

A judge may not be detained in proceedings instituted for a criminal offence committed in performance of judicial function without consent of the High Court Council.

Liability for Damages

Article 6

The Republic of Serbia is liable for damages caused by a judge through unlawful or improper work.

The Republic of Serbia may demand the judge to recompense the paid amount when damages are caused wilfully or by gross negligence.

Right to Association

Article 7

To protect their interests judges shall have the right to associate.

Judges may undertake measures to protect and preserve their independence and autonomy.

Participation in taking decisions of significance for the work of courts

Article 8

A judge is entitled to take part in taking decisions of significance for the work of courts and for determination and allocation of funds for operation of the courts.

Right to Advanced Professional Education and Training

Article 9

A judge has the right and duty to advanced professional education and training at the cost of the Republic of Serbia.

Training of judges is an organised acquiring and developing of theoretical and practical knowledge and skills required for independent, professional and efficient discharge of judge's function.

Training is voluntary unless when certain forms of training are mandatory under law or by decision of the High Court Council in case of change of specialisation, substantial changes in regulations, introduction of new work techniques and in order to eliminate deficiencies in the work of a judge noticed during performance evaluation.

The content of training program is defined in respect of the professional experience of a judge.

The High Court Council shall stipulate and oversee implementing of the training program that is conducted by an institution competent for judicial training in accordance with law.

Election and Termination of Office and Number of Judges and Lay Judges

Article 10

The National Assembly and the High Court Council respectively decide on election and termination of function of judge and court president, in accordance with this Law.

The Supreme Court of Cassation has fifteen judges.

The High Court Council defines the number of judges and lay judges for every court, following approval obtained from the minister responsible for the judiciary, except in case referred to in paragraph 2 of this Article.

The High Court Council reviews every five years the required number of judges and lay judges for every court.

The High Court Council may at its own initiative or at the proposal of court president, president of a directly superior court, president of the Supreme Court of Cassation and the minister responsible for the judiciary review the required number of judges and lay judges also before expiry of the five-year period.

Chapter Two STATUS OF A JUDGE

I. PERMANENCY OF JUDGESHIP

1. Concept

Article 11

Judgeship is permanent.

Judgeship shall last continuously from first election as judge until retirement. Prior to the above judgeship may terminate only under conditions provided under this Law.

Exceptionally, a person elected judge for the first time is elected to a period of three years.

2. Reduction of Number of Judges and Abolishing of Court

Article 12

Judgeship shall not terminate if number of judges is reduced.

If a court is abolished a judge continues to discharge his function in a court of same type and same instance, or approximately same rank.

The High Court Council decides in which court a judge continues to discharge function.

3. Suspension of Judgeship

Grounds for Suspension

Article 13

A judge shall be suspended from office if remanded in custody.

A judge may be suspended from office when proceedings for his dismissal or criminal proceedings for a dismissible offence have been instituted.

Decision on Suspension

Article 14

The court president decides on mandatory suspension of a judge, while the mandatory suspension of a court president is decided by the president of the directly higher court.

Non-mandatory suspension is decided by the president of the Supreme Court of Cassation.

The suspension of the president of the Supreme Court of Cassation is decided by the General Session.

Duration of Suspension

Article 15

A judge is suspended from office until revocation of detention, conclusion of dismissal proceedings or conclusion of criminal proceedings.

The High Court Council may reinstate a judge prior to conclusion of dismissal proceedings.

Right to Complaint

Article 16

A judge has the right to file complaint with the High Court Council, within three days. The High Court Council shall take decision on the complaint within eight days.

II. NON-TRANSFERABILITY OF A JUDGE

1. Concept

Article 17

A judge shall have the right to discharge his office in the court to which he is elected.

A judge may be transferred or assigned from one to another court, another state body or institution only with his consent.

Consent shall be in writing and must precede decision-taking on transfer or assignment.

Exceptionally, a judge may be transferred to another court in case of abolishing of a court, abolishing the prevalent part of the jurisdiction of the court to which he is elected or reduction of the number of judges in the court to which he is elected, on basis of the decision of the High Court Council.

Exceptionally, a judge may be assigned without consent to another court of same type or directly lower instance up to one year, on basis of final decision pronouncing a disciplinary sanction in compliance with this Law.

2. Transfer

Article 18

A judge may be transferred to another court of same type and same instance.

A judge continues to discharge his function permanently in the court to which he is transferred.

The High Court Council issues the decision on transfer.

3. Assignment to another court

Article 19

A judge may be assigned to work only in another court of same type and same or directly lower instance for maximum one year.

Exceptionally, a judge may be assigned to a directly higher-instance court if meeting the statutory requirements for election as a judge of the court to which he is assigned and if his performance evaluation is "outstanding" over the past three years.

A judge is assigned to court in which the lack, overburdening, recusal of judges or other reasons frustrate or inhibit the work of the court.

The High Court Council issues the decision on assignment.

4. Assignment to another state body or institution

Article 20

A judge may be assigned to discharge professional tasks in the High Court Council, the ministry with competence for the judiciary and the institution competent for judicial training.

Assignment specified in paragraph 1 of this Article is carried out at the recommendation of the head of the body and/or institution to which the judge is assigned, following opinion obtained from the president of the court wherein the judge holds office, with the written consent of the judge.

Assignment may not exceed three years.

The High Court Council issues the decision on assignment.

III. MUTUAL INDEPENDENCE OF JUDGES

1. General

Article 21

A judge is free in holding his views, facts and law in all matters under his deliberation.

A judge is not required to justify to anyone, even other judges and the president of the court, his understanding of fact and law, except in the reasoning of the judgement or when so particularly stipulated by law.

3. Immutability of Type of Work and Random Allocation of Cases

Immutability of Annual Work Load

Article 22

A judge is entitled to have his workload defined by annual work schedule and not to have it changed during the year.

Exceptionally, due to election of a new judge, longer absence of a judge or vacated judge's position, the type of work of a judge may be changed during the year.

The annual work schedule and changes thereof are determined with a view to exigencies of the court and the capacity of the judge to successfully discharge allocated duties.

Random Allocation of Cases

Article 23

Cases are allocated to a judge according to schedule that is independent of personality of parties and circumstances of the legal matter.

Cases are entrusted to a judge on basis of the court schedule of tasks, in accordance with the Court Rules, exclusively on basis of designation and number of the case file.

No one has the right to establish panel of judges and allocate cases by bypassing the work schedule and order of receiving of the cases.

Derogation

Article 24

Derogation from the order of receiving of cases is possible only due to justified preclusion of a judge.

A case may be taken from a judge only due to prolonged absence or dilatoriness, in accordance with the Court Rules.

Right to Objection

Article 25

A judge is entitled to object the annual schedule of work, change of type of work, derogation from the order of received cases and taking away of cases with the administrative-judicial panel of the directly superior court, within eight days from the day becoming aware thereof.

Objection of a judge of the Supreme Court of Cassation is deliberated by the General Session.

A party or person with legal interest also have the right to object in respect of taking away of a cases, within eight days from the day of becoming aware thereof.

The administrative-judicial panel of the court conducting the proceedings decides on the objection specified in paragraph 3 of this Article.

The decision on the objection is taken within eight days from the date of submission.

Duty to Notify the President of the Directly Higher Court

Article 26

A court president is required to notify in writing the president of the directly higher court of any derogation from the order of received cases.

3. Notification of Duration of Proceeding

Article 27

A judge shall notify the court president of reasons for failing to conclude first-instance proceedings within six months and shall there from notify him monthly of the progress of proceedings.

A judge gives first notice of proceedings under legal remedy to the court president after one month, and the next every fifteen days.

The court president is required to notify the president of the directly higher court of every first-instance proceedings that has not been concluded within two years.

A court president is required to notify the president of the Supreme Court of Cassation of every proceeding on legal remedy that has not been concluded within six months.

Deadlines for notification in enforceable, non-contentious and other non-contestable matters are defined by the Court Rules.

Duty to notify under this Article runs from the day of receiving the case in the court.

4. Right of Judge to Complaint

Article 28.

A judge may file complaint with the High Court Council for violation of any right for which this Law does not provide a particular remedy.

The High Court Council rules on the complaint within eight days and promptly notifies the court president, president of the directly higher court and the president of the Supreme Court of Cassation of the decision.

IV. RELATIONSHIP OF JUDGESHIP TO OTHER FUNCTIONS, ENGAGEMENTS AND ACTIVITIES

1. Relationship of other functions, engagements and actions with judgeship

Article 29

A judge may not hold office in bodies enacting or enforcing legislation, may not be member of a political party, engage in any paid public or private work, nor extend legal services or advice for compensation.

Other functions, engagements and activities that are contrary to the dignity and independence of a judge or damaging to the reputation of the court are incompatible with judgeship.

The High Court Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court on basis of Court Rules and the Code of Ethics.

A judge shall not require anyone's permission to engage in compensated research and professional activity outside of working hours.

In cases set forth by law or based on decision of the High Court Council a judge may engage in teaching, research and professional activity during working hours.

A judge may be sent on a study and/or other professional visit by decision of the High Court Council, following opinion of the court president, where performance evaluation from the judge's personal file and knowledge of foreign languages shall be particularly taken into account.

A judge may give opinions and professional comments regarding application of regulations only to journals published by the court, the ministry with competence for the judiciary, the High Court Council and judicial training institutions.

2. Incompatibility Deliberation Procedure

Duty to notify and filing of charges

Article 30

A judge is required to notify the High Court Council in writing of any engagement or work that may be deemed incompatible with judgeship.

The High Court Council notifies the court president and the judge that there is incompatibility between the engagement and work with judgeship.

The body competent for initiating proceedings shall file disciplinary charges immediately upon becoming aware that a judge is engaged in service or work or engaging in activities that may be deemed incompatible with his function.

V. PERFORMANCE EVALUATION OF JUDGES

Article 31

Work of all judges and court presidents is subject to regular evaluation.

Performance evaluation involves all aspects of judge's work and/or work of court president and represents the basis for election, mandatory training of judges, allocation to pay grades, dismissal and instituting disciplinary proceedings.

Evaluation is conducted on basis of publicized, objective and single criteria and standards, in a single procedure ensuring participation of the judge and/or court president whose performance is being evaluated.

Criteria and procedure for performance evaluation of judges are set by the High Court council.

Bodies competent for evaluation in courts

Article 32

Bodies competent for performance evaluation of judges are: departmental boards and the Commission of the High Court Council for Performance Evaluation of Judges.

Performance evaluation of judges is conducted by the departmental board.

Performance evaluation of judges in lower instance courts is conducted by departmental boards established in court departments of directly higher instance courts.

Departmental boards comprise the president of the department and two judges, elected by secret ballot at the session of the department to a period of four years.

In courts with larger number of judges a departmental board is established for every 50 judges.

Evaluation by the High Court Council

Article 33

The Commission of the High Court Council evaluates performance of court presidents and judges of the Supreme Court of Cassation and decides on objections of judges to their performance evaluation.

The High Court Council decides on objections to performance evaluation of court presidents and judges of the Supreme Court of Cassation.

The composition and operation of the Commission referred to in paragraph 1 of this Article is regulated by the act of the High Court Council.

Performance Evaluation Period

Article 34

Performance of judges with tenure of office and court presidents is evaluated annually and of judges elected for the first time once every six months.

Performance Rating

Article 35

Performance is rated.

Ratings are: "fails to meet requirements", "satisfactory", "good", "very good" and "excellent".

Rating is entered in the judge's and/or court president's personal file.

A judge and/or court president is entitled to object the rating with the bodies specified in Article 33 hereof, within 15 days from the day of submitting the decision on the rating, which has to be reasoned.

VI. FINANCIAL STATUS OF A JUDGE

Base Salary

Article 36

A judge is entitled to a salary commensurate with the position to which he is elected.

A judge's salary is determined pursuant to base salary.

The base salary is determined by multiplying the coefficient for calculation and payment of salary with the base for calculation and payment of salary.

The Government of the Republic of Serbia determines the base for calculation and payment of salaries of judges.

The coefficient for calculation and payment of salary is determined by classifying a judge into one of five pay grades.

Every pay grade for judges has two pay levels, except the fifth pay grade.

The base salary under this Law is the value that does not include the percentage for years of work.

Pay Grades for Judges

Article 37

Judges are classified into five pay grades, each having salary levels expressed in coefficients.

The first pay grade includes judges in magistrates courts.

The second pay grade includes judges of municipal courts.

The third pay grade includes judges of commercial, district courts and the high magistrates court.

The fourth pay grade includes judges of the Appellate, High Commercial and the Administrative Courts.

The fifth pay grade includes judges of the Supreme Court of Cassation.

Salary levels of Judges

Article 38

The first pay grade shall have salary levels of 2.00 and 2.50.

The second pay grade shall have salary levels of 3.00 and 3.50.

The third pay grade shall have salary levels of 3.50 and 4.00.

The fourth pay grade shall have salary levels of 4.00 and 4.50.

The fifth pay grade shall have salary level of 6.50.

Classification of Judges to Pay Grades

Article 39

The High Court Council issues the decision determining the coefficient.

The decision on the coefficient defines the pay grade to which a judge belongs, salary level and coefficient.

At election a judge is classified to a lower salary level in the pay grade to which he belongs.

A judge classified to a lower salary level of his pay grade and who is twice running rated "excellent" in performance evaluation is classified to the higher salary level of his pay grade.

A judge classified to the higher salary level of his pay grade and who twice running is rated "satisfactory" and "good" in performance evaluation is classified to the lower salary level of his pay grade.

Base Salary of Court President

Article 40

The base salary of court president is determined by increasing the salary of a judge of that court who is classified to the higher salary level by:

- 5%, in courts with up to ten judges;
- 10%, in courts with up to 20 judges;
- 15% in courts with up to 40 judges;
- 20% in courts with over 40 judges.

Base Salary of the President of the Supreme Court of Cassation

Article 41

The base salary of the president of the Supreme Court of Cassation is equal to the salary of the Speaker of the National Assembly.

Base Salary of a Judge Transferred and/or Assigned to Another Court

Article 42

A judge who is transferred and/or assigned to another court, state body or institution is entitled to a base salary of a judge of the court and/or state body or institution to which he is transferred and/or assigned, if more favourable.

The High Court Council stipulates emoluments and other earnings of a judge who is transferred and/or assigned to another court, state body or institution.

A judge under disciplinary sanction of transfer to another court is not entitled emoluments referred under paragraph 2 of this Article.

Increment to Base Salary of a Judge

Article 43

The base salary of a judge adjudicating in criminal offence cases with organised crime and war crime element may be increased up to 100% by decision of the High Court Council.

Chapter Three

ELECTION OF A JUDGE

I. ELECTION REQUIREMENTS

Article 44

A citizen of the Republic of Serbia who meets the requirements for employment in state bodies, who is a law school graduate, who has passed the bar exam and who is deserving of judgeship may be elected judge.

Prohibition of Discrimination

Article 45

Discrimination on any grounds is prohibited in election and nominating for election of a judge.

Required Experience

Article 46

The required professional experience in the legal profession following the bar exam is:

- two years for a judge of a magistrates court;
- three years for a judge of a municipal court;
- for years for a judge of a commercial court;
- six years for a judge of a district court and the High Magistrates Court;
- eight years for a judge of the Appellate Court, the High Commercial Court and the Administrative Court;
- twelve years for a judge of the Supreme Court of Cassation.

Other Requirements for Election

Article 47

Other requirements for the election of a judge are qualification, competence and worthiness.

Qualification means possessing of theoretical and practical knowledge necessary for performing the judicial function.

Competence means possessing of skills that enable efficient use of specific legal knowledge in dealing with cases.

High moral character means appropriate characteristics and a conduct in accordance with such characteristics.

The moral characteristics of a judge include honesty, thoroughness, diligence, fairness, dignity, perseverance, courage and esteem, and conduct in compliance with these characteristics involves upholding of dignity of the judge on and off duty; the awareness of social responsibility; preserving of independence and impartiality; reliability and dignity on duty and off, as well as taking the responsibility for the internal organization and a positive public image of the judiciary.

The criteria for the assessment of qualification, competence and moral character are set by the High Court Council, in accordance with the law regulating the institution that is in charge of judicial training.

II. ELECTION PROCEDURE

Announcement of Election

Article 48

The High Court Council shall publicly announce the election of judges.

The announcement is published in the Official Gazette of Serbia and other media.

Applications

Article 49

Applications are submitted to the High Court Council within 15 days of the public announcement in the Official Gazette of Serbia.

The application is submitted together with evidence of eligibility.

Obtaining of Information and Opinion

Article 50

The High Court Council shall obtain information and opinions about the qualification, competence and moral character of a candidate.

The information and opinions are obtained from the bodies and organisations where the candidate worked as a lawyer, and in the case of a candidate coming from a court, it is mandatory to obtain the opinion of the judges' session of that court.

Nomination of Judges to be Elected for the First Time

Article 51

In case of candidates for judges to be elected for the first time, in addition to qualification, competence and moral character, the High Court Council shall especially take into consideration the type of jobs that the candidate performed after passing the bar exam.

With regard to candidates coming from among judge's assistants, it is mandatory to obtain their performance evaluation.

Before presenting their nominations, the High Court Council shall conduct interviews with the candidates.

The High Court Council shall propose to the National Assembly two candidates for each judge's position.

The decision on the High Court Council's nomination must be reasoned and published in the Official Gazette of Serbia.

A candidate is allowed to file an appeal to the Constitutional Court against the decision specified in para 5 of this article to.

First Election

Article 52

The National Assembly shall elect a first-time elected judge from among the candidates nominated by the High Court Council.

Election to Permanent Function

Article 53

The High Court Council elects judges to be appointed to permanent position.

Appointment of a first-time elected judge whose work during the first three-year term of office is assessed as "very good" or "excellent" to permanent function as mandatoy.

A first-time elected judge whose work during the first three-year term of office is assessed as "not satisfactory" may not be appointed to permanent function.

Every decision on election must be reasoned.

The candidate may lodge an appeal to the Constitutional Court against the decision of the High Court Council referred to in para 3 of this article.

III. TAKING OATH AND TAKING OFFICE

Taking Oath

Article 54

Before taking office, a judge shall take an oath before the National Assembly Speaker.

The President of the Supreme Court of Cassation shall take an oath before the National Assembly.

A judge who is appointed to permanent function shall not take an oath.

Oath

Article 55

The oath reads as follows: „I do solemnly swear that I will discharge my duties in compliance with the Constitution and the law, according to the best of my ability and in the service of truth and justice”.

Taking of Office

Article 56

A judge shall take office at the ceremonial session of all judges of the court he/she has been appointed to.

The previous office of the judge ends with taking of office in the new court.

The judge of a higher court who has been elected as president of a lower court may go back to the function at the higher court after the end of office.

When it is Deemed that a Judge has not been Elected

Article 57

It is deemed that a judge has not been elected if he/she fails to take office without justified reasons within 2 months of election.

The High Court Council issues the decision and notifies the National Assembly in the case of a first-time elected judge.

The judge is entitled to file an appeal to the Constitutional Court against the decision of the High Court Council.

Chapter Four TERMINATION OF OFFICE

1. All Reasons

Article 58

Judge's office ends upon the request of the judge, with retirement age, due to a permanent loss of working ability, if not elected to permanent function or in case of dismissal.

The High Court Council issues the decision on termination of function.

The decision referred to para 2 of this article is published in the Official Gazette of Serbia.

2. Termination of Office upon the Request of the Judge

Article 59

A judge who wishes to resign shall submit a request to the High Court Council.

The request may be withdrawn until such time as the office of the judge is terminated under the decision of the High Court Council or until the expiry of the deadline provided by this Law.

If the decision on the request is not taken within one month, it is considered that the judge's office terminated after the expiry of the one-month period following the submission of the request.

In other cases, judge's office terminates on the date specified in the decision of the High Court Council.

If a judge submits a request for termination of office after a request for dismissal was filed, the former is not considered before the dismissal procedure is completed.

3. Retirement Age

Article 60

Judge's years of service complete with 65 years of age or 40 years of pensionable years of service.

Exceptionally, upon the request of the president of the court, the High Court Council may approve an extension of two years with the consent of the judge.

A judge may have the years of service extended only if it is necessary to complete current cases or old cases that have not been adjudicated for longer than two years.

4. Permanent Loss of Working Ability

Article 61

A judge's office ends if, based on the finding of the professional commission of the competent body, it is established that he/she is incapable of performing function due to the health condition.

The High Court Council shall issue a decision on referring a judge to a mandatory medical examination, following the proposal of the president of the court, the president of the immediately higher court or the judge concerned.

5. Termination of Office of First-time Elected Judge

Article 62

The office of a first-time elected judge who is not elected to permanent function ends with the expiry of the three-year term of office.

6. Dismissal

Reasons for Dismissal

Article 63

A judge is dismissed if convicted for an offence carrying imprisonment sentence of at least six months or for a punishable act that demonstrates that he/she is unfit for the judicial function; in case of incompetence, or due to a serious or repeated disciplinary offence.

A repeated disciplinary offence referred to in para 1 of this article shall mean responsibility for a disciplinary offence that is established for three times.

Specifically on Incompetent Discharge of Function

Article 64

Incompetence shall mean inadequately successful performance of judicial function, i.e. if the judge's performance is evaluated as "disatisfactory" based on the criteria for evaluation.

Power to Initiate and Initiating of Dismissal Procedure

Article 65

Anyone may launch an initiative for the dismissal of a judge.

The dismissal procedure may be instituted by the president of the court, the president of the directly higher court, the president of the Supreme Court of Cassation, the minister in charge of the judiciary, the bodies responsible for performance evaluation or the Disciplinary Commission.

The High Court Council shall determine reasons for dismissal.

Proceedings before the High Court Council

Article 66

The High Court Council shall establish facts and make a decision in the proceedings closed to the public.

The High Court Council may request the necessary information from competent bodies and organizations.

The High Court Council shall carry out the proceedings and take a decision within 30 days from the date of delivering the act that initiates the proceedings.

The decision of the High Court Council must be reasoned.

The Position of the Judge in the Proceedings

Article 67

The judge has the right to be immediately notified of the reasons for initiating the proceedings, to be aware of the content of the case, supporting documentation and the course of the proceedings and to provide explanation and evidence for his/her statements, in person or through a representative.

The judge has the right to present his/her statements in person before the High Court Council.

Appeal with the Constitutional Court

Article 68

The judge and persons or bodies referred to in article 59, para 2 are entitled to file an appeal against the decision of the High Court Council to the Constitutional Court, within 30 days of the delivery of the decision.

The Constitutional Court may reject the appeal or uphold the appeal and set aside the decision on dismissal.

The decision of the Constitutional Court is final.

Decision on Dismissal

Article 69

A final decision on dismissal is published in the Official Gazette of the Republic of Serbia.

Chapter 5

PRESIDENT OF THE COURT

Requirements for the Election of the President of the Court

Article 70

A person with at least three years in the permanent judge's function with the court of the same or higher instance and clear managerial and organizational skills, which is assessed based on the criteria set by the High Court Council, is eligible for the president of the court.

Nomination of Candidates for the President of the Court

Article 71

The High Court Council shall nominate two candidates for the president of the court.

Before presenting nominations, the High Court Council shall obtain opinion about the candidates from the session of all judges of the court whose president is being elected.

Election of the President of the Court

Article 72

The National Assembly shall elect one of the two candidates who are proposed by the High Court Council.

The judge who is elected as president of the court shall perform judge's function in that court.

Term of Office

Article 73

The president of the court is elected for a four-year period and may be re-elected.

The term of office runs from the day of taking office.

Acting President of the Court

Article 74

When the term of office of the president of the court ends, the High Court Council shall promptly propose candidates for the election of the president.

When the term of office of the president of the court ends, the president of the directly higher court shall designate a judge who will perform the function of president until such time as the new president takes office, and not later than one year.

The General Session of the Supreme Court of Cassation shall designate a judge who will perform the function of the president of that court.

Termination of Office of the President of Court

Article 75

The office of the president of the court ends due to the end of judge's function, election as a judge of other court, upon personal request, with the end of the term of office, and dismissal from the position of the president of court.

The National Assembly decides on the termination of office of the president of court.

Reasons for the Dismissal of the President of Court

Article 76

The president of court shall be dismissed in the case of the violations of obligations set out by the provisions governing court administration; violations of the autonomy of judges; violations of rules on allocation of cases; deviating from the rules on the annual calendar of judges; due to a serious disciplinary offence or incompetence.

The president of court is considered to be incompetent if his/her performance is evaluated as „disatisfactory“ based on the criteria for evaluation of presidents of courts.

Proceedings to Establish Reasons for Dismissal of the President of Court

Article 77

Anyone may launch an initiative for the dismissal of the president of court.

The proceedings for establishing the reasons for dismissal are conducted by the High Court Council.

The proceedings are initiated by the president of the directly higher court, the session of all judges whose president is concerned, the minister in charge of the judiciary, the body responsible for performance evaluation or the Disciplinary Commission.

The president of the court and/or other persons who initiated dismissal have the right to file an appeal to the Constitutional Court against the decision on the reasons for dismissal.

Decision on Dismissal of the President of Court

Article 78

The National Assembly shall issue the decision on dismissal of the president of court, following the proposal of the High Court Council, and after the completion of the proceedings for establishing the reasons for dismissal.

Status after Termination of Office of the President of Court

Article 79

The president of court who is not re-elected, who is dismissed or who resigns shall continue to carry out judge's function.

After the termination of office of the judge of a higher court who is elected president of a lower court, he /she has the right to continue judge's function in the higher court.

President of the Supreme Court of Cassation

Article 80

The National Assembly shall elect the president of the Supreme Court of Cassation from among the judges of that court, upon the recommendation of the High Court Council and following the opinion of the General Session of that court and the relevant committee of the National Assembly.

The president of the Supreme Court of Cassation is elected to a five-year term of office without the possibility of re-election.

The office of the President of the Supreme Court of Cassation shall end earlier if he/she requests so, with the end of judge's function, or dismissal based on the reasons prescribed by this Law pertaining to the president of court.

The General Session shall submit the proposal to initiate the dismissal proceedings for the president of the Supreme Court of Cassation.

The High Court Council shall conduct the proceedings to establish the reasons for dismissal and make a decision.

The president of the Supreme Court of Cassation has the right to file an appeal to the Constitutional Court against the decision establishing reasons for dismissal.

The National Assembly shall issue the decision on dismissal of the president of the Supreme Court of Cassation, following the proposal of the High Court Council.

The decision on the termination of office of the president of the Supreme Court of Cassation caused by other reasons is taken by the National Assembly.

Application of Provisions on Judges

Article 81

The provisions of this Law related to the election and dismissal of judges also apply to the election and dismissal of the president of court.

Other provisions of this Law concerning judges also apply to the president of court.

Chapter 6

SPECIAL PROVISIONS ON LAY JUDGES

Requirements for Appointment and Duration of Office

Article 82

A lay judge is required to be a national of the Republic of Serbia, who turned 26 years of age and is worthy of the function of lay judge.

The things considered when appointing a lay judge are sex, age, profession and social status, knowledge, competence, and affinities for specific type of matter.

A lay judge is appointed to a period of five years and may be re-appointed.

Procedure for Appointment

Article 83

The High Court Council appoints lay judges upon the proposal of the minister in charge of the judiciary.

Before making the proposal, the minister shall obtain the opinion from the court to which the lay judge is to be appointed.

Oath

Article 84

A lay judge shall take an oath before the president of the court.

The oath reads as follows: „I do solemnly swear that I will discharge my duties in compliance with the Constitution and the law, scrupulously, dedicatedly, and impartially.”

Suspension from Function

Article 85

The president of court shall suspend a lay judge from office in case that criminal proceedings have been instituted against him for an offence due to which he/she may be dismissed, or if dismissal proceedings have been instituted.

The suspension lasts until the completion of the proceedings.

Incompatibility with other Jobs, Engagements and Activities

Article 86

A lay judge may not be an attorney-at-law or extend legal services or advice for a fee.

Other jobs, engagements and activities that are contrary to the dignity and independence of a judge or harmful to the reputation of the court are also incompatible with the office of a lay judge.

Termination of Office

Article 87

The office of a lay judge terminates if the court where he/she works is abolished, in case of dismissal, or with the end of the term of office.

The proceedings to establish the reasons for termination of office of a lay judge are initiated by the president of the court, president of the directly higher court, president of the Supreme Court of Cassation, and the minister in charge of the judiciary.

The High Court Council shall conduct the proceedings and take a decision.

Reimbursement and Rewards for Lay Judges

Article 88

A lay judge is entitled to the reimbursement of costs incurred while performing function, compensation of lost earnings and reward.

The High Court Council shall define conditions for and the amount of the reimbursement and reward.

Application of Provisions on Judges

Article 89

Provisions on judges also apply to lay judges.

Chapter 7 DISCIPLINARY ACCOUNTABILITY

Disciplinary Offence

Article 90

A disciplinary offence is negligent performance of judge's function or conduct that is inappropriate for judge's function, which is provided by this Law.

Types of Disciplinary Offences

Article 91

Disciplinary offences are a violation of the principle of independence; failure of a judge to ask for disqualification in cases where there is the conflict of interest; unjustifiable delays in drafting of decisions; processing of cases in an order contrary to the order of reception; unjustifiable failure to schedule a hearing; frequent tardiness for hearings; apparently incorrect treatment of the participants to the proceedings and the court staff; non-compliance with the working hours; acceptance of gifts contrary to the regulations on the conflict of interest; engaging into inappropriate relations with parties to the proceedings and their legal representatives; engaging into activities that are incompatible with the judge's function under the law; unjustified prolonging of the proceedings; unjustified non-attendance of mandatory training programmes; provision of incomplete or incorrect information relevant for the work and decision-making of the High Court Council; unjustifiable change in the annual judges' agenda, and the violation of the principle of natural order of judge (free, unguided) in cases other than provided by the law.

A severe disciplinary offence is an offence that caused a serious disruption in the exercise of judicial power or regular duties at the court or a severe damage to the dignity of the court or public trust in the judiciary, and in particular if it results in the statute of limitations due to negligent performance of duty.

Disciplinary Sanctions

Article 92

Disciplinary sanctions are as follows: public caution, salary reduction up to 30% for a period not exceeding one year, transfer of the judge to another court of the same type and the same or lower instance that is at least 50 kilometers from the court he/she was assigned to, for a period not exceeding one year.

A public caution may be pronounced only in the case of the first disciplinary offence.

A disciplinary sanction is imposed in proportion to the gravity of the offence.

The information about the disciplinary sanction is entered in the judge's personal record.

A fine is enforced in an administrative procedure.

Instituting of Dismissal Proceedings

Article 93

If the Disciplinary Commission establishes the responsibility of a judge for a serious or repeated offence referred to in article 63, para 2 hereof, it shall institute dismissal proceedings.

Disciplinary Bodies

Article 94

Disciplinary bodies are the Disciplinary Prosecutor, deputy prosecutors and the Disciplinary Commission, which are set by the High Court Council.

The High Court Council shall appoint the members of the disciplinary bodies from among the ranks of judges.

The High Court Council shall publish an act stipulating the requirements for the appointment, duration of the term of office and manner of termination of office, the method of work and decision-making of the disciplinary bodies.

Disciplinary Proceedings

Article 95

The Disciplinary Commission shall conduct disciplinary proceedings following the proposal of the Disciplinary Prosecutor.

The Disciplinary Prosecutor shall file a motion to initiate disciplinary proceedings based on disciplinary charges that may be filed by anyone.

Disciplinary proceedings are urgent and closed to the public, unless the judge charged does not request that the proceedings be open to the public.

Disciplinary proceedings are subject to limitation after one year.

Decisions of the Disciplinary Prosecutor

Article 96

The Disciplinary Prosecutor may reject disciplinary charges as ill-founded or uphold the charges and file the motion for disciplinary proceedings.

The Rights of the Judge under Disciplinary Proceedings

Article 97

The judge has the right to be promptly notified of the motion of the Disciplinary Prosecutor, to examine the case file and supporting documentation, and to present explanations and evidence for his/her statements, in person or through a representative.

The judge has the right to verbally present his/her statements before the Disciplinary Commission.

Decisions of the Disciplinary Commission

Article 98

Having completed the disciplinary proceedings, the Disciplinary Commission may reject the motion of the disciplinary prosecutor or uphold the motion and impose a disciplinary sanction.

The Disciplinary Prosecutor and the judge who is subject to disciplinary proceedings may file an appeal to the High Court Council, within 8 days of the delivery of the decision.

Decisions of the High Court Council

Article 99

The High Court Council may either uphold or reverse the first-instance decision of the Commission.

The High Court Council shall decide on the appeal within 30 days of receiving the appeal.

The decision of the High Court Council is final.

The final decision on the imposition of a disciplinary sanction is entered in the personal record of the judge.