



REPUBLIC OF SERBIA

Ministry of Justice

# LAW ON JUDGES

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# **LAW ON JUDGES**

## **Chapter One**

### **PRINCIPLES**

#### **Independence**

##### **Article 1**

A judge is independent in his/her actions and decision taking.

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

#### **Tenure and Non-Transferability**

##### **Article 2**

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

A judge performs his function in the court to which s/he is elected.

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

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

#### **Preserving Confidence in Independence and Impartiality**

##### **Article 3**

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

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

The law shall set forth the services, engagements and actions that are incompatible with judgeship.

Judges shall adhere at all times to the Code of Ethics issued by the High Judicial Council.

All state bodies and officials are required to preserve, with their actions and behaviour, the confidence in independence and impartiality of judges and courts.

## **Financial Independence**

### Article 4

A judge is entitled to a salary commensurate with the dignity of judgeship and the burden of responsibility.

The salary of a judge shall represent a guarantee of his/her independence and support of his/her family.

## **Immunity**

### Article 5

A judge may not be held accountable for his/her expressed opinion or voting in taking of a 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 the judicial function without the consent of the High Judicial Council.

## **Liability**

### Article 6

The Republic of Serbia shall be liable for the damages incurred by a judge through unlawful or improper work.

When the final Constitutional Court judgment, final court judgment, or settlement before the court or other legal authorised organization concludes that the damage was caused wilfully or by gross negligence, the Republic of Serbia may demand that a judge remunerate the compensate paid.

When the decision of the European Court of Human Rights or other international court or organisation of which the Republic of Serbia is member concludes that human rights and fundamental freedoms were violated in the course of a court procedure and that the judgment has been based on such violation, or that judgement was omitted because of the violation of the right to a trial within a reasonable period of time, the Republic of Serbia may demand that a judge remunerate the compensate paid, if damage was caused wilfully or by gross negligence.

The High Judicial Council shall decide on whether there are conditions for the remuneration of compensation which was paid from Articles 2 and 3 hereof, at the request of the Ministry competent for the judiciary.

## **Right to Association**

### Article 7

To protect their interests and preserve their independence and autonomy, judges shall have the right to associate.

## **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 the 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, in accordance with a separate law.

Training of judges is a structured acquiring and developing of theoretical and practical knowledge and skills required for the independent, professional and efficient performance of judge's function.

Training is mandatory under the law or by the decision of the High Judicial Council in case of change of specialization, 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 the training programme is defined in respect of the professional experience of a judge.

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

### Article 10

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

The High Judicial Council determines the number of judges and lay judges for each court.

The number of judges for misdemeanour courts, the Higher Misdemeanour Court, and the Administrative Court, shall also be determined for each department outside the seat of the court.

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

The High Judicial Council may at its own initiative or at the proposal of a 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 before the expiry of the five-year period.

## **Rights Ensuing from Judge's Employment**

### Article 11

A judge shall realise the employment rights in accordance with the regulations which set the employment rights of appointed persons, unless otherwise prescribed by this Law.

## **Chapter Two**

### **STATUS OF A JUDGE**

#### **I. PERMANENCY OF JUDGESHIP**

##### **1. Concept**

###### Article 12

Judgeship shall last continuously from the first election to judge's office until retirement. Following the election, judgeship may terminate under conditions provided under this Law.

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

##### **2. Reduction of Number of Judges and Abolishing of Courts**

###### Article 13

Judgeship shall not terminate if the number of judges is reduced in the court in which judgeship is performed.

If a court is abolished, a judge continues to perform his/her function in a court which takes over jurisdiction, that is, in a court of the same type and same instance, or approximately same rank.

The High Judicial Council decides in which court a judge continues to perform function.

##### **3. Suspension of Judgeship**

###### **Grounds for Suspension**

###### Article 14

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

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

###### **Decision on Suspension**

###### Article 15

The court president decides on the mandatory suspension of a judge, while the mandatory suspension of a court president is decided by the president of the directly higher instance 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 16

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

The High Judicial Council may reinstate the judge prior to the conclusion of dismissal proceedings.

### **Right to Complaint**

#### Article 17

A judge has the right to file a complaint with the High Judicial Council, within three days from the day of receipt of the decision.

The High Judicial Council shall take a decision on the complaint from paragraph 1 of this Article, within eight days from the day of receipt of the complaint.

## **II. NON-TRANSFERABILITY OF A JUDGE**

### **1. Concept**

#### Article 18

A judge shall have the right to permanently perform his/her office in the court to which he/she is elected.

A judge may be transferred or assigned from one court to another, or to another state authority, institution, or international judicial organisation only with his/her consent.

Such consent shall be given in writing and must precede the decision-taking on transfer or assignment.

Exceptionally, a judge may be transferred without his/her consent to another court in case of the abolishing of a court, abolishing of the prevalent part of the jurisdiction of the court to which he/she is elected, leading to a reduction of the number of cases, on the basis of the decision of the High Judicial Council.

### **2. Transfer**

#### Article 19

A judge may be transferred, with his/her consent, to another court of same type and instance if there is a need to urgently fill out a vacancy which cannot be resolved by electing or transferring a judge, provided that presidents of both courts have given their consent.

A judge continues to perform his/her function permanently in the court to which he/she is transferred.

The High Judicial Council issues the decision on transfer.

### **3. Assignment to another court**

#### Article 20

A judge may be assigned to work only in another court of same type and same or directly lower instance for a period no longer than 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/she is assigned.

A judge is assigned to court in which the lack, absence, or recusal of judges or other reasons impede or slow down the work of the court.

The High Judicial Council, with the consent of a judge, shall issue the decision on assignment of the judge from paragraphs 1 to 3 of this Article.

#### **4. Assignment to Another State Body, Institution in Charge of Judicial Education or International Organisation**

##### **Article 21**

A judge may be assigned to perform professional tasks in the High Judicial Council, the Ministry competent for the judiciary, an institution in charge of judicial training, and an international judicial organisation.

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

The assignment may not exceed three years.

The High Judicial Council issues the decision on the assignment.

During the period of assignment, a judge may be relieved of his/her duties as a judge, based on a decision of the High Judicial Council.

If a judge is assigned to the Ministry competent for the judiciary, it is mandatory that he/she be relieved of his duties as judge.

### **III. MUTUAL INDEPENDENCE OF JUDGES**

#### **1. General**

##### **Article 22**

A judge is free in holding his/her views, determination of facts and application of law in all matters under his/her deliberation.

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

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

##### **Immutability of Annual Tasks**

##### **Article 23**

A judge is entitled to have his/her workload defined by the Annual Calendar of Tasks and not to have it changed during the year.

Exceptionally, due to the election of a new judge, longer absence of a judge, considerably increased or decreased influx of cases in certain legal areas during the course of the year, or a vacated judge's position, the legal area in which a judge proceeds may be changed during the year.

The Annual Calendar of Tasks and changes thereof are determined with a view to exigencies of the court and the capacity of a judge to successfully perform allocated duties.

##### **Random Allocation of Cases**

##### **Article 24**

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



Cases are entrusted to a judge on the basis of the court schedule of tasks, in accordance with the Court Rules of Procedure, according to the order determined in advance for each calendar year, exclusively on the basis of the designation and the number of the case file.

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

### **Derogation**

#### Article 25

Derogation from the order of the receiving of cases is possible only due to a justified preclusion of a judge, in accordance with the Court Rules of Procedure.

In accordance with the Court Rules of Procedure, a case may be taken from a judge only due to his/her prolonged absence or if he/she was issued a final disciplinary sanction due to a disciplinary offence for unjustified procrastination.

### **Right to Objection**

#### Article 26

A judge is entitled to raise objections to the Annual Calendar of Tasks, change of type of work, derogation from the order of received cases and taking away of cases with the president of the directly superior court, within three days from the day of becoming aware thereof.

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

A party in proceedings also has the right to object in respect of taking away of a cases, within three days from the day of becoming aware thereof.

The decision on the objection is taken within 15 days from the date of submission.

### **Duty to Notify the President of the Directly Higher Instance Court**

#### Article 27

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

## **3. Notification of Duration of Proceeding**

#### Article 28

A judge shall notify the court president of reasons for failing to conclude the first-instance proceedings within a period of one year and shall there from notify him/her every three months of the progress of proceedings.

A judge gives the first notice of proceedings under legal remedy to the court president after two months, and afterwards every 30 days.

The court president is required to notify the president of the directly higher instance court of every first-instance proceeding that has not been concluded within two years, as well as of reasons for such occurrences.

The 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 one year.

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

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

## **4. Right of a Judge to Complaint**

### Article 29

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

The High Judicial Council rules on the complaint within 15 days and promptly notifies the court president, president of the directly higher instance court and the President of the Supreme Court of Cassation of the decision. If the complaint is grounded, the High Judicial Council shall take measures to protect the rights of a judge.

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

### **1. Relationship of Other Functions, Engagements and Actions with Judgeship**

#### Article 30

A judge may not hold office in bodies enacting or enforcing legislation, public offices, and autonomous province and local self-management units. A judge may not be a member of a political party or act politically in some other manner, engage in any paid public or private work, nor extend legal services or advice for compensation. A judge may be a member of the Republican Electoral Commission, that is, the electoral commission of the autonomous province and local self-management unit.

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 Judicial Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court, on the basis of the Code of Ethics.

A judge shall not require explicit permission to engage in compensated educational and research activity outside working hours.

In cases set forth by the law, a judge may engage in teaching and research activities in a judicial training institution during working hours.

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

### **2. Procedure for Deliberation of Incompatibility**

#### **Duty to Notify and Filing of Charges**

#### Article 31

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

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

The court president shall file disciplinary charges immediately upon learning 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 32**

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

Performance evaluation involves all aspects of a judge's work and/or work of a court president, and represents the basis for the election, mandatory training of judges, and dismissal.

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

Criteria, standards, and procedure for the performance evaluation of judges and/or court presidents are set by the High Judicial Council.

### **Bodies Competent for Evaluation in Courts**

#### **Article 33**

Performance evaluation of judges in lower instance courts is conducted by committees established in directly higher instance courts.

A committee shall consist of three judges elected by a secret ballot at the session of all judges, to a period of four years.

One committee shall be established for every 100 judges whose work is evaluated.

### **Evaluation by the High Judicial Council**

#### **Article 34**

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

The High Judicial Council decides on objections to performance evaluation of court presidents.

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

### **Performance Evaluation Period**

#### **Article 35**

Performance of judges with tenure of office and court presidents is regularly evaluated once in three years and of judges elected for the first time once a year.

Exceptionally, based on the decision of the High Judicial Council, a judge may be evaluated outside the schedule.

## **Rates**

### Article 36

Performance is rated.

Ratings that pertain to the evaluation of judges are: “performs a judicial function with extreme success”, “successfully performs a judicial function”, and “fails to meet requirements”.

Ratings that pertain to evaluation of court presidents are: “performs the function of the court president with extreme success”, “successfully performs the function of the court president”, and “performs the function of the court president unsuccessfully”.

Rating is entered in a judge’s and/or court president’s personal file.

A judge or a court president is entitled to object to the rating with the bodies specified in Article 34 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 37

A judge has the right to a salary adequate for his/her elected position.

The salaries of judges are established on the basis of the basic salary.

The basic salary is established by multiplying the coefficients for calculation and payment of salaries with the base for calculation and payment of salaries.

The base for calculation and payment of salaries of judges shall be established in the Law on Budget.

The coefficient for calculation and payment of salaries is established by classifying each judge into one of five salary groups.

The basic salary, under this law, is the value which does not include the percentage for evaluating the years of employment.

### **Salary groups of judges**

#### Article 38

Judges are classified into six salary groups, expressed in coefficients.

The first salary group includes magistrates.

The second salary group includes basic court judges.

The third salary group includes judges of commercial courts, higher courts and the Higher Misdemeanour Court.

The fourth salary group includes judges of the Commercial Appellate Court, appellate courts, and the Administrative Court.

The fifth salary group includes judges of the Supreme Court of Cassation.

The sixth salary group includes the President of the Supreme Court of Cassation.

## **Coefficients**

### Article 39

- The first salary group has the coefficient 2.50.
- The second salary group has the coefficient 3.00.
- The third salary group has the coefficient 3.50.
- The fourth salary group has the coefficient 4.00.
- The fifth salary group has the coefficient 5.00.
- The sixth salary group has the coefficient 6.00.

## **Base Salary of Court President**

### Article 40

The base salary of a court president is determined by increasing the salary of a judge of that court by:

- 10%, in courts with up to 20 judges;
- 15% in courts with up to 40 judges;
- 20% in courts with up to 60 judges;
- 25% in courts with up to 80 judges;
- 30% in courts with over 80 judges.

Provision from Paragraph 1 of this Article does not apply to the President of the Supreme Court of Cassation.

## **Base Salary of a Judge Transferred and/or Assigned to another Court**

### Article 41

A judge who is transferred and/or assigned to another court, the Ministry competent for the judiciary, institution, or international organisation is entitled to a base salary of a judge of the court and/or the Ministry in charge of the judiciary, institution, or an international organisation to which he/she is transferred and/or assigned, if more favorable.

The High Judicial Council stipulates emoluments and other earnings of a judge who is transferred and/or assigned to another court, the Ministry competent for the judiciary, institution, or an international organisation.

## **Increment to the Base Salary of a Judge**

### Article 42

The base salary of a judge adjudicating in the court in which judicial vacancies cannot be filled may be increased up to 50%.

The base salary of a judge adjudicating in criminal offence cases with organised crime and war crime elements may be increased up to 100%.

The decision on increasing the base salary from paragraphs 1 and 2 of this Article shall be issued by the High Judiciary Council.

The base salary of a deputy court president shall be increased by 50% of the increase referred to in Article 40, paragraph 1 of this Law.

## **Chapter Three**

### **ELECTION OF A JUDGE**

#### **I. ELECTION REQUIREMENTS**

##### Article 43

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

#### **Required Experience**

##### Article 44

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

- two years for a judge of a misdemeanour court;
- three years for a judge of a basic court;
- six years for a judge of a higher court, a commercial court, and the Higher Misdemeanour Court;
- ten years for a judge of the Appellate Court, the Commercial Appellate Court and the Administrative Court;
- twelve years for a judge of the Supreme Court of Cassation.

#### **Other Requirements for Election**

##### Article 45

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.

Worthiness means ethical characteristics that a judge should possess, and conduct in accordance with such characteristics.

The moral characteristics of a judge shall include honesty, thoroughness, diligence, fairness, dignity, perseverance, and esteem, and conduct in compliance with these characteristics involves upholding of dignity of a 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 organisation and a positive public image of the judiciary.

The criteria and standards for the assessment of qualification, competence and moral character are set by the High Judicial Council, in accordance with law.

## **Prohibition of Discrimination**

### Article 46

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

In electing and nominating for the election of a judge, special care shall be devoted to the national composition of the population, adequate representation of the members of national minorities, as well as knowledge in professional legal terminology in national minority languages officially used in courts.

## **II. ELECTION PROCEDURE**

### **Announcement of Election**

#### Article 47

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

The announcement is published in the “Official Gazette of the Republic of Serbia” and other media with national coverage.

### **Applications**

#### Article 48

Applications are submitted to the High Judicial Council, within 15 days of the public announcement in the “Official Gazette of the Republic of Serbia”.

The application is submitted along with evidence of eligibility.

### **Obtaining of Information and Opinion**

#### Article 49

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

The information and opinions are obtained from bodies and organisations where the candidate worked in the legal profession, and in case of a candidate coming from a court, it is mandatory to obtain the opinion of the session of all judges of that court, as well as the opinion of the session of all judges of the immediately higher instance court. Before the election, a candidate has the right to view information and opinions.

### **Nomination of Judges to be Elected for the First Time**

#### Article 50

In case of candidates for judges to be elected for the first time, in addition to qualification, competence and moral character, the High Judicial Council shall particularly 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 its nominations, the High Judicial Council may conduct interviews with the candidates.

The High Judicial Council shall propose to the National Assembly one or more candidates for each judge's position.

A decision following the High Judicial Council's proposal must include an explanation.

### **First Election**

#### Article 51

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

The decision on the election referred to in paragraph 1 of this Article shall be published in the "Official Gazette of the Republic of Serbia".

### **Election to Permanent Function**

#### Article 52

The High Judicial Council elects judges to be appointed to permanent office.

A first-time elected judge whose work during the first three-year term of office is assessed with "performs the judicial duty with exceptional success" rating shall be elected to permanent office as mandatory.

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 office.

Every decision on the election must be reasoned and published in the "Official Gazette of the Republic of Serbia".

## **III. TAKING OATH AND TAKING OFFICE**

### **Taking Oath**

#### Article 53

Before taking up 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 office does not have to repeat the oath.

### **Oath**

#### Article 54

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

### **Taking of Office**

#### Article 55

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

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



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

### **When a Judge is Deemed as Not Elected**

#### Article 56

It is deemed that a judge has not been elected if he/she fails to take up office without justified reasons within 30 days of election.

The High Judicial Council issues the decision upon a proposal of the court president and notifies the National Assembly in the case of a first-time elected judge.

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

## **Chapter Four**

### **TERMINATION OF OFFICE**

#### **1. All Reasons**

##### Article 57

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

The High Judicial Council issues a decision on the termination of office.

The decision referred to in paragraph 2 of this Article is published in the "Official Gazette of the Republic of Serbia".

#### **2. Termination of Office upon Request of Judge**

##### Article 58

A judge who wishes to resign shall submit a request in writing to the High Judicial Council.

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

If the decision on the request for the termination of office is not taken within 30 days, it is considered that a judge's office has terminated after the expiry of the 30 day period following the submission of the request.

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

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

#### **3. Retirement Age**

##### Article 59

Judge's years of service shall cease with 65 years of age or 40 years of years of official service, by force of law.

Exceptionally, at the request of the court president, the High Judicial Council may approve an extension of two years, with the consent of a judge.

A judge may have the years of service extended only if it is necessary to complete commenced cases.

#### **4. Permanent Loss of Working Ability**

##### Article 60

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

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

#### **5. Termination of Office of First-time Elected Judge**

##### Article 61

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

#### **6. Dismissal**

##### **Reasons for Dismissal**

##### Article 62

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 disciplinary offence.

##### **Specifically on Incompetent Performance of Function**

##### Article 63

Incompetence shall mean insufficiently successful performance of the judicial function, i.e. if a judge's performance is evaluated as "dissatisfactory" according to the criteria for the evaluation of the work of judges.

##### **Power to Initiate and Initiating of Dismissal Procedure**

##### Article 64

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

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

The High Judicial Council shall determine the reasons for dismissal.

## **Proceedings before the High Judicial Council**

### **Article 65**

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

The High Judicial Council shall carry out the proceedings and take a decision, within 45 days from the date of delivering the act that initiated the proceedings.

The decision of the High Judicial Council must be reasoned.

## **The Position of the Judge in the Proceedings**

### **Article 66**

A 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.

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

## **7. Appeal to the Decision on Termination of Office**

### **Appeal with the Constitutional Court**

#### **Article 67**

The judge is entitled to file an appeal against the decision of the High Judicial 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 68**

The 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 69**

Among judges from the court of the same or higher instance, a person with clear managerial and organisational skills, based on the criteria set by the High Judicial Council, is eligible for the position of President of the Court.

## **Nomination of Candidates for the President of the Court**

### Article 70

The High Judicial Council shall nominate one or more candidates to run for President of the Court.

Before presenting nominations, the High Judicial Council shall obtain opinions 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 71

The National Assembly elects the president of the court at the proposal of the High Judicial Council.

A judge who is elected President of the Court shall also perform judge's office in that court.

## **Term of Office**

### Article 72

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 up office.

## **Acting President of the Court**

### Article 73

When the term of office of the president of the court ceases, the president of the directly higher instance court shall designate a judge who will perform the function of the president until such time as a new president takes up office, for a period no longer than one year.

The General Session shall appoint a judge who will perform the function of the President of the Supreme Court of Cassation.

## **Termination of Office of the President of the Court**

### Article 74

Office of the president of the court ends due to the termination of a judge's function, his/her election as a judge of another court, upon personal request, due to the termination of a court, with the end of the term of office, and due to dismissal from the position of the court president.

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

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

## **Reasons for the Dismissal of the President of the Court**

### Article 75

The president of the court shall be dismissed in the case of violation of obligations set out by the provisions governing the court administration; violation of the principle of

autonomy of judges; violation of rules on the allocation of cases; departure from the rules that regulate the Annual Calendar of Judges; due to a serious disciplinary offence committed while performing the function of the court president, or incompetence.

The court president is deemed as incompetent if his/her performance is evaluated as „dissatisfactory“, based on the criteria and standards for the evaluation of court presidents.

### **Proceedings to Establish Reasons for Dismissal of the President of the Court**

#### Article 76

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

The proceedings for establishing the reasons for dismissal of the president of the court are conducted by the High Judicial Council.

The proceedings for establishing the reasons for dismissal of the president of the court are initiated upon the proposal of the president of the directly higher instance court, the session of all judges whose president is concerned, the Minister competent for the judiciary, the body responsible for performance evaluation, and the Disciplinary Commission.

### **Decision on Dismissal of the President of the Court**

#### Article 77

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

### **Status after Termination of Office of the President of the Court**

#### Article 78

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

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

### **President of the Supreme Court of Cassation**

#### Article 79

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 Judicial Council and following the opinion of the General Session of that court and the competent 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.

Office of the President of the Supreme Court of Cassation shall end before the expiry of the term of office if he/she so requests, with the termination of the judge's function, or by dismissal based on the reasons prescribed by this Law pertaining to the President of the Court.

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

The High Judicial Council shall conduct the proceedings to establish the reasons for the dismissal of the President of the Supreme Court of Cassation and make a decision.

The National Assembly shall issue the decision on the dismissal of the President of the Supreme Court of Cassation, following the proposal of the High Judicial 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 80

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

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

## **Chapter 6**

### **SPECIAL PROVISIONS ON LAY JUDGES**

#### **Requirements for Appointment and Duration of Office**

##### Article 81

Any national of the Republic of Serbia of legal age who is worthy of the function may be appointed as a lay judge.

In appointing a lay judge sex, age, profession and social status, knowledge, competence, and affinities for specific type of matter shall be taken into account..

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

#### **Procedure for Appointment**

##### Article 82

The High Judicial Council appoints lay judges at 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 a lay judge is to be appointed.

A person of legal age, not older than 70 years at the time of appointment, may be appointed as a lay judge.

#### **Oath**

##### Article 83

A lay judge shall take an oath before the president of the court to which the judge is appointed.

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

### **Suspension from Function**

#### Article 84

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

The suspension will be in force until the completion of the proceedings.

### **Incompatibility with other Jobs, Engagements and Activities**

#### Article 85

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 office of a lay judge.

### **Termination of Office**

#### Article 86

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

Office of a lay judge does not cease due to the reaching of retirement age.

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

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

### **Reimbursement and Rewards of Lay Judges**

#### Article 87

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

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

### **Application of Provisions on Judges**

#### Article 88

Provisions on judges shall also apply to lay judges.

## **Chapter 7**

### **DISCIPLINARY ACCOUNTABILITY OF JUDGES**

#### **Disciplinary Offence**

##### Article 89

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

#### **Types of Disciplinary Offences**

##### Article 90

Disciplinary offences are:

- a violation of the principle of independence;
- failure of a judge to request his/her recusal in cases where there are reasons for recusal or exclusion foreseen by law;
- unjustifiable delays in the 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;
- unjustifiable prolonging of proceedings;
- unjustifiable failure to notify the court president about cases with prolonged proceedings;
- obviously incorrect treatment of participants in proceedings and the court staff;
- in compliance with the working hours;
- acceptance of gifts contrary to the regulations on the conflict of interest;
- engaging in inappropriate relations with parties in proceedings and their legal representatives;
- comments about court decisions, activities, or cases, made to the media in a manner contrary to law and the Court Rules of Procedure;
- engaging in activities that are incompatible with a judge's function under the law;
- unjustified non-attendance of mandatory training programs;
- provision of incomplete or incorrect information relevant for the work and decision-making of the High Judicial Council;
- unjustifiable change in the court's annual schedule of judges' activities, and the violation of the principle of natural judge, contrary to the law;
- serious violation of provisions of the Code of Ethics.

A severe disciplinary offence exists if the commission of a disciplinary offence referred to in paragraph 1 of this Article 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 causing serious damages to the property of the party in proceedings, as well as in the case of repeated disciplinary offence.

A repeated disciplinary offence referred to in paragraph 2 of this Article exists if disciplinary responsibility of a judge has been finally established on three occasions.



## **Disciplinary Sanctions**

### Article 91

Disciplinary sanctions are as follows: public reprimand, salary reduction of up to 50 % for a period not exceeding one year, prohibition of advancement for a period of up to three years.

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

A public reprimand may be issued only in the case of a judge's first disciplinary offence.

## **Instituting of Dismissal Proceedings**

### Article 92

If the Disciplinary Commission establishes the responsibility of a judge for a serious disciplinary offence, it shall institute dismissal proceedings.

## **Disciplinary Bodies**

### Article 93

Disciplinary bodies are: the Disciplinary Prosecutor, Deputy Disciplinary Prosecutors and the Disciplinary Commission, established by the High Judicial Council.

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

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

## **Disciplinary Proceedings**

### Article 94

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

The Disciplinary Prosecutor shall file a motion to initiate the disciplinary proceedings based on a disciplinary report.

Disciplinary proceedings are urgent and closed to the public, unless the judge charged requests that the proceedings be open to the public.

Disciplinary proceedings are subject to the statute of limitation after one year from the day of the commission of an offence.

## **Decisions of the Disciplinary Prosecutor**

### Article 95

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

## **Status of a Judge in Disciplinary Proceedings**

### **Article 96**

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

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

## **Decisions of the Disciplinary Commission**

### **Article 97**

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 with the High Judicial Council against the decision of the Disciplinary Commission, within 8 days of the delivery of the decision.

## **Decisions of the High Judicial Council**

### **Article 98**

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

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

The decision of the High Judicial Council is final.

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

## **Chapter Eight**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **I. TRANSITIONAL PROVISIONS**

#### **Continuation of Performance of Judge's Office in Municipal Misdemeanour Bodies and Misdemeanour Councils**

### **Article 99**

The judges elected under the Law on Judges ("Official Gazette of the Republic of Serbia" No. 63/01, 42/02, 17/03, 27/03, 29/04, 35/04, 44/04, 61/05, 101/05 and 46/06) and the Law on Courts ("Official Gazette of the Republic of Serbia" No. 46/91, 60/91 – correction, 18/92 – correction, 71/92, 63/01, 42/02, 27/03, and 29/04) shall continue to perform their duty in courts to which they were elected, until the judges elected in accordance with this Law take up office.

The magistrates in municipal misdemeanour bodies and misdemeanour councils appointed under the Law on Minor Offences (“Official Gazette of the Socialist Republic of Serbia”, No. 44/89 and “Official Gazette of the Republic of Serbia”, No. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 62/01, 65/01 and 55/04), shall continue to perform their duty in municipal misdemeanour bodies and misdemeanour councils until the judges elected in accordance with this Law take up office.

## **Election of Judges**

### **Article 100**

The High Judicial Council shall make a decision on the number of judges and lay judges in accordance with this Law, within 30 days after the date of the election of the first constitution of the High Judicial Council, having obtained the consent of the Minister in charge of the judiciary.

The election of judges, in accordance with this Law, shall be conducted no later than December 1, 2009, with the exception of judges of the Supreme Court of Cassation who shall be elected within 90 days after the date of the first constitution of the High Judicial Council.

The judges elected in accordance with this Law shall take up office on January 1, 2010.

Election to judge’s office in accordance with laws previously in effect shall be deemed as the first election. Appointment of a misdemeanour judge shall not be deemed as the first election.

## **Termination of Duties and Rights of Judges Elected or Appointed Under Previous Laws**

### **Article 101**

Duties of judges from Article 99, paragraphs 1 and 2 of this Law, who were not elected under this Law, shall be terminated on the day when judges elected in accordance with this Law take up office.

The judges from paragraph 1 of this Article are entitled to compensation of salary for six months in the amount of salary they had at the moment of termination of their duties.

The right to compensation of salary from paragraph 2 hereof shall be terminated prior to the expiration of the six month period if the judge whose duty was terminated obtains an employment status or right to a pension, and can be extended for another six months if he/she will obtain the right to a pension during those six months.

## **Election of President of the Court**

### **Article 102**

The High Judicial Council appoints the acting court president from the ranks of judges elected in accordance with this Law.

The acting court president from paragraph 1 hereof shall take up office on January 1, 2010.

The acting court presidents shall perform this function until the election of court presidents in accordance with this Law.

Court presidents, in accordance with this Law, shall be elected within three months upon the expiry of the deadline from paragraph 2 hereof.

By way of exception to provisions from paragraphs 1 to 4 of this Article, the President of the Supreme Court of Cassation shall be elected within a period of 90 days from the day of the constitution of the High Judicial Council. The President of the Supreme Court of Cassation shall be elected by the National Assembly among the persons who fulfil the requirements for the election of judges of this court, following the proposal of the High Judicial Council and having obtained the opinion of the competent Committee of the National Assembly.

The President of the Supreme Court of Cassation shall take up office on January 1, 2010. The President of the Supreme Court of Cassation shall become a member of the High Judicial Council on the day he/she is elected President of the Supreme Court of Cassation.

Until January 1, 2010, the President of the Supreme Court of Cassation is entitled to a base salary equal to the base salary of the President of the Supreme Court of Serbia.

### **Election of Lay Judges**

#### Article 103

Lay judges appointed under the Law on Judges (“Official Gazette of the Republic of Serbia” No. 63/01, 42/02, 17/03, 27/03, 29/04, 35/04, 44/04, 61/05, 101/05 and 46/06) shall continue to perform their duty in courts to which they were elected, until the election of lay judges under this Law.

Lay judges, in accordance with this Law, will be appointed no later than January 1, 2010.

### **Passing of Bylaws**

#### Article 104

The High Judicial Council will pass the bylaws envisioned by this Law no later than 60 days from the day of constitution of the first composition of the High Judicial Council.

Regulations passed by the High Judiciary Council that are not contrary to this Law shall be applied until the regulations from paragraph 1 hereof are passed.

## **II. FINAL PROVISIONS**

### **Termination of Validity of Previous Law**

#### Article 105

The Law on Judges (“Official Gazette of the Republic of Serbia”, No. 63/01, 42/02, 17/03, 27/03, 29/04, 35/04, 44/04, 61/05, 101/05 and 46/06) shall no longer be in force with the date of commencement of the application of this Law.

### **Termination of Validity of Other Laws or Provisions of Other Laws**

#### Article 106

Provisions of the Law on Salaries in Public Organs and Public Services (“Official Gazette of the Republic of Serbia, No. 34/01, 62/06 – other law, and 63/06 – correction of

other law) shall no longer be valid after the date of entering of this Law into force, in the part that refers to the manner of establishing salaries, bonuses and compensations to judges.

Provision from Article 51, paragraph 2 of the Law on Court Taxes (“Official Gazette of the Republic of Serbia” No. 28/94, 53/95, 16/97, 34/01 – other law, 9/02, 29/04, and 61/05) shall no longer be valid after the date of entering of this Law into force, in the part that refers to judicial allowance.

## **Entering Into Force of the Law**

### Article 107

This Law shall enter into force on the eighth day upon its publication in the “Official Gazette of the Republic of Serbia”, and shall be applied as of January 1, 2010, except for the provision in Article 20, paragraph 2 which shall be applied from entering into force of this Law, and provisions in Articles 43-54, Article 81, Article 82, paragraph 1, and Articles 83 and 88 of this Law which shall be applied on the date of the constitution of the High Judicial Council.

Until the day of the constitution of the High Judicial Council, that is, until the day when this Law begins to apply, the High Judicial Council, that is, the High Judicial Council shall make decisions about the assignment of a judge to another court referred to in Article 20, paragraph 2 of this Law, with the judge’s consent.