

LAW ON JUDGES OF SERBIA

Chapter One

PRINCIPLES

Independence Article 1

A judge shall be independent in his actions and decision-taking.

He/she shall adjudicate and render judgement according to the Constitution, laws, other general acts and his/her conscience.

Tenure and Non-transferability Article 2

A judge shall discharge his duties as a permanent function, in the court to which he has been elected.

A judge may not be transferred or assigned to another court against his will.

Preserving of Confidence in Independence Article 3

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

This Law shall stipulate services, engagements and activities that are incompatible with the duty of a judge.

Financial Independence Article 4

A judge shall have the right to salary sufficient to maintain his/her independence and sustain his family.

Immunity Article 5

A judge shall not be accountable to any person for an opinion or vote rendered in performance of judicial duty.

A judge may not be detained in custody without the consent of the National Assembly, during a procedure initiated for a criminal offence committed in performance of judicial duties.

Liability Article 6

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

The Republic of Serbia may demand that the judge compensate the paid amount if the damage was caused wilfully or by gross negligence.

Right to Association Article 7

Judges shall have the right of association for protection of their interests.

They may undertake measures for protection and preservation of their independence and autonomy.

Right to Advanced Training Article 8

A judge shall be entitled to advanced training at the cost of Republic of Serbia.

Types and manner of advanced training shall be prescribed by the Supreme Court of Serbia.

Election and Termination of Office and Number of Judges and Lay Judges Article 9

The National Assembly shall elect and terminate the office of judges and presidents of the courts.

The number of judges and lay judges for each court shall be determined by the National Assembly, at the proposal of the High Judicial Council.

The general framework for determining the number of judges, lay judges and court staff shall be determined by the High Judicial Council.

Chapter Two

JUDGESHIP

I. PERMANENCY OF JUDGESHIP

1. Concept Article 10

A judgeship shall last continuously from first election as judge until retirement.

Judgeship may terminate prior to above only under conditions set forth in this Law.

Upon termination of judgeship in the Court of Serbia and Montenegro, a judge shall have the right to continue discharging of function in the same court or another court of same rank.

2. Decrease of Number of Judges and Closing of Courts

Article 11

Judgeship shall not cease with decrease in number of judges.

If a court is closed down, a judge shall continue his office in a court of same type and instance, or approximately of same rank.

The High Judicial Council shall decide on the court where a judge is to continue with performing his function.

3. Suspension of Judgeship

Grounds for Suspension

Article 12

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

A judge may be suspended from duty if proceedings for his dismissal or criminal proceedings for an offence subject to dismissal have been initiated against him.

Decision on Suspension

Article 13

A president of the court shall decide on mandatory suspension of a judge, and on mandatory suspension of a president of the court – the president of the directly higher court.

If suspension is not mandatory, it shall be ruled upon by the president of the Supreme Court of Serbia.

The High Personnel Council shall decide on suspension of the president of the Supreme Court of Serbia.

Duration of Suspension

Article 14

A judge shall be suspended until detention is revoked, conclusion of dismissal proceedings or conclusion of criminal proceedings.

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

Right to Complaint

Article 15

A judge shall have the right to file a complaint against the decision on suspension with the High Personnel Council, within three days.

The president of the Supreme Court of Serbia shall voice his complaint at the General Session.

II. NON-TRANSFERABILITY OF A JUDGE

1. Concept

Article 16

A judge shall have the right to perform his duties for the duration of judgeship in the court to which he/she is elected.

He/she may be transferred from one to another court only with his/her consent.

Consent shall be in written form and must precede the passing of decision on transfer or secondment.

2. Transfer

Article 17

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

Permanency of judgeship shall continue in the court to which he/she is transferred.

The High Judicial Council shall pass the decision on transfer.

3. Secondment to Another Court

Article 18

A judge may be seconded only to another court of same type, same or immediately lower instance, for maximum one year.

He/she shall be seconded to a court where deficiency, hindrance, suspension of judges or other reasons inhibit or slow the workload.

The decision on secondment shall be made by the president of the Supreme Court of Serbia.

III. INDEPENDENCE OF JUDGES FROM EACH OTHER

1. Generally

Article 19

A judge shall be free in holding his view of facts and law in all matters under his deliberation.

He shall not be required to justify his understanding of fact and law to anyone, including other judges and the president of the court, except in justification of the judgement or when so particularly stipulated by law.

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

Immutability of Annual Work Load Article 20

A judge shall be entitled to have the type of his workload defined by an annual work schedule and not to have it changed during the year.

However, due to election of a new judge, long absence of a judge or vacant judge's position, the type of work of a judge may be changed during a year.

Random Choice Allocation of Cases Article 21

A judge shall be allocated cases according to an order independent of personalities of the parties and circumstances of the legal matter.

Cases shall be allocated to a judge pursuant to the work schedule of the court, in accordance with the Court Rules of Procedure, pursuant to the predetermined order for each calendar year, exclusively on basis of designation and number of the case file.

Nobody is entitled to establish court chambers and allocate cases outside the work schedule and order of receiving of the cases.

Derogation Article 22

The order of allocated cases may be deviated from only if a judge is overworked or if he is legitimately prevented.

A case may be taken away from a judge only in the event of his prolonged absence or protraction of proceedings.

Right to Objection Article 23

A judge shall be entitled to file an objection, within three days, with the president of the directly higher court on the annual schedule of work, change of the type of work, deviation from the order of case allocation or taking away of cases.

The High Personnel Council shall rule on the objection from a judge of the Supreme Court.

A party in the proceedings shall also be entitled to object on deviation from the order of case allotment and to taking away of cases.

Mandatory Notification of the President of the Directly Higher Court

Article 24

A president of the court shall, regardless of whether an objection has been filed or not, notify in writing the president of the directly higher court on any deviation.

3. Notice on Duration of Proceeding

Article 25

A judge shall notify the president of the court on the reasons why a first-instance proceeding has not been concluded within a six-month statutory term, and shall thereupon inform him monthly on further developments in the proceeding in relation to time.

First notice in the proceedings pursuant to legal remedies shall be given after one month, and the next shall be given every fifteen days.

Deadlines for notification in enforceable, special litigation and other non-litigious matters shall be determined by the court Rules of Procedure.

4. Right of Judge to Complaint

Article 26

A judge may complain to the High Personnel Council for violation of a right for which this Law does not provide any particular remedy.

The High Personnel council shall deliberate on the complaint within eight days and shall immediately inform the president of the court, the president of the directly higher court and the president of the Supreme Court of Serbia of its decision.

IV. INCOMPATIBILITY OF JUDGESHIP WITH OTHER FUNCTIONS, ENGAGEMENTS AND ACTIVITIES

1. Incompatibility of Other Functions, Engagements and Activities with Judgeship

Article 27

A judge may not hold office in legislative or executive bodies, may not be a member of a political party, engage in any paid public or private work, nor may he/she offer paid legal services or advice.

Other functions, engagements or activities that are adverse to the dignity and independence of a judge or detrimental to the dignity of the court shall also be incompatible with judgeship.

The Supreme Court of Serbia shall prescribe which activities shall be considered adverse to the dignity and independence of a judge and detrimental to the dignity of the court.

A judge may engage in compensate research or professional activity without anyone's permission.

2. Procedure on Incompatibility Deliberation

Mandatory Notification and Initiation of Proceedings

Article 28

A judge shall notify the president of the court, in writing, on any function or engagement that could be deemed incompatible with judgeship.

The president of the court shall inform the president of the directly higher court of such his/her function or engagement, and the president of the Supreme Court of Serbia – the High Personnel Council.

The president of a court shall initiate proceedings before the High Personnel Council on deliberation on incompatibility, immediately upon finding out that a judge is holding office or engagement, or is performing activities that could be deemed incompatible with his duties.

Pronouncement of Caution and Objection

Article 29

The High Personnel Council may concurrently with determination of incompatibility, pronounce a caution to a judge that shall be entered into his personnel file.

A judge shall be entitled to complain to the High Judicial Council, within eight days.

A judge may express his contentions verbally, by himself or through a proxy.

V. JUDGE'S FINANCIAL STATUS

Base Salary

Article 30

A judge's salary shall be determined pursuant to base salary.

The basic salary is determined pursuant to coefficient for calculation and payment of salaries and the calculation and payment base set forth by law governing salaries in government bodies.

Base salary, for the purpose of this Law, shall mean the amount without the percentage increment for years of service.

Base Salary of a Judge

Article 31

Deleted

Base Salary of the President of the Court

Article 32

Deleted

The Base Salary of a Judge Seconded to another Court

Article 33

A judge seconded to another court shall have the right to the base salary of a judge in that court if it is more favourable for him.

The High Judicial Council shall prescribe compensation and other benefits of a judge seconded to a another court, with the agreement of the Ministry in charge of the judiciary.

Increments of Judges' Base Salary

Article 34

The High Judicial Council may increase by up to 20% the base salary of a judge and president of a court, depending on the scope and complexity of tasks they discharge.

The High Judicial Council may decide to increase the base salary in a court in which judge posts cannot be filled by up to 50%.

The base salary of a judge sitting in criminal cases with elements of organised crime or war crimes may be increased, in addition to the increment specified in paragraph 2 of this Article, by another 100%.

The High Judicial Council shall decide on the increase of salary specified by this Article, with the agreement of the Ministry in charge of the judiciary.

Supplement to the Judge's Salary

Article 35

Deleted

Chapter three

HIGH PERSONNEL COUNCIL

Scope of activities

Article 36

The High Personnel Council shall be established within the Supreme Court of Serbia.

The High Personnel Council shall decide on issues related to the status of judges that is prescribed by law.

Composition

Article 37

The High Personnel Council shall comprise of nine judges from the Supreme Court of Serbia.

The judges shall enter the Council pursuant to the order established by the Rules of Procedure of the High Personnel Council.

The High Personnel Council shall comprise of approximately equal number of judges from each division of the Supreme Court of Serbia.

Passing Decisions

Article 38

The High Personnel Council shall pass decisions by majority vote of all members.

Incompatibility

Article 39

The President of the Supreme Court of Serbia may not be a member of the High Personnel Council.

In case of a procedure against a member of the High Personnel Council, he/she shall be replaced by a judge selected by other members of the Council by lot.

Mandate and Management

Article 40

A mandate of a member of the High Personnel Council shall last two years.

If the term of office of a member of the High Personnel Council ceases prematurely, a new member shall be appointed for the duration of the remainder of the term of his/her predecessor.

A member of the High Personnel Council whose judgeship ceases shall concurrently cease membership in the High Personnel Council.

The President, chosen by the members among themselves, shall chair the High Personnel Council.

Chapter Three A

INTERNAL CONTROL

The Supervisory Board

Article 40a

An Advisory Board is hereby established in the Supreme Court of Serbia (hereinafter “the Board”).

The Board shall comprise five judges from the ranks of judges of the Supreme Court of Serbia elected to a term of four years by the General Session.

The Board shall be chaired by a president elected by Board members from their own number.

A judge cannot concurrently be a member of the Board and the High Personnel Council.

Purview of the Supervisory Board

Article 40b

The Board is empowered to control court cases and make an inspection thereof either following a complaint or at its own initiative.

Upon conclusion of control of a court case file the Board may initiate proceedings before the High Personnel Council for dismissal of a judge for unconscientious or unprofessional discharge of duty or recommend pronouncing of disciplinary measure against the judge.

Chapter Four

ELECTION OF JUDGE

REQUIREMENTS FOR ELECTION

Article 41

A citizen of the State Union of Serbia and Montenegro meeting all conditions for employment with government authorities who is a Bachelor of Law, has passed the Bar Exam and is worthy of the judge's function may be elected judge.

The following work experience in legal practice following the passed Bar Exam shall be required:

- two years for a judge at municipal court
- four years for a judge at commercial court
- six years for a judge at district court
- eight years for a judge at the Court of Appeal, High Commercial Court and Administrative Court
- twelve years for a judge at the Supreme court of Serbia.

II. ELECTION PROCEDURE

Notice of Election

Article 42

The High Judicial Council shall announce the election of judges.

The announcement shall be published in the “Official Gazette of the Republic of Serbia” and other public media.

Application

Article 43

Every application for election shall be submitted to the High Judicial Council within fifteen days following the day of publishing of announcement in the “Official Gazette of the Republic of Serbia”.

All the required documents proving that the requirements for election have been met shall be enclosed with the application.

The High Judicial Council shall be provided with the personal record of each candidate originating from a court.

Obtaining Data and Opinion

Article 44

The High Judicial Council shall obtain data and opinion on professional ability and worthiness of a candidate.

The data and opinion shall be obtained from the bodies and organisations in which the candidate has worked in legal practice, and for candidates coming from courts the opinion of the session of judges of the candidate’s court is mandatory.

Nomination for Election

Article 45

The High Judicial Council shall, whilst nominating a judge, take into consideration only his/her professional ability and worthiness.

Every nomination for election shall be justified.

Election

Article 46

A judge is elected by the National Assembly at the proposal of the High Judicial Council.

The National Assembly may only elect a candidate nominated by the High Judicial Council.

If the nominated candidate is not elected, the High Judicial Council shall redefine the nomination with another candidate.

III. JUDGE’S OATH AND TAKING OFFICE

Taking Oath Article 47

Prior to taking office, a judge shall take an oath before the President of the National Assembly.

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

A judge, elected from the judge's profession shall not take the oath again.

Oath Article 48

The judge' oath shall be as follows: " I swear, by my honour, to perform my duty and in accordance with the Constitution and law, by the best of my knowledge and ability and serve solely to truth and justice".

Taking Office Article 49

A judge shall take the office at the ceremonial session of all judges at the court to which he/she is elected.

A judge's previous function in the original court shall cease with taking the new office.

A higher instance court judge, elected as president of a lower instance court, may return to his/her judge's function at the higher instance court after termination of the elected function.

Not Elected Judge Article 50

A judge shall be deemed not elected if he/she fails to take office within two months of election without a justifiable reason.

Such decision shall be passed by the High Personnel Council following a proposal by a president of a court, and shall accordingly notify both the National Assembly and the High Judicial Council.

A judge shall have the right to file an objection against the decision with the High Judicial Council within eight days.

Chapter five TERMINATION OF JUDGE'S FUNCTION

I. THE REASONS FOR TERMINATION OF JUDGE'S FUNCTION

1. All Reasons

Article 51

The judge's function shall cease at the judge's request, when he/she reaches the retirement years of service or when removed from office.

2. Reaching the Retirement Years of Service

General

Article 52

A judge shall be deemed to have reached retirement age when reaching the age of sixty-five or forty years of service.

A president of a court shall, at latest until 1 October, inform in writing the President of the Supreme Court of Serbia which judges and presidents of the directly lower courts are reaching the retirement years of service next year and when.

The Prohibition of Extension and Reduction of the Number of Years for Retirement

Article 53

The number of years required for retirement in respect of a judge may not be extended.

Any decrease of the time period required for retirement shall not influence a judge's termination of duty.

3. Reasons for Removal from Office

All Reasons

Article 54

A judge shall be removed from office when he/she is convicted for a criminal offence to unconditional prison sentence of minimum six months, or for a punishable offence making him/her unworthy of judge's function, or when he/she performs the judge's duty negligently and unprofessionally, and when he/she permanently loses the working capacity to perform the function.

Negligent and Incompetent Performance

Article 55

A judge shall be deemed negligent in performance of duty if he/she is dilatory in resolving a case, ignores the prescribed statutory deadlines in proceedings or issuing decision, or otherwise acts contrary to the criteria prescribed by the Supreme Court of Serbia.

Any continued engagement on functions, duties or activities same or similar to those determined to be incompatible with his/her function shall be deemed unconscientious discharge of duty.

Insufficient success in discharge of duty according to criteria set forth by the Supreme Court of Serbia shall be deemed incompetence.

II Determination of Reasons for Termination of Judge's Function

1. DETERMINATION OF COMPLETION OF YEARS OF SERVICE AND REASONS FOR REMOVAL FROM OFFICE

Competence and Initiation of the Proceedings

Article 56

The High Personnel Council determines completion of years of service and the reasons for removal from office.

President of the Court, president of directly higher court, president of the Supreme Court and the Minister in charge of the judiciary shall initiate the procedure, while the procedure for determining grounds for removal from office of a judge due to unconscientious or incompetent performance of duty may be instituted also by the Board.

The procedure for determining whether the President of the Supreme Court of Serbia has attained years of service and grounds for removal from office shall be instituted by the High Personnel Council.

If the High personnel Council fails to reach a decision within 60 days from the day of instituting proceedings, the decision shall be taken by the General Session within the following 30-day period, and the term in office of members of the High Personnel Council shall cease.

Procedure before the High Personnel Council

Article 57

The High Personnel Council shall determine the facts and decide in the proceedings which shall be closed to public.

It may request the necessary data from competent authorities and organisations.

The decision of the High Personnel Council must be justified.

Pronouncement of Measures and the Right to Objection

Article 58

The High Personnel Council may, during the procedure for removal from office of a judge due to negligent and incompetent performance of judge's function, pronounce

the measure of caution or removal from office for the period from one month to one year.

A judge shall have the right to, within eight days, file an objection to the General Session.

The General Session shall be closed to public.

Status of Judge During the Procedure

Article 59

A judge shall have the right to be immediately notified of the reasons for initiating the procedure, informed of the case and relevant documents, course of the procedure and the report of rapporteur judge, and to offer explanations or proof for his claims by himself or through a representative.

A judge may present his/her claims verbally before the High Personnel Council and the General Session.

Notifying the National Assembly

Article 60

No complaint is allowed against the decision of the High Personnel Council determining completion of years of service or grounds for removal from office.

The President of the Supreme Court of Serbia shall, immediately upon the receipt of the decision, notify the National Assembly that a judge has completed the years of service for retirement or that there are reasons for his/her removal from office.

The Effect of Measures

Article 61

The measures of caution and removal from office shall be recorded in the judge's personal record.

As long as the measure of removal from office is effective, the judge shall have the status as if suspended from duty.

A caution may not be pronounced twice to a judge.

2. Termination of duty at the request of a judge

Article 62

A judge who wants his judge's function to be terminated shall file a request in writing to the High Personnel Council, which shall immediately communicate a valid request to the National Assembly.

The request may be withdrawn until the judge's function is terminated by the decision of the National Assembly, or until the expiration of the deadline provided by this Law.

A request for termination of judge's function filed by a judge after the initiation of the procedure for removal from office shall not be considered until the conclusion of dismissal procedure.

III. DECISION ON TERMINATION OF JUDGE'S FUNCTION

Taking of Decision Article 63

The National Assembly shall decide on termination of judge's function.

Time of Termination of Judge's Function Article 64

If the decision on the request for termination of judge's duty is not taken within one month, it shall be considered that the judge's function is terminated after the expiration of one month from the date of filing the request, which shall be published in the "Official Gazette of the Republic of Serbia".

In all other cases the judge's function shall be terminated with the day specified in the decision of the National Assembly.

2. The Consequences of Removal from Office Article 65

A judge's employment rights shall cease with dismissal and completion of retirement years of service.

He/she may not apply for election to a court or public prosecution nor apply for appointment as deputy public prosecutor or misdemeanour judge.

Chapter Six

PRESIDENT OF COURT

Duration of term in Office Article 66

The President of Court shall be elected among judges, to a four-year term, and may be re-elected.

The term in office of the President of Court shall begin with the day of taking the office.

Acting President of Court

Article 67

Upon the termination of duty of the President of Court, the President of the directly higher Court shall appoint a judge as acting president who shall perform this duty until a new President of Court takes the office, and for a period not exceeding one year.

An acting President of Court in a municipal court shall be appointed by the president of the Court of Appeals on whose territory is the seat of the municipal court.

The General Session shall appoint a judge for the position of the acting President of Supreme Court of Serbia.

Status of the President of Court upon the Termination of Duty

Article 68

The President of Court who has not been re-elected, who was removed from duty or whose function was terminated on his request shall continue the performance of judge's function.

When the duty of court president of a higher instance court judge elected to the post of lower instance court president ceases, he shall have the right to continue the performance of judge's function at the higher instance court.

Removal of the President of Court from Duty

Article 69

The President of Court shall be removed from duty if he/she performs his duties negligently and inadequately.

The negligent performance of duty is primarily reflected in failure to organise proper and timely work of the court and prevent activities detrimental to the independence or dignity of the court.

Application of Provisions on Judges

Article 70

The President of Court shall be appointed and removed from duty in accordance with the same procedure as the procedure for the appointment and removal of judges.

Other provisions of this Law referring to judges shall also apply to presidents of courts.

Chapter Seven

SPECIAL PROVISIONS ON LAY JUDGES

Requirements for Appointment and Duration of Duty

Article 71

A Yugoslav citizen, who has reached twenty-six years of age and is worthy to be a lay judge may be appointed a lay judge.

In appointing attention shall be given to the sex, age, vocation and social status, knowledge, expertise and affiliation for specific legal matters.

A lay judge shall be appointed to a five-year period and may be re-elected.

Appointment Procedure

Article 72

The High Judicial Council shall appoint a lay judge at the proposal of the Minister in charge of judiciary.

Before making a proposal, the Minister shall obtain the opinion from the court to which the lay judge is being appointed.

The Oath

Article 73

A lay judge shall take an oath before the President of the Court to which he has been appointed.

The text of the oath shall be as follows: "I swear by my honour to perform my duty in accordance with the Constitution and law, consciously and with dedication".

Suspension from Office

Article 74

The President of Court may suspend a lay judge from duty if proceedings have been instituted against him for a criminal offence due to which he may be dismissed from office or if dismissal proceedings have been instituted.

Suspension shall last until conclusion of proceedings.

Incompatibility with other Services, Engagements and Activities

Article 75

A lay judge may not be a lawyer nor may perform any legal services or give legal advice for remuneration.

Other services, engagements and activities contrary to the dignity and independence of a judge or damaging to the reputation of court shall be deemed incompatible with the position of a lay judge.

Termination of Duty

Article 76

The duty of a lay judge shall cease with abolishing of the court, but not due to attaining retirement age nor due to incompetent performance of duty unless the lay judge meets the professional requirements for a judge.

The procedure for determination of reasons for termination of duty of a lay judge shall be initiated by the President of Court, President of the directly higher court, President of Supreme Court of Serbia and the Minister in charge of judiciary.

The High Judicial Council shall conduct the procedure and decide on the matter.

A caution nor a measure of removal from the court may not be pronounced to a lay judge.

Remuneration and Reward to Lay Judges

Article 77

A lay judge shall be entitled to compensation of duty-related expenses, compensation of lost income and right to a reward.

The conditions and the amount of compensation and reward shall be set by the High Judicial Council.

According Application of the Provisions on Judges

Article 78

The provisions on judges shall accordingly be applied to lay judges.

Chapter Eight

TRANSITIONAL AND FINAL PROVISIONS

I. TRANSITIONAL PROVISIONS

Continuation of Performance of Judge's Function

Article 79

The judges elected on the basis of the Law on Courts ("Official Gazette" of the Republic of Serbia" No. 46/91, 60/91, 18/92 and 71/92) shall continue to perform the function to which elected or assigned pursuant to the Law on Courts.

Election of Judges to the Court of Appeal and Administrative Court

Article 80

A decision on the number of judges and lay judges for the Court of Appeal and judges for the Administrative Court shall be reached by 1 June 2006.

The president and judges of the Court of Appeals and Administrative Court shall be elected by 31 December 2006, in accordance with the previous order of judges pursuant to Article 11, paragraph 2.

**Base Salary for District Court Judges Prior to Commencement of the Work of
the Court of Appeal
Article 81**

Deleted

II. FINAL PROVISION

**Entry into Force
Article 82**

This Law shall enter into force on the day of publication in the “Official gazette of the Republic of Serbia”.

Article 15

Procedures for determination of grounds for dismissal and attaining years of service that have commenced before the High personnel Council shall be continued in accordance with this Law, unless concluded prior to coming into force of this Law.

The duty of president of a court to which a court president was elected pursuant to the Amending Law to the Law on Judges (“Official Gazette of the RS”, no. 27/2003) shall cease.

Article 16

Powers of presidents of appellate courts in respect of presidents and judges of municipal courts shall be exercised by presidents of district courts until election of presidents of appellate courts.

Powers of presidents of appellate courts in respect of presidents and judges of district courts shall be exercised by president of the Supreme Court of until election of presidents of appellate courts.

Article 17

The Supervisory Board shall commence work within 30 days of coming into force of this Law.