

LAW ON THE AMENDMENTS TO THE LAW ON JUDGES

Article 1

In the Law on Judges (“Official Gazette of the RS” nos. 116/08, 58/09 – decision by the Constitutional Court, 104/09, 101/10 and 8/12 – decision by the Constitutional Court 121/12 and 124/12 – decision by the Constitutional Court) Article 6, paragraphs 2 to 4 shall be amended to read as follows:

“If the Republic of Serbia, based on the final court decision, or settlement concluded before the court or other competent authority, has paid damages referred to in paragraph 1 of this Article, it can demand from the judge reimbursement of the paid amount if the damage was caused with intention.

If by the decision of the Constitutional Court, the European Court of Human Rights or other international court it has been ascertained that human rights and fundamental freedoms were violated in the course of a court proceedings and that the judgment has been based on such violation, or that judgment was omitted due to violation of the right to trial within a reasonable time, the Republic of Serbia may request that a judge reimburse the paid amount, if damage was caused with intention.

Upon request by the Minister in charge of the judiciary, the Public Attorney of the Republic of Serbia shall initiate civil proceedings before the competent court for reimbursement of the paid amount referred to in paragraphs 2 and 3 herein, upon previously obtained opinion by the High Judicial Council. The High Judicial Council shall give its opinion within 30 days.”

Article 2

Article 7 shall be amended to read as follows:

“Article 7

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

The right of professional association shall also imply participation in the professional association activities during the working hours, if by doing so the court operations are not disturbed.”

Article 3

In Article 10, paragraph 3, the words “the Higher Misdemeanor Court” shall be replaced by the following words “the Appellate Misdemeanor Court”.

Article 4

The words “and Abolishing of Courts” in the title Section 2 above Article 13 shall be deleted.

Paragraphs 2 and 3 in Article 13 shall be deleted.

Article 5

In Article 18, paragraph 1, after the word: “elected”, a coma and the following words shall be added: “except in cases which have been prescribed herein”.

Paragraph 4 shall be deleted.

Article 6

In Article 19, paragraph 1, after the words: “his/her” the following word shall be added: “written”, and after the word: “same” the following words shall be added: “or lower”.

After paragraph 1, paragraphs 2 to 4 shall be added and shall read as follows:

“Notwithstanding paragraph 1 herein, a judge may be transferred without his/her written consent to another court in case of abolishing or substantially changing the jurisdiction of the court to which he/she is elected.

The jurisdiction of the court is substantially changed when due to the change of actual competences, founding of a new court or territorial jurisdiction where the court performs its jurisdiction the required number of judges has changed.

In case of paragraph 2 herein, a judge may be transferred only to a court of the same instance which is assuming the jurisdiction of the court which ceased to operate or which jurisdiction has been substantially changed based on the criteria proscribed by the High Judicial Council.”

The previous paragraphs 2 and 3 have become paragraphs 5 and 6.

Article 7

In Article 20, after paragraph 4, paragraph 5 shall be added and shall read as follows:

“Prior to bringing the decision on transfer of a judge referred to in paragraphs 1 to 3 herein, the High Judicial Council shall obtain opinion of the session of all judges of the court of origin of the judge and the court of his/her destination.

Article 8

Article 25 shall be amended to read as follows:

“Article 25

Derogation from the order of case intake is possible in situations provided by the law, as well as in cases of excessive workload or 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 if due to his/her prolonged absence it is required to act in the case that is urgent in accordance with the law or in accordance with its substance; or if efficient court operation is endangered or if he/she was issued a final disciplinary sanction due to a disciplinary offence for unjustified procrastination, and other situations provided by the law.

Another judge shall be assigned with the taken cases referred to in paragraph 2 herein in accordance with the Court Rules of Proceedings.”

Article 9

In Article 29, after paragraph 1, a new paragraph shall be added and shall read as follows:

“The complaint shall be served to a person it relates to, who may give his/her opinion within 3 days from the day of the service.”

In the former paragraph 2, which shall become paragraph 3, after the word: “decision” the following words shall be added: “the judge who has lodged the complaint”.¹

Article 10

In Article 30, paragraph 1 the words: “or advice” shall be replaced by the following words: “or provide legal advice”.

After paragraph 6, a new paragraph 7 shall be added and shall read as follows:

“Upon approval by the president of the court, a judge may during the working hours participate in activities of professional bodies formed in accordance with special regulations, as well as in working groups for drafting laws and other acts.”

¹ The word order in the Serbian sentence differs from the word order in the English one, thus the added words will not necessarily follow the mentioned word “decision“.

The former paragraph 7 shall now become paragraph 8.

Article 11

The title of Article 33 and the whole Article shall be amended to read as follows:

“BODIES COMPETENT FOR EVALUATION

ARTICLE 33

Commissions of the High Judicial Council shall evaluate the performance of judges and the presidents of the courts.

Commissions shall be composed of three members, where the judges of higher instance courts evaluate the work of judges and court presidents of lower instance courts.

Commissions composed of three judges appointed by the High Judicial Council from among the judges of the Supreme Court of Cassation shall decide on the complaints on evaluation.

An administrative dispute may be instituted against the decision of the Commission referred to paragraph 3 herein.

Composition and mode of operation of the Commissions referred to in paragraph 1 herein shall be regulated by an act of the High Judicial Council.”

Article 12

Article 34 shall be deleted.

Article 13

In Article 36, paragraph 5 is deleted.

Article 14

In Article 37, after paragraph 6, a paragraph 7 shall be added and shall read as follows:
“A judge may not besides a salary, receive a pension he/she is entitled to pursuant to special regulations”.

Article 15

In Article 38, paragraph 4, the words: “Higher Misdemeanor” shall be replaced by the following words: “Appellate Misdemeanor”.

Article 16

In Article 42, after paragraph 4, paragraphs 5 and 6 are added and shall be read as follows:

“Judges from the courts on the level of the Republic of Serbia and the Appellate Courts shall have the right to receive a separation allowance.

The High Judicial Council shall determine the right to allowance referred to in paragraph 5 herein”.

Article 17

In Article 44, indent 3, the words: “Higher Misdemeanor” shall be replaced by the following words: “Appellate Misdemeanor”.

Article 18

In Article 50, paragraph 3, the word: “may” shall be replaced by the word: “shall”.

Paragraph 4 shall be amended to read as follows:

“The High Judicial Council shall nominate to the National Assembly one or more candidates for each judge's position. The High Judicial Council shall, when proposing candidates for judges of misdemeanor or basic courts, nominate a candidate who has completed the initial training in the Judicial Academy, in accordance with the special law.”

In paragraph 5, after the word: “explained”, the following words shall be added: “and posted on the web page of the High Judicial Council”.

Article 19

In Article 59 paragraphs 2 and 3 shall be deleted.

Article 20

In Article 61, after the words: “office” a coma and the following words shall be added and shall read as follows: “in accordance with explained decision of the High Judicial Council”.

Article 21

In Article 64, paragraph 2 shall be amended to read as follows:

“The High Judiciary Council shall, ex officio or upon a proposal by the president of the court, president of the immediately higher court, president of the Supreme Court of Cassation,

bodies responsible for judges' performance evaluation, and the Disciplinary Committee, institute a procedure for dismissal of a judge.”

After paragraph 3, a new paragraph 4 shall be added and shall read as follows:

“A president of the first instance court wherein the criminal proceedings were conducted against a judge shall be obliged to, with no delay, submit the final judgment on conviction to the High Judicial Council.”

Article 22

Article 69 shall be amended to read as follows:

“Article 69

A judge who has been elected permanent judge in a court of the same or higher instance, skillful to manage and organize court work may be elected president judge of the court based on the criteria set by the High Judicial Council.”.

Article 23

In Article 70, paragraph 1, the words: “or more” shall be deleted.

Article 24

In Article 72, paragraph 1 shall be amended to read as follows:

“Article 72

The president of the court shall be elected for a five-year term and may not be reelected.

Article 25

In Article 73, paragraph 1 the words: “one year” shall be replaced by the words: “six months”.

Article 26

In Article 76, paragraph 2, after the word: “court” the following words shall be added: “initiated and”².

Article 27

In Article 79, after paragraph 1, a new paragraph 2 shall be added and shall read as follows:

“A candidate for the president of the Supreme Court of Cassation shall, along with the application, submit a program for the improvement of court operations in the Republic of Serbia which shall be posted on the web page of the High Judicial Council together with the data from curriculum vitae of the candidate.”

The former paragraphs 2 to 7 shall now become paragraphs 3 to 8.

Article 28

In Article 81, after paragraph 1, a new paragraph shall be added and shall read as follows:

“A lay judge cannot be a member of a political party or be politically active in any other way.”

The former paragraphs 2 and 3 shall now become paragraphs 3 and 4.

Article 29

In Article 86, paragraph 3 shall be amended to read as follows:

“The proceedings to establish the reasons for termination of the office of a lay judge shall be initiated upon proposal by the president of the court, president of the immediately higher court, president of the Supreme Court of Cassation, and Minister in charge of the judiciary.”

In paragraph 4, after the word: “proceedings” the following words shall be added: “initiated and” as well as a coma.³

Article 30

² The word order in the Serbian sentence differs from the word order in the English one, thus the added words will not necessarily follow the mentioned word.

³ *Id.*

In Article 90, paragraph 2, after the words: “case” the following words shall be added: “due to negligent work of a judge”.⁴

Article 31

In Article 91, after paragraph 3, a new paragraph 4 shall be added and shall read as follows:

“Disciplinary sanction of salary reduction of up to 50% and disciplinary sanction of prohibition of advancement for a period of up to three years may be imposed individually or jointly.”

Article 32

In Article 94, paragraph 4 the words “one year” shall be replaced with the words “two years”.

Article 33

In Article 98, after paragraph 3, a new paragraph 4 shall be added and shall read as follows:

“A judge against whom a disciplinary sanction has been imposed may initiate an administrative dispute.”

The former paragraph 4 shall now become paragraph 5.

Article 34

Judges of the Higher Misdemeanor Court shall continue working as judges of the Appellate Misdemeanor Court as of January 1, 2014.

Article 35

On the day this Law enters into force, Article 6 of the Law on the Amendments to the Law on Judges (“Official Gazette of the RS”, nos. 101/10 and 8/11 – decision by the Constitutional Court) shall cease to be effective.

Article 36

⁴ *Id.*

This Law shall come into force the day after its publication in the “Official Gazette of the Republic of Serbia”, and provisions of Article 3, 15 and 17 shall be effective as of January 1, 2014.