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COMMENTS

ON THE DRAFT LAWS ON THE ORGANISATION OF COURTS AND ON JUDGES OF THE REPUBLIC OF SERBIA

by

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INTRODUCTION

The New Constitution of the Republic of Serbia (the Constitution) was approved by decision of the National Assembly on 08 November, 2006 and adopted on 30 September. It was confirmed by referendum held on 28-29 October 2006. On 10 November, 2006 the National Assembly adopted the Law on the Implementation of the Constitution.

The Constitution regulates the principles being the guarantees of the independence of judges. There are as follow:

- The principle of the stability of judges, (Art. 146),
- The immunity of judges (Article 151),
- The principle of incompatibilities (Article 152),
- The principle of establishing courts only on the basis of the law, (Article 143),
- A ban on the creation of provisional courts, martial courts and special courts (Article 143),
- The role of the HJC (Art. 153-155).

This opinion is also based on the following fundamental documents:

- The International Covenant on Civil and Political Rights.
- The European Convention for the Protection of Human Rights and Fundamental Freedoms.
- the Basic Principles on the Independence of the Judiciary endorsed by the UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
- Recommendation R (94) 12 of the Committee of Ministers to Member States on independence, efficiency and role of judges.
- The European Charter on the Statute for Judges.
- Opinion No 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judge and the irremovability of judges
- OPINION No. 3 (2002) of the CCJE on the principles and rules governing judge's professional conduct, in particular ethics, incompatible behaviour and impartiality,
- The "*BANGALORE PRINCIPLES OF JUDICIAL CONDUCT*"
- The National Judicial Reform Strategy adopted in May 2006,

I also received copies of

- a letter from the Judges Association of Serbia dated 26 December 2007 to the Strategy Implementation Secretariat (concerning mainly the draft Law on High Court Council)
- Remarks and suggestions regarding the draft law on Judges and draft law on Organisation of Courts.

In April-May 2007 I was asked to provide comments on the then first draft of a working document named "Basic principles for package of Laws" concerning the judges and the prosecutors. Due to health problems I was unable to follow-up on this draft document.

When reading the draft Law on Judges (the draft Law) as submitted to me in February 2008, I realise that an admirable piece of work has been achieved.

I would like to stress that this draft law has taken into consideration the main principles ensuing from the fundamental documents listed above.

For ease of understanding the comments hereunder will follow the order of chapters of the draft law unless otherwise presented.

CHAPTER I - PRINCIPLES

1. (articles 1-10) The fundamental principles listed and detailed under this heading are: Independence, Tenure and Non-transferability, Participation in taking decisions of significance for the work of courts, Right to Advanced Professional Education and Training, Election and Termination of Office and Number of Judges and Lay Judges. Not all of these aspects fall generally under the concept of "general principles". For example, it is surprising to find in article 10 the number of judges of the Supreme Court of Cassation (SCC). This has very little to do with "principles". The principles that are listed here are indeed not criticisable and are welcome; they are globally compliant with European acquis.
2. Though, the following details are worth being given some consideration: article 2 could mention also International institution among places where a judge could work temporarily, be it international courts or other organisations Serbia is member of. Article 3 makes reference to the code of ethics to be issued by the High Court Council (HCC). This is a very important document and it is potentially controversial, like in some countries, mainly if it is not confirmed or ratified by a law. It is highly desirable that all judges, through their association(s) be consulted in order to facilitate adhering to it.

3. Second paragraph of article 7 sounds vague or unclear as it is about the "right to association" and no reference is made to the way judges may "undertake measures to protect and preserve their independence and autonomy". How far can they go with that concept? Does this mean that they can only act through the association? Some clarification is necessary here.

4. Similarly, article 8 needs to be further detailed; what is the mechanism of consultation and to what extend can judges give their views on these aspects. Does it make reference to article 41 of the (draft) law on organisation of courts which seems to limit the competence of the "session of all judges"? [1]

5. Article 9 states in a very ambitious way the principle of a "right" to advanced professional education and training. Yet there is a contradiction between two concepts namely the fact that the judges have a right and duty to be trained, and § 9 which says that training is voluntary (unless certain conditions make it mandatory). It would help to make training mandatory on a regular basis (for example at least once in two years, for example) so that no judge can shirk continuous education.

CHAPTER II - STATUS OF A JUDGE

PERMANENCY OF JUDGESHIP

6. This is actually the central part of the law; it details the various aspects of the status of judges namely: permanency of judgeship (with exception for persons elected for the first time where the mandate is limited to 3 years[2]), the non-transferability of a judge (irremovability principle), mutual independence of judges, relationship of judgeship to other functions, engagements and activities, performance evaluation and financial status.

[1] *The session of all judges takes under review the reports on the work of judges and the court, takes decision to initiate proceedings for assessment of constitutionality of law and legality of regulations and other general act, reviews application of regulations governing the issues under the purview of courts, gives opinion on candidates for judges and lay judges and decides on other issues if relevance for the whole court*.

[2] There is no indication in the draft law as to the fate of actual judges. As was mentioned by the Judges Association of Serbia, there is no transitional provision attached to the draft that was submitted to the experts.

7. It is my view that there is no conclusive reason to criticise the 3 years probation's period, based on international standards as a certain number of fairly described criteria have been set up (see notably articles 51 to 53 hereunder, specially article § 2, and also article 34 on performance evaluation period). To ensure that a person meets really all requirements before appointing him/her to a permanent position as a judge, is acceptable. Alternative systems exist in member states (e.g. France, the Netherlands) where a long and intensive training period exist combined with a certain number of performance evaluation mechanisms.

8. In article 12, the words "or approximately" are too vague and it is suggested to delete them. Courts simply are or are not of the same rank.

9. The principle of a possible suspension is undisputable for obvious reasons and the automatic or mandatory suspension foreseen in § 1 even more. However, there is no serious reason to restrain the fundamental right to a fair and transparent procedure unless there are serious reasons (that shall be duly stated in writing) to make an urgent decision. It seems that no special procedure is foreseen, other than the right for the judge to file an "a posteriori" complaint (article 16).

NON TRANSFERABILITY OF A JUDGE

10. The concept stated in article 17 is most welcome indeed and the exceptions to the principle are rightly restricted and described in a precise way with serious guarantees. Article 19 is positive and the interest of the well functioning of the justice system. Article 42 deals with the issue of salary i.e. the compensation for an increase of tasks or responsibilities.

11. Article 20 seems to be very restrictive: a judge can only be assigned to work at the High Court Council, the ministry with competence for the judiciary and the institution competent for judicial training. There is no reason why a judge should not be entitled to work – subject to certain conditions – in an other ministry or in international organisations. In such cases they would be seconded to the ministry or organisation or request a leave of absence. In such case, as in most European judicial systems, they should be entitled to return to their previous position once their assignment has come to an end.

MUTUAL INDEPENDENCE OF JUDGES

12. Articles 21 to 28 deal in a very detailed manner with the concept of mutual independence of judges and are assed as very progressive. Yet, it should be mentioned that the practical consequences of this principle might be better located in the law on judicial organisation or even in the codes of procedure (civil and criminal), mainly articles 22 - 27. The concept and its' implementation are fully compliant with recommendations by the CoE and the CEPEJ.

13. Article 22 is very interesting as this mechanism exists in a formal way only in a limited number of European countries (e.g. the Netherlands where norms are defined nation wide by the Council for the Judiciary "Hooge Raad", and where each court decides upon deliberation, the annual workload). The question now is how will this be implemented in practice? How will the decision be made? What will happen if an unforeseen increase in the number of cases arises?

14. Although being very detailed and apparently a bit stiff, article 27 can be assessed as very positive: it is a contribution to acceleration of judicial processes. However, it is difficult to implement in practice unless the judge has the power to accelerate the

procedure and issue orders (based on the code of civil procedure) without infringing the principles of neutrality and impartiality. Based on my own experience as well as the well-known situation of judicial activities throughout Europe, it is unlikely that the notification set up by article 27 will be able to contribute to an acceleration of cases. On the contrary, it might very well be that the time spent in reporting to the president of the court would be more usefully used to draft decision instead of wasting time with this kind of unnecessary administrative tasks. It should also be suggested here that judges be given the power to initiate ADR mechanisms such as mediation or conciliation, either handled by themselves (subject to adequate training) or, preferably, by a specialised organisation.

15. Article 28 covers all unforeseen occurrences of violation of any right attached to the judges' statute.

RELATIONSHIP OF JUDGESHIP TO OTHER FUNCTIONS, ENGAGEMENTS AND ACTIVITIES

16. Article 29 states the principle of incompatibility of the judges' position with a certain number of activities such as membership of political party, paid public or private work, compensated legal services or advice and other activities which – according to decisions to be taken by the HCC – are assessed as being contrary to the dignity and independence of a judge. Research and professional activities outside working hours do not require any prior authorisation. Due the restrictions set by §§ 1-3 it is yet unclear what type of so called "professional activity" remains possible. § 5 [3] sounds contradictory with other § of the same article and globally speaking; in order to avoid any misunderstanding, it is recommended to redraft it in a clearer way.

17. Last § of the same article is unjustified restrictive as there is no reason why a judge could not publish articles with a private owned publishing company, subject to the other restrictions imposed in the 6 first paragraphs.

18. Article 30 is ambiguous as "(a) judge is required to notify the High Court Council in writing of any engagement or work that may be deemed incompatible with judgeship". This means concretely, applying the principle of basic prudence, that judges will almost always notify their engagement or work because they may not know in advance what the position of the HCC could be.

PERFORMANCE EVALUATION OF JUDGES

19. Article 31 states the general principle of regular evaluation of all judges and court presidents (with exception of the president of the SCC). The procedure detailed in the following articles (32-35) is transparent, fair and based on predetermined and – to the possible extend – objective criteria. Indeed one may discuss the principle itself of a performance evaluation for judges. However, similar systems exist in the majority of European systems; it contributes definitely to improve the quality of the judicial service and is guaranteeing of professionalism of judges vis-à-vis the citizens. The mechanism that was chosen here doesn't raise any serious criticism once the principle of legitimacy of judges' evaluation is adopted. One should also bear in mind that an efficient Performance evaluation system must be based on the definition of clear goals to be reached by the subject. Therefore a precise procedure including interviews and exchange of documents should be carefully set up with the assistance of human resources management experts.

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

FINANCIAL STATUS OF A JUDGE

20. The main characteristics of the judges remuneration is the following: the salary (which is supposed to be commensurate to the position of the judge, to his/her seniority, experience and responsibilities) is determined pursuant to a base salary. Judges are classified into five pay categories which correspond to grades. Each grade is divided into two levels (except the fifth grade) which are expressed in coefficients. This is a very classical remuneration mechanism for civil servants and judicial staff and doesn't open the flour for serious criticism.

21. Two aspects of the financial status can raise discussion. One is the fact that the base for calculation and payment of salaries to judges is determined by the Government. This may question the principle of independence of the judiciary, although there is very little room (if at all) for differentiation or discrimination. There is no reason why the HCJ is not entrusted with this task like in countries were it has been transferred to similar institutions. The second aspect is the classification of judges depending on the court where they have been appointed to (article 37). This is open to criticism as there is no relevant reason to make a difference in terms of workload, professional experience and scope of competence between judges of magistrates courts and municipal courts, between commercial, district courts and the high magistrates court and the Appellate, High Commercial and the Administrative Courts. So the five categories could very well be reduced to three. This would have the advantage to show to both the judges and the public at large that justice is rendered by equally qualified judges at all courts and levels. Well performing judges should have an opportunity to stay at a court of whatever level without any negative financial consequence.

22. The generous disposition of art. 43 which foresee an increased salary up to 100% for judges adjudicating criminal cases in organised crime and war crime cases might be interpreted as an attempt to offer an excessive privilege to certain judges and, consequently, to reduce the perception the public has of their independence.

CHAPTER III - ELECTION OF A JUDGE

23. Compliant with article 143 of the Constitution[4], this chapter describes the requirements for applying to an employment as judge, the selection and election procedure of judges, the taking oath and office. It is very welcome that reference is made in art.47 (last §) to the law regulating the training institute[5]. One aspect is unclear, namely the question whether one person can apply to two or more positions or if the application is limited to one position. As the law is drafted I see no reason why multiple applications would not be possible.
24. Indeed, as already mentioned, the critical issue of reappointment/election of already appointed judges, remains and needs to be solved in a way that avoids any serious harm to the functioning of the judicial institution.

CHAPTER IV - TERMINATION OF OFFICE

[4] "*On proposal of the High Judicial Council, the National Assembly shall elect as a judge the person who is elected to the post of judge for the first time. Tenure of office of a judge who was elected to the post of judge shall last three years. In accordance with the Law, the High Judicial Council shall elect judges to the posts of permanent judges, in that or other court. In addition, the High Judicial Council shall decide on election of judges who hold the post of permanent judges to other or higher court.*"

[5] *Details of that law are not known by the expert. However, one could very well imagine that, as exist in some countries, the training institution be involved in the qualification assessment of candidate judges.*

25. According to article 58, judge's office ends upon the request of the judge, with retirement age, due to a permanent loss of working ability, if not elected to permanent function or in case of dismissal. The following dispositions describe in detail these different situations. Neither the cases of termination nor the procedure deserve any comment or criticism. § 2 of article 67 could however specify if the concerned judge is the only person entitled to present a statement or if an attorney or any other representative might do it as well.

CHAPTER V - PRESIDENT OF THE COURT

26. In order to determine if the election of presidents of courts is done in a fair way, as it seems at first reading of this chapter, a lot will depend on the way the "clear" managerial and organisational skills will be assessed. The assistance of psychologists and/or sociologist might be useful here and such assistance could be introduced into the procedure.
27. Article 71 is very progressive compared to the selection procedure in other European countries where consultation of the judges of the court is rare. Indeed the opinion of the session of all judges is not binding, nor does it need to be reasoned, but it constitutes certainly a very relevant argument leading the HCC to consider that a candidate is not suitable for the job.

28. Article 80, on the president of the SCC is remarkably progressive and democratic as it limits the term to five non-renewable years and the election follows the opinion of the general assembly of that court.

CHAPTER VI - SPECIAL PROVISIONS ON LAY JUDGES

29. These dispositions need no special comment as article 89, set aside the specific aspects of this position, makes reference to the general provisions that apply to judges[6]. It is however suggested to clarify the requirements, as article 82 is very vague in this regard when stating that the applicant has to be "worthy" of the function of a lay judge.

CHAPTER VII - DISCIPLINARY ACCOUNTABILITY

30. Article 91 defines very clearly, and even, maybe in a too precise and limitative way, the disciplinary offences and the severe disciplinary offences. Some judicial systems (e.g. France) do not define a priori, in such a precise manner, disciplinary offences. It is left to the soundness of the disciplinary institution whatsoever, to set up a case law defining it. Such a system brings a certain kind of legal uncertainty, but on the other hand it allows the judges' pairs to asses the behaviour of their colleagues in light of the social perception of judicial duty. The procedure meets usual standards of fairness and deserves no criticism.
31. Article 94 lists the various disciplinary bodies, including the "Disciplinary Prosecutor". Yet, there is no indication as to who is this Prosecutor, who (which organ points him/her). This is substantial and should definitely be clarified.

32. There seems to be a mistake in the formulation of article 95 § 3 which read: "*Disciplinary proceedings are urgent and closed to the public, unless the judge charged does not request that the proceedings be open to the public*". The word "not" should probably be deleted.

[6] As I am not fully aware of the tasks that can be confided to a lay judge, I do not feel comfortable enough to comment further.

Subject to the comments and suggestions hereabove, the draft law can be assessed as meeting European acquis and even being very close to best practice. Indeed a law is not sufficient in itself to set up an ideal judicial system. A lot depends indeed of the way it is implemented.

Although transitional measures are not specified in this draft law, a lot will also depend on the way the concerns of actual judges are addressed, namely the nagging question of their reappointment or election. Set aside legal and constitutional aspects of this question, it is essential that the judicial system keeps its judges who do not deserve to be dismissed for serious reasons. In this way, the citizens, and the international community, will definitely gain an increased trust vis-à-vis the country's justice system.

DRAFT LAW ON ORGANISATION OF COURTS

I - General principles

1. This chapter is of an introductory nature and lists a certain number of very general but nevertheless fundamental principles, such as judicial power vested with the courts, establishment and suppression of courts by law only, independence of the judiciary (separation of powers), judicial competence and the principle of unlawful refusal to act.

2. It also stresses other principles taken over from international instruments such as prohibition of influence on courts, publicity of hearings. Here, one may regret that even more important norms such as fairness of trial, and more generally, principles deriving from article 6 of the ECHR are not mentioned. As an introductory chapter meant at reminding of a certain number of fundamental concepts, which are detailed in the following parts of the law, it had been worth mentioning them. For example, the right to trial in a reasonable time [7] could have been mentioned here.

3. In article 1, the concept of "generally accepted rules of international law and ratified international agreements" sounds a little bit strange. It should more clearly be made reference to international instruments and even to the supremacy of those on national laws and regulations in the case of conflicts.

4. Article 2 states that temporary courts and other types of exceptional courts may not be established. This provision is most welcome; it is the reproduction of article 143 of the Constitution. However, a new law can be passed and decide to make an exception to this principle; it is therefore advisable to confirm it by mentioning a prohibition in the constitution.

5. The prohibition of selection of judges by the concerned parties is stated in article 4 (1st sentence) and how the selection of judges is to be implemented from a practical viewpoint is explained in article 5 (2nd sentence) but the rules of repartition i.e. how cases are distributed among departments or benches of a court needs to be described in a regulation.

6. Prohibition of influence on courts does not seem to be sanctioned by any law although it might be considered a crime. The way in which article 6 § 1 is drafted may be interpreted as an excessive limitation of the freedom of media. A more precise description of what can be considered an attempt to influence courts should be considered.

7. The right to complain against the work of the court in cases where proceedings are considered dilatory, irregular or where decision have been made under influence is mentioned in article 8 and the procedure is detailed in article 56 (complaints procedure) : it can be filed either with the court president or "through" the ministry of justice. The law remains unclear however as to the power of the president, the minister, the president of the higher court or the high court. In addition, there seems to be a risk of interference into judicial activities if, as it seems, the minister is entitled to take action. Clarification is necessary here.

8. The dispositions concerning legal assistance between courts, and between courts and government authorities and organisations needs to be more precisely defined. The context (preconditions) in which these provisions apply needs to be further elaborated. Otherwise, there might be a risk of misuse of such dispositions. The limits (privacy, state security e.g.)

[7] See § 28 hereafter.

should be clearly drawn. It can be suggested, for example, to submit requests for "legal assistance" to a bench of judges from the same court or from a higher instance entrusted with the decision to authorise transmission of files and/or other information.

9. Article 10 (symbols of State Authority) doesn't call for comments. Maybe the universal symbol of Justice (the scales) could be visible as well.

II - EXTERNAL ORGANISATION OF COURTS

10. The structure of the court system of Serbia, as described in articles 11 to 15 is very common in European judicial systems. The choice has been made by the Republic of Serbia to have a single judicial power on the whole territory (article 11). Some European countries, based notably on the French example decided to have two, more or less separate, judicial bodies, a so called two-tier system: one for general jurisdiction (civil, criminal, commercial, labour, social) and one specialised in administrative law (administrative courts and "*Conseil d'Etat"*). A "conflict court" needs to be set up in this system as it is sometimes unclear if a case pertains to one or the other body. From a historical viewpoint, this strict separation is based on the concept of separation of powers. However, the general tendency is now to eliminate or reduce the distinction between the two judicial systems and the choice made by the Republic of Serbia can not be seriously criticised as there is no reason to believe that the principle of separation of powers might be at stake.

11. The system has a pyramidal structure with a Supreme Court of Cassation at its top. From article 12 one can understand that it has overall jurisdiction on all lower level courts (High Commercial Court, the High Magistrates Court, the Administrative Court, Appellate courts). The Supreme Court of Cassation's jurisdiction is described at article 30[8]. At article 13, the header "other *Republican* Level courts" is somehow strange as one may believe that all courts are "Republican"! [9]. One can understand that what is meant here is that the High Commercial Court, the High Magistrates Court and the Administrative Court have jurisdiction Republic wide; but on the other hand, the territorial competence of the four Appellate courts is limited to their specific area. A strong reservation can be raised towards the fact that there will be only one administrative court for the whole country. From the experience taken from most European countries, litigation between citizens and public administration is increasing tremendously during the last decades. It would be wise to establish a two level system with four or five regional administrative courts and one administrative court of appeal. I share the comment and opinion expressed by the Judges' Association of Serbia in this respect.

12. Article 14 gives details as to the territorial jurisdiction of the various courts. Yet, it is not said how the courts will be established when several areas (municipalities) are concerned. It should be stated by which type of normative instrument the said courts will be established.

13. Article 15 explains how the various courts are linked to each other in the aforementioned pyramidal system. This system may lead to an exaggerate number of remedies in some cases and, consequently, on an abnormal duration. For example, cases dealt with by a municipal court may be appealed at a district court and further at an appellate court not

[8] See comments hereafter at § 18.

[9] During the meeting, the MoJ's representative explained that this article has already been modified. However, the new version was not submitted to the WG.

even mentioning the Supreme Court of Cassation. There seems to be a limitation to cases limitedly listed in a law or questions of internal court organisation.

TERRITORIAL JURISDICTION AND PERMANENCY OF COURTS

14. The goal of the dispositions detailed in articles 16 to 21 are a very positive contribution to ensure an easy access to justice for the citizens as they should be as close as possible to them. This is the reason why court sessions may be held outside usual court premises subject to a specific law. In this respect, article 17 is drafted in a way that may lead to some confusion: does it mean that a municipal court may, on its own decision, hold court days outside its seat. Clarification is needed here.

15. Article 20 states that "actions that do not tolerate postponement also during non-working days". This is an excellent provision, which exists in almost all judicial system, one way or another. However, it is preferable in my opinion to have the law – instead of the Court Rules – deciding clearly what kind of actions can be undertaken during non-working days.

16. Concerning article 21, which imposes to judges and to staff to notify respectively the president or their superior of the reasons preventing them to work within 24 hours, this disposition should be included in judges or staff regulations rather than in a law of a more general nature.

III - JURISDICTION OF COURTS

17. Articles 22 to 31 establish the list of competences "ratione materiae" of the various courts. This raises the question whether these are the only legal dispositions dealing with this matter or if other laws or codes (civil or criminal procedure notably) give more detailed explanation. If there are no other normative texts, it is desirable to elaborate a bit more in order to clarify the respective judicial competences. In this respect, the last sentence of article 22 " *It may be provided by law that only certain municipal courts from the territory of the same district court act in particular legal matters"* is surprising and contrary to general principles stated under article 1, 4 and 14 of this law. There is no obvious reason for such a derogation that might lead to abuses.

18. The role of the Supreme Court of Cassation is described in articles 30 and 31. These articles are amazingly short and do not give substantial indications as to the precise jurisdiction of it. The concept of "extraordinary legal remedies" is extremely vague and if not detailed further in the law, may lead either to an excessive limitation of cases able to be submitted to the court, or, more probably, to an overflow of cases until the jurisprudence of the SCC brings clarification. It could for example be stated that remedies are limited to case of obvious misinterpretation/violation of the law, or miscarriage of justice e.g. Further article 31 says "The Supreme Court of Cassation determines general legal views in order to ensure uniform application of law by courts". It should be made clear that the SCC issues legal views only in the framework of a specific case; otherwise this would be in contradiction with the principle of separation of powers as a court can not make any decision outside its jurisdiction. The same comment shall apply to this sentence: "reviews application of law and other regulations and the work of courts".

IV - INTERNAL ORGANISATION OF COURTS

19. The annual calendar of tasks, i.e. the court hearings' schedule is prepared apparently in a very democratic way. However, it seems desirable to have it more service oriented and for example foresee to consult with the prosecutor's office as well as with the Bar association as they may have relevant suggestions.

20. Concerning the court departments and session of all judges (articles 35-41) one can very well understand the relevancy of such institutions whose objective is to issue coherent jurisprudences and consistent decisions. It should however be clarified if the system applies to the handling of single cases (lawsuits) or if the sessions, for example the joint session of departments (art.40) or the session of all judges (art. 41) are of a general nature and are supposed to make recommendations or binding decisions. If the latest applies, this might be considered contrary to the independence of judges.

21. The same comment can be made concerning the functioning of the Supreme Court of Cassation: it is unclear if sessions of departments (art.43) or the general session (article 44) may have a say in a specific case or if they issue opinions "a posteriori". To what extend are the opinions issued by these institutions binding for judges of the SCC and for judges of lower level courts.

22. The supervising tasks of the president of a court (art. 52) or even more concerning the president of a higher court (article 55 and 56) raises a serious issue, namely the potential infringement of judicial independence and the interference in judicial activities. One can very well understand that a certain way of overall supervision is necessary as there might occur malfunctioning in courts like in any other organisation. However, here the role of the president is described in a very vague way so that one may fear undue interferences. For example, to state that “The court president is required to demand legality, order and accuracy in the court, eliminate irregularities and procrastination in work" may well lead to such unacceptable situations. Although article 74 seems to put a limitation to this power by providing a possibility of annulment of an act of judicial administration that interferes with autonomy and independence of the court and judges, it is advisable to put clear limitation to the power of a court president and even more, to the power of a president of a higher level court.

V - COURT STAFF

23. Articles 58 to 71 do not call for specific comments other than the fact that in order to introduce modern managerial practices, it is suggested to introduce an institution like a regular (for example twice a year) meeting of staff, by category or in general, so that they have an opportunity to express their views on the administrative functioning of the court. The role and tasks of the court advisors (articles 61 – 62) needs to be clarified in particular as to their authority over staff and the possibility and extend to which a court president may delegate administrative tasks.

VI - JUDICIAL ADMINISTRATION

24. The aim of article 72 is to list tasks and responsibilities with respect to judicial administration entrusted respectively to the High Court Council on one hand and to the ministry with competence for the judiciary on the other hand. Regarding the later, most of the tasks, which are of logistical nature, do not call for specific comments. Though, the words "developing the judicial system" and "oversight of action in cases within statutory timeframes and on complaints and grievances" are vague and ambiguous and call for clarification or elaboration.

25. Concerning Personal Records it is advisable to specify that judges or court employees may have access to the data and a right to seek deletions of improper information or adjunction of omitted relevant information.

VII - COURT SECURITY

26. Court security is an important issue in all judicial systems. As it may interfere with court activities, it should be specified that court guards act under the authority of the court president or, by delegation given by the president, or the judge in charge of court administrative businesses. It is certainly advisable to create a specific “judicial police” force under the overall authority of the judicial power (HJC).

VIII - FUNDS FOR THE WORK OF THE COURTS

27. The "basic provision" stated in this chapter are welcome in principle, depending indeed on the practical implementation. Judicial budget issues deserve a separate set of rules and regulations that should be drafted in close cooperation with the various concerned actors, bearing in mind both the requirements based on the principle of judicial independence and on the availability of financial means in the general budget.

IX - THE RIGHT TO TRIAL IN REASONABLE TIME

28. The title of this chapter and the location of it in this law are amazing. Reference is made here to one of the main aspects of article 6 of the ECHR and one would expect to have a declaration of this principle as a reminder somewhere at the beginning (preamble) of the law. The mention of the need to close a case within two years makes no sense as this term might be definitely too long in certain matters, and reasonable in others. Finally, and mainly, the solution which is recommended here, namely the appointment of a retired judge is certainly not the only way to deal with such a problem. It is therefore recommended to state that the right to trial in reasonable time is fundamental, and consequently to authorise the court president to use all appropriate measures (with conditions and limitations set out by law) in order to solve it to the interest of justice and of the citizen.

X - TRANSITIONAL AND FINAL PROVISIONS

29. It is obvious that the transition period will be difficult, of course for judges and court staff, but mainly for the parties involved in lawsuits. Therefore, all appropriate measures should be taken to manage it the smoothest way. It would be advisable to set up a kind of "transition management" panel who could be entrusted with solving in a speedy way and with judicial guarantees, all problems that will certainly arise during that period.