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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT CRITERIA AND STANDARDS  
FOR THE ELECTION OF JUDGES  
AND COURT PRESIDENTS  
OF SERBIA**

Pursuant to Article 45, paragraph 6 and Article 69 of the Law on Judges (*Official Gazette of the Republic of Serbia*, No 116/2008) and Article 59, paragraph 1 of the Law on High Judicial Council (*Official Gazette of the Republic of Serbia*, No 116/2008), the High Judicial Council pronounces

## **CRITERIA AND STANDARDS FOR ELECTION OF JUDGES AND COURT PRESIDENTS**

### **§ 1.**

1/1. Judges and court presidents, beside meeting all requirements for employment within state institutions, holding a Bachelor of Law degree, passing the Bar Exam and working experience following the Exam, must also satisfy election requirements in terms of qualification, competence and worthiness.

1/2. Qualification implies theoretical and practical knowledge necessary for performing the judicial function.

1/3. Competence implies skills which enable efficient application of specific legal knowledge in solving judicial cases.

1/4. Worthiness implies ethic qualities a judge should possess and behaviour in accordance with those qualities.

### **§ 2.**

2/1. This sub legal act denotes criteria and standards for:

1) first election of a judge with a three-year mandate; 2) election for permanent function of judges who were elected upon previous regulations (hereinafter: already appointed judges); 3) election of judges for permanent function following expiration of a three-year mandate; 4) election in advancement; 5) election of court president.

## **I The first election of a judge with a three-year mandate**

### **§ 3.**

3/1. The first election of a judge with a three-year mandate includes first-time candidates for performing a judicial function.

## **1. Qualification**

### **§ 4.**

4/1. Theoretical knowledge is evaluated and assorted depending on following standards:

1) grade point average during studies;  
2) duration and conditions of studies;  
3) academic and expert titles;  
4) published scientific and professional papers;  
5) other circumstances influencing the level of knowledge necessary for performing a judicial function.

4/2. Candidate's practical knowledge is evaluated and assorted depending on a state after passing the Bar exam.

4/3. Judicial assistants are assorted depending of evaluation of their performance (scope, quality, conscientiousness, initiative and published academic and professional papers).

4/4. Other candidates are evaluated and assorted on the basis of reports by the bodies, organizations, Bar Associations and principals they have performed practical work with.

## **§ 5.**

5/1. Qualification of magistrates who apply for position at magistrate courts of the same degree is evaluated on the basis of their theoretical and practical knowledge.

5/2. Standards for evaluating a magistrate's theoretical knowledge are:

- 1) academic and other titles;
- 2) published expertise;
- 3) participation in specialization programs;
- 4) participation in working groups for compilation of regulations;
- 5) participation in training programs organized by the Judicial Training center, courts and other organizations for expert education and specialization for judges and other experts;
- 6) grades obtained at university;
- 7) duration of study.

5/3. Standards of magistrates' practical knowledge are:

- 1) a number and type of working cases;
- 2) a number of relevant solved cases and cases solved by other manners;
- 3) a number of legally-binding completed cases without declared legal remedy;
- 4) a number of declared legal remedies;
- 5) a number of confirmed, reworked and repealed decisions in relation to:
  - a number of decisions based on legal remedies;
  - a number of relevant solved cases;
- 6) duration of process – duration of decision-making;
  - 7) a percentage of fulfillment of orientation standard and ratio of accuracy;
- 8) a number of cases with obsolete conduction of proceeding, which can be ascribed to a candidate's obvious omissions;
- 9) a number of complex cases;
- 10) duration of judicial working experience in a magistrate body or judicial bodies.

## **2) Competence**

### **§ 6.**

6/1. Competence is established based on skills for performing judicial function, such as: knowledge, expertise, practice, skillfulness and every other capacity to efficiently and operatively apply legal knowledge in solving court cases.

6/2. Competence is conditioned with: good knowledge of material and proceedings codes, awareness of necessity to examine cases, skillfulness, identification in establishing relevant facts, capacity for analytic and synthetic opinion, judging based on own reason, clear expression, exemplary literacy, diligence, self-control, sense for cooperation with colleagues and cultured behavior.

6/3. Competence for performing judicial function is evaluated on the basis of performance of judicial assistants and opinions of judges the candidates have fulfilled practical training with.

6/4. Competence for performing judicial function of a barrister or barrister apprentice is evaluated on the basis of the value of his/her performance and Bar Association's opinion, or principal's opinion.

6/5. Competence for performing judicial function of other candidates is evaluated on the basis of interviews, while other methods can also be applied (test, interview and other psycho-social techniques). Before announcing election of any judges, the High Judicial Council will decide whether it will use abovementioned methods.

6/6. Competence of magistrates who are candidates for judges at the magistrate court of the same degree is evaluated on the basis of value of working performance and opinions of judges' board, principal of the body and board of all judges.

### **3) Worthiness**

#### **§ 7.**

7/1. Ethic qualities which make a judge worth the function are: honesty, conscientiousness, equity, dignity, persistence and exemplarity.

7/2. Honesty implies: ethic correctness, respectability, truthfulness, fairness, goodness, incorruptibleness and other positive personal qualities.

7/3. Conscientiousness implies: professional responsibility, assiduity, diligence, adherence to the professional rules, accuracy and refusal of anything that can jeopardize honorable performance of judicial profession.

7/4. Equity implies equal treatment in equal affairs, unequal treatment in unequal affairs proportional to their inequality and treatment of other as of oneself.

7/5. Dignity is acquired and preserved: with authority, decency, courage, behavior and speech culture, conducting appropriate to the courts and judicial function's reputation.

7/6. Persistence of a judge is reflected in his/her dedication to the law, justice and truth, as well as in belief in the rule of law and legal state.

7/7. Exemplarity of a judge is recognized by: restraining from any indecent act or act having such impression; restraining from any action causing suspicion, rising doubts, weakening confidence or in any other way undermine confidence in court; restraining from hate speech, indecent or blunt behavior, impolite treatment, expressing partiality or intolerance, vulgar expressions, indecent clothing and every other improper behavior.

#### **§ 8.**

8/1. Ethical conduct requires a reputation of the court and it is evaluated depending of: social responsibility for conducting judicial function, independence, impartiality, reliability and dignity of the judges, their responsibility for internal organization of the court and positive image of judicial system in public.

8/2. A court's reputation depends of knowledge, capacity, equity, efficiency, courage and honorable life of a judge.

8/3. Awareness of judges' social responsibility is sourced from their obligation to provide court's protection of rights and freedoms in a reasonable time period.

8/4. Independence of a judge is reflected in his/her freedom and capability to make impartial decisions, based on his/her own evaluation of facts and own understanding of

laws, without limits, influences, enticements, threats, pressures and interventions from anyone and for any reason.

8/5. Impartiality of judges is reflected in dedicating equal attention to adverse interests of parties and objective judging procedure without any ideological, political and other preconceptions or prejudices.

8/6. Judge equally fosters and defends reliability and dignity while performing judicial function and outside of it.

8/7. By taking the responsibility for internal organization of a court, a judge expresses readiness for the whole court, and not only him/her, perform its duties in accordance with laws, accurately and efficiently.

8/8. Judge contributes to a positive image of judiciary in public with his/her ethic qualities and behavior.

8/9. Dignity for performing judicial function of a candidate is evaluated on the basis of results of interviews, while other methods can also be applied (test, interview and other psycho-social techniques). Before announcing election of any judges, the High Judicial Council will decide whether it will use abovementioned methods.

8/10. Worthiness of judicial assistants is evaluated on the basis of opinions of judges they are disposed to.

8/11. Worthiness of barristers and barristers' apprentices is evaluated on the basis of Bar Association, or principals.

8/12. Worthiness of magistrates is evaluated on the basis of opinion of ministerial bodies in charge of justice functions, Boards of judges in which a magistrate has performed or performs his function, the principal of the body and chairperson of the Magistrate council.

## **II Election of already appointed judges for permanent function**

### **§ 9.**

9/1. It is presumed that an already appointed judge applying for the election to the court of a same type, or of a same level, fulfills criteria and standards mentioned in this sub-legal act.

9/2. This presumption can be overturned if there are reasons for doubt that a candidate fulfills criteria and standards noted in this sub-legal act, because he/she has shown incompetence, a lack of qualifications or unworthiness for performing judicial function.

9/3. It is considered that a candidate has not manifested a sufficient level of qualification if, in the past three years, he/she has had a number of revoked decisions significantly higher than the average in the court he/she works in.

9/4. It is considered that a candidate has not manifested a sufficient level of competence if, in the past three years, he/she has concluded less number of cases then required by the orientation norm, or if obsolescence of criminal proceedings can be ascribed to a candidate's obvious omission.

9/5. It is considered that a candidate is not worthy of a judicial function if his/her qualities, actions and decisions have undermined the court's reputation and confidence in judicial authority.

### **§ 10.**

10/1. Reasons for doubts in candidate's qualification and competence are formed depending of:

- 1) percentage of fulfillment of orientation norm;
- 2) number, type and complexity of cases in working process;
- 3) number of relevant solved cases and a number of cases solved by other methods;
- 4) number of cases solved and cases in which a legal remedy is declared;
- 5) number of legally-binding concluded cases without a legal remedy;
- 6) number of confirmed, revoked and reworked decisions by legal remedy;
- 7) number of open hearings before a higher court which can be ascribed to an omission of a original jurisdiction court;
- 8) number of cases in which a hearing is reopened and time period from conclusion to reopening of a new hearing;
- 9) ratio of accuracy;
- 10) time period for decision-makings;
- 11) modes for treating the old cases (number of received and number of solved old cases and in which deadlines);
- 12) number of obsolete cases in criminal proceedings which can be ascribed to a candidate's obvious omissions.

10/2. Reasons for doubt in worthiness of a candidate are formed on the basis of actions that are not in accordance with ethical qualities and ethical behavior of judges mentioned in §§ 7. and 8. of this sub legal act.

10/3. Data on existence of reasons for doubt from abovementioned article are collected by the High Judicial Council from the bodies of the ministry in charge of justice issues, from the Supervising board and High Personnel Council of the Supreme Court of Serbia, board of all judges in which an already appointed judge has performed judicial function, president of that court, as well as a president of immediate higher court.

## **III Election for a permanent function upon expiration of a three-year mandate**

### **§ 11.**

11/1. Following the expiration of a three-year mandate, a first-time elected judge is necessarily elected for a permanent function if graded with "exceptionally successful performance of judicial function" for the each year of that mandate.

11/2. Following the expiration of a three-year mandate, a first-time elected judge can not be elected for a permanent function if graded with "does not satisfy" for the each year of that mandate.

11/3. Following the expiration of a three-year mandate, a first-time elected judge can be elected for a permanent function:

- if graded with "exceptional performance of judicial function" and "successful performance of judicial function" during the mandate;
- if graded with "successful performance of judicial function" during each year of the mandate;
- if his/her grades have improved during the mandate each year.

11/4. Criteria, standards and proceedings for evaluation of judges' performances, which will be the basis for abovementioned grading procedure, will be established by a special act of the High Judicial Council.

#### **IV Promotion** **§ 12.**

12/1. Promotion implies election of a judge to the higher level court, no matter of the type of the court.

12/2. Standards of qualification and competence mentioned in paragraph 10/1. of this sub-legal act have a decisive impact on a choice for promotion, and reasons for doubt in qualification and competence of a candidate also depend on them.

12/3. During the evaluation of a candidate, additional standards are also taken into consideration, such as:

- 1) scientific and professional titles;
- 2) scientific and expertise papers published, as well as presentations at local and international expert meetings;
- 3) conduct in extremely difficult and complex cases;
- 4) certificate by organization dealing with judges' training and specialization;
- 5) acknowledgements by local and international professional organizations;
- 6) compilation of a program and lectures to trainees organized by the Judicial Training center, courts and other organizations dealing with professional education and specialization for judges, judges' assistants and judicial apprentices;
- 7) participation in trainings organized by the Judicial Training Center, courts and other organizations dealing with professional education and specialization for judges, judges' assistants and judicial apprentices;
- 8) knowledge and application of international standards and rules and procedures of the European Court of human rights;
- 9) membership in chosen or arbitrage court, as well as other forms of alternative solution of disputes;
- 10) membership in managing bodies of professional associations;
- 11) participation in working groups for compilation of rules and regulations;
- 12) computer skills and knowledge of foreign languages;
- 13) exceptional activities in improving and organization of court's performances in which he/she executes judicial function and shown capacity to transfer knowledge to judges' assistants and apprentices.

12/4. The High Judicial Council can form a separate working group to examine facts of importance to application of abovementioned standards.

12/5. The High Judicial Council also uses grades obtained from the councils evaluating judges' performances in the lower level courts.

12/6. Worthiness of a judge applying for promotion is implied, since it is equally necessary for function in every court.

12/7. Rules of promotion are applied also to magistrates, and judges at magistrate courts.

#### **V Election of president of the court** **§ 13.**

13/1. Judge of the same or higher level court can be elected president of the court.

13/2. President of the court, besides qualifications, competence and worthiness for performing judicial function, must also have a capacity to manage and organize activities of the court.

13/3. Capacity to manage and organize implies:

- 1) capacity to organize working activities in collective;
- 2) capacity for internal organization of court activities;
- 3) knowledge of court's administration working activities;
- 4) authority that a candidate enjoys among judges of the court he/she performs his/her function;

- 5) skills to manage human and technical resources;

- 6) capacity for successful communication with employees and interested parties;

- 7) cooperation with other institutions and bodies;

- 8) capacity to solve organizational problems and successful overcoming of crisis situation in court's working activities;

- 9) effective choice of collaborators and court's personnel;

- 10) improvement of court's working activities and introduction of innovations in works which facilitate and expedite working activities of the court;

- 11) dignity in representing the court;

- 12) pleading for preservation of court's and judges' reputation in public.

13/4. Standards of capacity to manage and organize are:

- 1) results of the court where a candidate has performed a managerial function;

- 2) duration of judicial experience and experience in managing function;

- 3) opinion of the Board of all judges of the court a candidate belongs to;

- 4) promotion in judicial function;

- 5) results of court's activities in terms of types and numbers of concluded cases as well as a realization of orientation norm;

- 6) results of court's working activities related to old cases, with application of international standards, especially the right to fair trial and trial of reasonable duration;

- 7) engagement in solving cases and a percentage of realization of orientation norm;

- 8) contribution to professional specialization of judges, judges' assistants and other employees, and application of new legal regulations;

- 9) additional standards mentioned in paragraph 12/3.

13/5. Before proposing a candidate for court's president, it is necessary to obtain the opinion of Board of judges of the court in which a candidate performs judicial function, Board of all judges of the court for which the president is proposed, as well as boards of all judges of an immediate higher court, while if a previous president is among the candidates, the evaluation of his mandate is taken into consideration.

13/6. Before proposing a candidate for the Supreme Court of Cassation, it is necessary to obtain an opinion on candidates from the General board of that court and the National Assembly committee in charge of judiciary.



13/7. The opinion is given in the form of positive or negative evaluation which must be explained.

## **VI Data sources, tables, questionnaires and modes for acquiring data**

### **§ 14.**

14/1. General sources of data for all candidates are:

- 1) personal and working biography;
- 2) personal record.

14/2. The High Judicial Council, during the evaluation of qualifications, competence and worthiness of candidates for judges and presidents of courts, obtains data from: Board of all judges of the court the candidate originates from, Boards of all judges of immediate higher court, presidents of these courts, Supervision board and High Personnel Council of the Supreme Court of Serbia and bodies of ministry in charge of judiciary.

14/3. Data and opinions on candidates who are not working in the court are obtained from bodies and an organization a candidate performs his functions.

14/4. Data and opinions on candidates from barrister practice are obtained from local Bar Association and Bar Association of Serbia, while it is also possible to obtain an opinion from a Board of all judges of the court a candidate has applied to.

14/5. Data and opinions on magistrates responding to advertisement for magistrate courts of the same level are given by the Board of all judges and principals, as well as the Board of magistrates.

14/6. High Judicial Council evaluates data on judges' performances based on statistic data comprised in table T2 – Report on judges' performances, as well as in table for AVP (ACC) Program for commercial and economic courts.

14/7. High Judicial Council evaluates data on president of the court's performances based on statistic data comprised in table T1 – Report on court's performances, and table T2 – Report on judges' performances, as well as in table for AVP (ACC) Program for commercial and economic courts.

14/8. Qualification and competence for performing judicial function will be established on the basis of the Rules of orientation standards to determine necessary number of judges and employees in local and district courts.

14/9. Standards for practical knowledge of magistrates applying to advertisement for magistrate courts of the same level are established for the past three years, based on the Rules of orientation standards to determine necessary number of judges and employees in local magistrate bodies and annual reports, with additional data mentioned in article § 5. of this sub-legal act.

14/10. Data on qualification, competence and worthiness of candidates for the first election to the judicial function, as well as for promotion, presidents of the courts, chairpersons of bodies and organizations, Bar Associations and other subjects will deliver to the High Judicial Council through questionnaires.