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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT AMENDMENTS
TO THE LAW
ON THE HIGH JUDICIAL COUNCIL
OF SERBIA

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WITH INSERTED DRAFT AMENDMENTS AND ADDITIONS FROM 2014

LAW ON HIGH JUDICIAL COUNCIL

I GENERAL PROVISIONS

Scope of the Law

Article 1

This Law shall govern the status, competence, organisation and manner of operation of the High Judicial Council (hereinafter "the Council"), requirements and the election procedure for Elected Council Members, term of office and termination of office thereof, and conditions and means for work of the Council.

1. STATUS OF THE COUNCIL

Independence and Autonomy

Article 2

The Council is an independent and autonomous body that ensures and guarantees independence and autonomy of courts and judges.

Within its remit the Council shall co-operate with the State Prosecutorial Council, state and other authorities and organisations, Court Councils from other countries, and international organisations.

Funds for Operations of the Council

Article 3

Funds for operations of the Council shall be secured from the Republic of Serbia budget upon proposal of the Council.

The Council shall dispose of the funds from paragraph 1 of this Article, independently and in accordance with law.

Seat and Symbols of the Council

Article 4

The seat of the Council shall be in Belgrade.

The Council shall have a stamp containing the name and the Coat of Arms of the Republic of Serbia, and the name and the seat of the body, in accordance with separate laws.

Composition of the Council

Article 5

The Council shall have eleven members.

Members of the Council shall include the President of the Supreme Court of Cassation, the Minister competent for the judiciary and a Chairperson of the competent Committee of the National Assembly, as members by virtue of office, and eight Elected Members elected by the National Assembly, in accordance with this Law.

Elected members comprise six judges with permanent tenure of office, of whom minimum one judge comes from the territory of autonomous provinces, and two credible and prominent jurists with minimum 15 years of professional experience, one of whom is a attorney and the other a Faculty of Law professor.

President and Deputy President of the Council

Article 6

President and Deputy President of the Council shall be elected and dismissed by a Council from the ranks of judges of the elective members of the Council, by a secret ballot, by majority vote of all members, in the manner stipulated by the Rules of procedure of the Council (hereinafter referred to as the Rules of procedure).

President of the Council represents the Council, manages its operations and performs other duties in accordance with a law.

Deputy President of the Council performs all duties of the President in the case of absence or incapacity of the president of the Council.

Deputy President

Article 7

DELETED

~~President of the Council~~

~~Article 6~~

~~President of the Supreme Court of Cassation is by virtue of office the President of the Council.~~

~~The President of the Council shall represent the Council, manage its operations and perform other duties in accordance with law.~~

~~Deputy President~~

~~Article 7~~

~~The Council has a Deputy President who is elected from among the ranks of judges— Elected members of the Council, by the Council and dismissed from office by the Council, —The Deputy Chairperson shall perform duties of the President in case of his/her absence or when prevented.~~

~~The manner of election of the Deputy President of the Council and the duration of the mandate thereof shall be specified by the High Judicial Council Rules of Procedure (hereinafter: Rules of Procedure).~~

Relationship with Other Authorities

Article 8

Courts and other state bodies, as well as judges and court presidents, are obliged to act upon the Council's requests for submitting information, documents and other material relating to the performance of tasks under the Council's remit.

2. STATUS OF MEMBERS

Immunity

Article 9

A Council Member shall enjoy immunity equal to that of a judge.

A Council Member shall not be held responsible for his / her opinion or voting in the Council.

A Council Member may not be deprived of his /her liberty in a proceeding instituted for a criminal offence committed in performance of duties of a Council Member without approval of the Council.

Suspension from office of Council member

Article 9a

~~Council member shall be mandatorily suspended from office when he/she has been detained in custody.~~

~~In addition to the Paragraph 1 of this Article, elected Council member shall be suspended from the office, due to the vote of no confidence, if his or her dismissal was proposed to the National Assembly, and an elected Council member from the ranks of judges will be suspended if he/she is removed from judicial office.~~

~~An elected Council member, in addition to the reasons specified in Para. 1 of this Article, shall be mandatorily suspended from office when a proposal for his/her dismissal from office of Council member has been submitted.~~

~~An elected Council member may be suspended from office when a proceeding for their dismissal from office of Council member has been initiated i.e. when criminal proceedings have been initiated for a criminal offence which is grounds for dismissal.~~

Decision on suspension and term of suspension of suspension

Article 9b

The decision on suspension from office of Council member is made by the president of the Council.

A Council member shall remain suspended from office until the release from custody, the end of suspension from judicial office, the end of the proceedings for the dismissal from the Council member office, or the end of the criminal proceedings for the criminal offence which may be ground for dismissal.

~~A Council member is suspended from office until the abolition of custody, the end of the proceedings for the dismissal from the Council member office or the end of the criminal proceedings for the criminal offence which may be grounds for dismissal.~~

Right to an objection

Article 9c

An elected Council member has the right to an objection to the decision on suspension on the basis of reasons prescribed in Article 9a Paragraph 3 of this law, within eight days from the day of service of the decision.

The Council decides on the objection from Paragraph 1 of this Article within eight days from the day of submitting of the objection.

The submitted objection does not detain enforcement of the decision from Paragraph 1 of this Article.”

Remuneration

Article 10

Elected Council Members from the ranks of judges, during performing the office in the Council, are entitled to the rights deriving from their employment with the Council.

Members of the Council from paragraph 1 of this Article are entitled to a salary in the amount determined by multiplying the coefficient 6,00 with the baseline for calculation and disbursement in accordance with the Law on Judges.

Members of the Council by virtue of office and members from the ranks of attorneys and Faculty of Law professors are entitled to a separate fee for the work in the Council, to be determined by the competent Committee of the National Assembly.

Incompatibility of Jobs

Article 11

Elected Council Members from the ranks of attorneys and/or Faculty of Law professors, after taking up office, may not perform duties in regulatory bodies, executive bodies, public services, and bodies of an autonomous province and local self-government units.

Elected Council Members from the ranks of judges are exempt from the performance of judge's duties during the time of performing their duty within the Council.

Term of Office of Members

Article 12

The term of office of Council Members is five years, save for the members by virtue of office.

Elected members of the Council may be re-elected, but not consecutively.

During the term in the Council a Judge-Member of the Council may not be elected judge of another court.

II COMPETENCE AND MANNER OF OPERATION OF THE COUNCIL

Competence

Article 13

The Council shall:

- elect judges to permanent judge's office
- rule on the termination of judges' office

- propose candidates to the National Assembly for the first judicial tenure-
- propose the election and dismissal of the President of the Supreme Court of Cassation and Court Presidents to the National Assembly
- propose candidates for the Constitutional Court Judges to the Supreme Court of Cassation;
- appoint lay judges;
- decide on the transfer, assignment, and objection to the suspension of judges;
- rule on incompatibility of other services and jobs with judge's office;
- rule in the process of the performance evaluation of a judge and president of the court;
- determine the composition, duration and the termination of the mandate of the members of disciplinary bodies, appoint the members of disciplinary bodies and regulate the manner of operation and decision making in disciplinary bodies;
- rule on legal remedies in disciplinary proceedings;
- approve the curriculum for continuous training of judges and court staff, and monitor the training programme implementation;
- defines curricula for the initial training of judges;
- pass the Code of Ethics
- determine the number of judges and lay judges for each court;
- perform affairs of the judicial administration within its remit;
- rule on issues of immunity of judges and Members of the Council;
- propose the volume and structure of budgetary funds necessary for the work of the courts for overhead expenses, and oversee disbursement of funds in accordance with law;
- rule on objections in the process of the election of Members of the Council from the ranks of judges;
- form its Working Bodies and permanent and *ad hoc* Commissions, and elect their Members;
- provide opinions on amendments to the existing laws or on the passing of new laws which set out the status of judges, organisation and functioning of the courts, as well as other systemic laws applied by courts or of importance for exercising judge's office;

- rule on the existence of conditions for compensation for damages due to unlawful and erroneous actions of a judge;
- submit annual reports on its work to the National Assembly;
- perform tasks in respect of the implementation of the National Strategy for the Reform of Judiciary within its remit;
- inform the public on its work;
- cooperate with Court Councils from other countries and with international organisations;
- pass acts provided for by law;

- perform other duties as specified by law.⁵

Manner of operation

Article 14

The Council sessions are open to public.

The Council may decide to work in a session closed to public, in accordance with the rules of procedure. The Council session is convened by the President on his own initiative or at the request of at least three members of the Council.

The Council may hold a session if at least six members of the Council are present.

Permanent working bodies

Article 15

The Council establishes permanent working bodies in specific areas within its jurisdiction.

The establishment, composition and manner of operation of the permanent working bodies shall be more closely regulated by rules of procedure.

Ad hoc working bodies

Article 16

The Council may establish *ad hoc* working bodies for consideration of specific issues within its competence and for giving proposals, opinions and expert explanations.

The decision of the establishment of *Ad hoc* working body shall determine the composition, duties for which this body is established, the time on which it is established, the time periods within it shall submit their reports on their work and other issues related to his work.

The operation mode of the *Ad hoc* working groups are more closely regulated by special acts of the bodies.

Manner of Operation

~~Article 14~~

~~The Council may decide to work in a public session, in accordance with the Rules of Procedure.~~

~~Council sessions shall be convened at the request of the Chairperson or upon the receipt of the motion of minimum three Council Members.~~

~~The Council may conduct the session if minimum six Council Members are present.~~

Permanent Working Bodies

~~Article 15~~

~~Permanent Working Bodies of the Council are: the Commission for Judges' and Court Presidents' Performance Evaluation, the Electoral Commission and Disciplinary Bodies.~~

~~— The composition and the manner of operation of the Bodies mentioned in paragraph 1 of this Article shall be regulated by act of the Council, in accordance with law.~~

Ad Hoc Working Bodies

~~Article 16~~

~~To address certain issues from its remit, the Council may establish *ad hoc* Working Bodies.~~

~~The forming, composition and the manner of operation of *ad hoc* Working Bodies shall be regulated in more detail under the Rules of Procedure.~~

Decision Making

Article 17

Decisions of the Council shall be passed by majority vote of all Members.

Decisions of the Council must be reasoned always, when a legal remedy may be filed against them, and when specified by law and the Rules of Procedures.

Rules of Procedure

Article 18

The Council shall pass the Rules of Procedure regulating in more detail the manner of operation and the decision making of the Council.

The Rules of Procedure and other general acts of the Council shall be published in the "Official Gazette of the Republic of Serbia" and on the website of the Council.

Transparency of Work

Article 19

The Council shall submit an annual Report on its work to the National Assembly.

Annual reports are published on the web site of the Council.

The Council shall inform the public regularly of its work in a manner set forth under the Rules of Procedure.

III PROCEDURE FOR ELECTION OF COUNCIL MEMBERS

1. GENERAL REQUIREMENTS

Authorised Nominators

Article 20

Elected Members of the Council shall be elected by the National Assembly at the motion of authorised nominators.

The Council shall be the authorised nominator for Elected Council Members from the ranks of judges.

The Council is obliged to propose to the National Assembly candidates who are directly elected by judges in a manner and in the procedure as provided under this Law. The authorised nominator for the Elected Member of the Council from the ranks of attorneys shall be the Serbian Bar Association.

Candidates for the Elected Member of the Council from the ranks of Faculty of Law professors shall be proposed by the joint session of Deans of law faculties in the Republic of Serbia.

Candidacy and Nomination

Article 21

The decision on the commencement of the procedure for the nomination of candidates for Elected members of the Council shall be passed by the President of the Council, not later than six months before the expiration of the term of office of the Elected Members of the Council.

The decision from paragraph 1 of this Article shall be published in the "Official Gazette of the Republic of Serbia" and on the web site of the Council.

The President of the Council shall submit the decision on the commencement of the procedure for the nomination of candidates for Elected Members of the Council to the President of the Electoral Commission of the Council, President of the Serbian Bar Association, and the Dean of the oldest Law Faculty in the Republic of Serbia.

Authorised nominators must submit the names of the candidates for the Elected Members of the Council to the National Assembly of the Republic of Serbia not later than 90 days before the expiration of the term of office of the Elected Members of the Council, and in the case of termination of office before the end of the mandate within 30 days from the day of termination of office.

2. Election of Candidates for the Council Members from the Ranks of Judges

a) General Provisions

Representation of Courts

Article 22

Elected Members of the Council from the ranks of judges shall be elected from the following courts:

- one from the Supreme Court of Cassation, the Commercial Appellate Court, and the Administrative Court;
- one from the appellate courts;
- one from the higher and commercial courts;
- two from the basic courts, misdemeanour courts and the ~~Misdemeanour Court~~ Misdemeanour Appellate Court ~~Higher Misdemeanour Court~~;
- one from the courts from the territory of Autonomous Provinces

Requirements for Candidacy

Article 23

A candidate for the Elected Member of the Council from the ranks of judges may be any judge with the permanent tenure of office.

A candidate status shall be acquired by a judge who is proposed by the session of all judges of one or several courts by type and instance of court, that is, the court from the territory of the autonomous provinces where s/he exercises judge's office, as well as by a judge who is supported by at least 20 judges from the type and instance of court, that is, the court from the territory of the autonomous provinces where s/he exercises judge's office.

~~The Session of all judges of one court may propose only one candidate, except the session of all judges from the court of the territory of autonomous provinces, which is entitled to propose, besides the candidate for Member of the Council from Article 22 Item 2 to 4 of this Law also candidate for Member of the Council from Article 22 Item 5 of this Law. On the Session of all judges, ballot on the proposed candidates is secret. The session of all judges of one court may propose only one candidate. On the session of all judges, ballot on the proposed candidates is secret.~~

By way of exception to paragraph 2 of this Article, no motion of the General Session, that is, the session of all judges is required for acquiring the candidate status for the Elected Member of the Council from the rank of judges from the Supreme Court of Cassation, the ~~Misdemeanour Appellate Court~~ Misdemeanour Appellate Court ~~Higher Misdemeanour Court~~, the Commercial Appellate Court and the Administrative Court, but the candidate status shall be acquired by application.

A Court President may not be a candidate for the election to the Council.

Electoral Right and Ballot list

Article 24

Judges shall elect candidates for the Council based on the free, general, equal and direct electoral right, by secret ballot.

No one has the right on any grounds whatsoever to prevent or force a judge to vote or to hold

him/her accountable for voting.

The right to elect candidates for the Council is vested in all judges, ~~with the permanent tenure of office.~~

Election commission establishes and prepares Ballot list for each polling station. Ballot lists shall be concluded 15 days before the election.

A judge may vote only for the candidate in the list of candidates of the type and/or instance of the court where s/he exercises judge's office.

~~A judge from the territory of autonomous provinces, in addition to candidate from the candidacy list mentioned in paragraph 5 of this Article, shall also vote for the candidate from list of the candidates for the courts from the territory of autonomous provinces. A judge from the territory of Autonomous Provinces, in addition to the candidacy list mentioned in paragraph 4 of this Article, shall also vote for the list of the candidates for the courts from the territory of Autonomous Provinces.~~

Electoral Commission

Article 25

The procedure for the nomination of candidates for Elected Members of the Council from the ranks of judges shall be organised and conducted by the Electoral Commission of the High Judicial Council (hereinafter "Electoral Commission").

The Electoral Commission comprises a Chairperson and four Members and their deputies, elected by the Council from the ranks of judges with permanent judge's office, with their consent.

Deputy Members of the Electoral Commission shall have the same rights and responsibilities as the Members for whom they deputize.

The Council Members may not concurrently be Electoral Commission Members and/or deputy Members.

The term of office of Members of the Electoral Commission is five years, with a possibility to be re-elected.

Members of the Electoral Commission may not run for Elected Members of the Council.

Status of the Electoral Commission

Article 26

The Electoral Commission shall be autonomous and independent in its work and shall operate on the basis of law and regulations enacted on the basis of law.

The Electoral Commission shall pass decisions by majority vote of all Members.

The Electoral Commission shall be accountable for its work to the Council which shall provide conditions for its functioning.

All courts are required to extend assistance to the Electoral Commission and provide

information necessary for its work.

Electoral Activities

Article 27

The Electoral Commission, on receiving the decision to commence the procedure for the nomination of candidates, shall pass a decision on electoral activities and timeframes.

The Chairperson of the Electoral Commission shall transmit to court presidents the decision to commence the procedure for nominating candidates and the decision on electoral activities and timeframes.

Court presidents are required to make available the decision to commence the nomination procedure and the decision on electoral activities and timeframes to all judges in their courts, in a proper manner.

b) Procedure

Candidacy Application

Article 28

A candidacy application form shall be submitted to the Electoral Commission within 15 days as of the date the decision to commence the nomination procedure for Elected Members of the Council is published in the "Official Gazette of the Republic of Serbia".

A signed statement of the candidate on accepting the candidacy, the decision of the session of all judges of the court or courts proposing the candidate, that is, form with signatures of judges who support the candidate, as well as personal and professional information on the candidate shall be enclosed in the candidacy application form.

Procedure following Application

Article 29

The Electoral Commission shall examine if the application is timely and complete.

The Electoral Commission shall reject any untimely application by a ruling.

The Electoral Commission shall, within 24 hours on receiving an incomplete application form, inform the candidate to complete the application within 48 hours upon receiving the said information, with a warning that otherwise the application will be rejected.

Final List of

Candidates Article 30

After expiry of the time limit under Article 28, paragraph 1, of this Law, the Electoral Commission shall establish the final list of candidates in the subsequent 8-day's period.

The Electoral Commission shall establish one final list of candidates for each instance and type of court, that is, from the courts from the territory of the Autonomous Provinces, whose judges are nominated for Elected Members of the Council from among judges, by virtue of the provision of Article 22, hereof.

The sequence of candidates in the lists shall be established based on the sequence of the

submission of candidacy application forms to the Electoral Commission.

Presentation of candidates

Article 30a

Beginning after seven days from the day of determination of candidate list, the Council is required to enable all applicants to the Council to present all information from his/her personal and professional life as well the positions on matters within the competence of the Council on web site of the Council

Time of Election and Polling Stations

Article 31

The Electoral Commission shall set the date and time of the election and notify all presidents of the courts ten days before the election day.

The court presidents shall send a public notification to all judges about the date and time of the election seven days before the election day, and also about the method of transportation to the polling stations which will be organized at the cost of the courts.~~day.~~

Voting for Elected Members from the ranks of judges shall be carried out in polling stations at the courts designated by the Electoral Commission, at Appellate courts.

Judges vote at a polling station in the appellate court in whose territory is a court in which they perform judicial function.

Judges of basic, higher and appellate courts vote at a polling station in the appellate court, in whose territory is set a court in which they perform judicial function.

Judges of the Supreme Court of Cassation vote in the Appellate Court in Belgrade.

Judges of misdemeanor courts vote in the department of the Misdemeanour Appellate Court in whose territory is set a misdemeanour court where they perform judicial function, and judges of the Misdemeanour Appellate Court in the seat of the Misdemeanour Appellate Court.

Judges of commercial courts vote in the Commercial Appeal Court.

Administrative court judges vote in the Administrative Court.-

Polling Boards and Voting

Material Article 32

The Electoral Commission shall prepare in due time the voting material for each polling station, consisting of the required number of ballots and the final list of candidates.

The Electoral Commission shall appoint polling boards for each polling station.

A polling board shall consist of three judges who are not running for election.

Manner of Voting

Article 33

On the voting day, the final list of candidates must be visibly displayed in all polling stations and in all courts by instance and type of court, that is, the courts from Autonomous Provinces electing a candidate in that particular list.

Each judge shall vote in person.

Ballot is secret.

Only stamped ballots shall be used for voting.

The polling board shall carry out the ballot in the premises of the court designated by the President of the Court in a timely manner.

Procedure after voting

Article 33a

Upon completion of the voting the polling board determines the number of unused ballots, determines the number of valid and invalid ballots and the number of votes that each candidate got on that polling place, the record will be made about all this information.

Ballot paper shall be considered as invalid if the ballot paper is unfilled, more than one candidate is rounded on ballot paper or the ballot paper is filled in that way that it can not be determined for which candidate was voted.

The polling board shall place in a special envelopes unused, invalid and valid ballots and together with the signed record of the voting results, and shall submit all of this to the election commission.

If it is established that the number of ballots papers in the ballot box exceeds the number of judges who have voted, electoral committee shall be dissolved and a new one shall be appointed, the voting at that polling place shall be repeated within seven days.

Establishing of

Results Article 34

The Electoral Commission shall establish the total number of judges and the number of judges who have voted in each polling station, the number of unused, invalid and valid ballots, and the number of votes won by candidates per polling station, as well as the total number of votes per candidate for each list of candidates.

3. Decision on Nomination of Candidates for Elected Council Members

A. Nomination of Candidates from the Ranks of Judges

Article 35

The Council shall propose one candidate, with the largest number of votes, from each list, based on the record on establishing the election results, submitted to the Council by the Electoral Commission.

By way of exception to paragraph 1 of this article, the council shall propose two candidates with the highest number of votes from the list of candidates of judges of basic courts, misdemeanor courts and Misdemeanour Appellate Court~~higher misdemeanor court~~.

In case when two or more candidates in one electoral list win an equal number of majority vote,s the council shall propose the candidate with longer tenure of office.

The Council shall submit to the National Assembly the final decision on the nomination of candidates from the rank of judges from each candidacy list.

B. Nomination of Candidates from the Ranks of Attorneys

Article 36

The procedure for the nomination of candidates for the Elected Member of the Council from the ranks of attorneys shall be organised and conducted by the Bar Association of Serbia in a manner ensuring the broadest possible representation of its Members.

The procedure for candidature, election and nomination is carried out in a manner and within timeframes set by the Bar Association of Serbia in its act.

The Bar Association of Serbia shall submit nominations to the National Assembly.

C. Nomination of Candidates from the Ranks of Professors

Article 37

The nomination of candidates for Elected Members of the Council from among Faculty of Law professors shall be carried out in a manner and under the procedure defined by an act of the joint session of Deans of all law faculties in the Republic of Serbia..

The Dean of the oldest law faculty in the Republic of Serbia shall submit the proposal for the candidate for the Council Member from the ranks of Faculty of Law professors to the National Assembly, in accordance with the decision of the joint session of all Deans of law faculties in the Republic of Serbia.

The joint session of faculty of law Deans in the Republic of Serbia shall be convened and chaired by the Dean of the oldest law faculty in the Republic of Serbia.

4. Election and Taking up Office

Election of Members

Article 38

The National Assembly shall elect the Members of the Council at the proposal of authorised nominators.

The National Assembly shall, for the Council Member from the ranks of judges, elect two candidates from the candidacy list of basic courts, misdemeanour courts and ~~higher misdemeanour court~~ Misdemeanour Appellate Court, that is, one candidate per list from other lists of candidates.

If the Elected Member of the Council, without justified reason, fails to take up office within 30 days from the day of the election in the National Assembly, s/he shall be deemed as not elected.

The reason for the failure to take up office mentioned in paragraph 3 of this Article shall be established in the Council's decision, which shall notify the National Assembly thereon.

The High Judicial Council shall organize repeated elections for such Member within a period of 60 days.

IV TERMINATION OF OFFICE OF THE COUNCIL MEMBERS

Grounds for Termination

Article 39

The term of office of the Council Members by virtue of office shall cease on the date of the termination of office thereof which was the basis for their appointment.

The term of office of Elected Council Members shall cease with permanent loss of working capacity to perform the duty of the Member of the Council, resignation from the Council membership, expiration of the term of office and due to dismissal.

The term of office of Elected Council Members from among judges shall also cease with the date of the termination of their tenure.

The term of office of an Elected Council Member from among attorneys shall end after the deletion from the Bar Association Register

The term of office of Elected Council Member from among professors shall terminate when his/ her professorship has ended.

The office of the elected Council Member shall also be terminated in other cases stipulated by law.

Termination of the office of the electoral Council Member shall be declared at its first next session.

Early Termination of the Term of Office

Article 40

If the term of office of an Elected Member of the Council ends before the term s/he has been initially appointed to, the Council shall pass within 15 days the decision referred to in Article 21, paragraph 1 of this Law.

The procedure of the nomination and election of a new Member shall be carried out pursuant to the provisions hereof.

The term of office of the new Member shall be five years.

V. DISMISSAL OF ELECTED MEMBER

Reasons

Article 41

An elected member of the council shall be dismissed from office before the expiration of term he/she has been elected to if s/he fails to perform the duty of the council member in compliance with the constitution and law and if convicted with final court decision to unconditional imprisonment for a criminal offence and if convicted with a final court decision for an offence which renders him/her dishonorable of exercising office of the member of the council.

~~V PROCEDURE FOR DISMISSAL~~

~~Reasons~~

~~Article 41~~

~~An Elected Member of the Council shall be dismissed from office before the expiration of term he/she has been elected to if s/he fails to perform the duty of the Council Member in compliance with the Constitution and law and if convicted to unconditional imprisonment for a criminal offence, that is the criminal offence rendering him/her unworthy of exercising office of the Member of the Council.~~

~~Initiative~~

~~Article 42~~

~~An initiative for the dismissal from office of an Elected Member of the Council may be filed by any Member of the Council.~~

~~An initiative for the dismissal from office of an Elected Member of the Council from the ranks of judges may also be filed by the President of any Court, based on the decision of the session of all judges.~~

~~An initiative for the dismissal from office of an Elected Member of the Council from the ranks of attorneys, and/or Faculty of Law professors may be filed by authorised nominators.~~

Dismissal in the case of the conviction for the criminal offense a

Article 42

The Council shall submit to the National Assembly its proposal for the dismissal of the elected member because of his/her final conviction to unconditional imprisonment or a conviction for an offense rendering him/her dishonorable for the position of a council member, at its next session, within 15 days from the day of that member's receipt of the final decision on conviction.

~~Assessment of Admissibility of the Initiative~~

~~Article 43~~

~~The Council shall, within seven days upon the receiving of initiative, assess the credibility of grounds for the request for dismissal from office.~~

~~If it concludes that grounds for the dismissal from office are not made probable, the Council shall notify the initiator in writing that the initiative has not been adopted.~~

Initiative for dismissal

Article 43

Initiative for dismissal of a council member, who didn't perform his/her duties in accordance with constitution and laws can be submitted by each member of the council or authorized nominators from the Article 23 Paragraph 2.

Initiative shall be reasoned.

Admissibility of the initiative

Article 44

Upon the receipt of the initiative the Council enables a Council Member whose dismissal is initiated, to answer the allegations of the initiative within period of three days.

The Council shall render decision on the admissibility of the initiative within seven days of the expiration of the period referred to in Paragraph 1.

If it determines that the initiative for the dismissal lacks merit, the Council notifies the applicant in writing within seven days from the date of the decision referred to the Paragraph 2.

If it determines that the initiative for the dismissal is substantiated, the Council shall initiate the procedure for removal within seven days from rendering of the decision referred to in paragraph 2 of this article.

Elected member of the Council whose dismissal was initiated shall not participate in evaluation of the initiative

~~Statement~~

~~Article 44~~

~~On accepting the initiative the Council shall, prior to taking a decision to institute proceedings, allow the Council Member, whose dismissal is initiated, to make a statement about the allegations.~~

~~Instituting the Proceedings~~

~~Article 45~~

~~The Council shall pass a decision on instituting the dismissal proceedings within 15 days upon receiving the initiative.~~

~~An Elected Member shall be allowed to make a statement on all the allegations relevant to taking the decision on dismissal.~~

Motion for dismissal

Article 45

Motion for dismissal of an elected member of the Council from the ranks of judges can submit at least 20 percent of the total number of judges who, in accordance with Article 24 Paragraphs 5 and 6 of this Law, are entitled to vote on the election of elected members of the council in accordance with the type and instance of the court where the dismissed member was elected, in accordance with Article 22 of this Law.

Motion for dismissal of an elected member of the Council from the ranks of lawyers can submit at least 20 percent of total number of lawyers registered in registry of lawyers in of the Bar association of Serbia and bar associations within its composition.

Motion for dismissal of an elective member of the Council from the ranks of the professors from law faculty, can submit at least 20 percent of all law faculty deans.

Motion for dismissal of a council member must be explained and have reasons from Article 41 of this Law.

Commencement of the procedure

Article 46

Procedure for dismissal of a council member is initiated when the Council accepts the initiative, or when the proposal for dismissal is submitted.

In the case referred to in Paragraph 1 of this Article, Council initiates the proceedings and informs the election commission or authorized nominators of the council members among lawyers and professors.

The procedure for dismissal shall be carried out within 30 days from the start of the procedure.

~~Dismissal from Office~~

~~Article 46~~

~~The Council shall make a proposal on dismissal from office within 30 days of initiating the proceedings.~~

~~The Council Member whose dismissal from office is under deliberation shall not take part in the making of the proposal referred to in paragraph 1 of this Article.~~

~~The decision on the dismissal from office, on grounds of the proposal referred to in paragraph 1 of this Article, shall be taken by the National Assembly.~~

Procedure before the Council

Article 46a

The Council shall, in the proceedings regulated by Rules of procedure and meeting the requirements of a fair trial, allow to the Council member against whom an impeachment procedure is initiated, to submit at session his/her statement on the facts relevant for the decision on dismissal.

The Council shall, after the procedure, render a reasoned decision on the admissibility of the initiative or a reasoned opinion on the proposal for dismissal, and submit them to Council member against whom the proceeding is initiated and to the submitter of initiative or of the proposal for dismissal.

The admissibility of the initiative or a reasoned opinion on the proposal for dismissal shall be published on the web page of Council.

Vote of confidence

Article 46b

The judges shall vote on confidence to an elected Council Member, by secret ballot, in accordance with Article 24 Paragraphs 5 and 6 of this Law.

The procedure of vote of confidence is subjected to the provisions of Article 31 to 34 of this Law.

An elected member received a vote of no confidence if voted by at least two third of judges who are entitled to vote, and majority of them voted for dismissal.

The vote of confidence regarding the dismissal of the elected member of the council from the ranks of lawyers and law faculty professors, is taken by their authorized nominators in a manner and by the procedure applied to their election.

The Decision on dismissal

Article 46 v

The council or nominators, according to Article 46b Paragraph 4 in a case of no confidence vote shall propose to the National Assembly a removal of the elected member of the Council, who received a no confidence vote.

The member of the Council whose dismissal is being decided upon shall not participate in the proceedings referred to in Paragraph 1 of this Article.

The council shall suspend the procedure of dismissal of an elected member of the council, within eight days of the voting if the voting did not result in a no confidence vote. A confidence vote proceeding cannot be taken against an elected council member within 6 months from the day of voting of confidence resulting in lack of no confidence vote.

The decision on dismissal, based on the proposals referred to the paragraph 1. Of this article, shall be enacted by the national assembly.

VI. ADMINISTRATIVE OFFICE

Tasks and Organisation of Work

Article 47

The Administrative Office within the Council shall be for conducting professional,

administrative and other affairs of the Council.

The organisation, tasks and manner of operation of the Administrative Office is regulated in more detail by an act of the Council.

Regulations governing the status of civil servants and employees shall apply to the rights and obligations of employees of the Administrative Office.

Secretary of the Council

Article 48

The Office has a Secretary who is appointed to a five year's term and may be reappointed.

The Secretary is appointed by the Council.

The Administrative Office is managed by the Secretary who is accountable to the Council for his/her work.

The Secretary has a status of an appointee.

The terms and conditions for the appointment of the Secretary are regulated by an act of the Council.

Assignment of a Judge

Article 49

A judge may be assigned to the Working Bodies of the Council to perform professional tasks.

The decision on the assignment shall be passed by the Council, upon obtaining an opinion of the President of the Court in which a judge performs his/her duty, with the written consent of the judge.

The period of such assignment may not exceed three years.

VII TRANSITIONAL AND FINAL PROVISIONS

First Election of the Members of the Council

Article 50

The National Assembly shall, not later than 90 days of entering into force of this Law, elect the Elected Members of the first composition of the Council.

At the election, the National Assembly is required to elect minimum one Member of the Council from the ranks of judges from the territory of the Autonomous Provinces.

Until such time as the first composition of the Council is elected, the High Judiciary Council shall perform the tasks from the remit of the Council relating to the election of Elected Members of the Council from the ranks of judges.

Performance of the Function of the Council Member by the President of the Supreme Court of Serbia

Article 51

Until the election of the President of the Supreme Court of Cassation, a Member of the Council by virtue of office shall be the President of the Supreme Court of Serbia.

The Elected Members of the First Composition of the Council from the Ranks of Judges

Article 52

The Elected Members of the first composition of the Council from the ranks of judges comprise one judge from the Supreme Court of Serbia and one from the Higher Commercial Court and the commercial courts, that is, two judges each from the district and municipal courts, where minimum one Member must be from the territory of the Autonomous Provinces.

The candidates for the Elected Members of the first composition of the Council shall be proposed to the High Judiciary Council by the sessions of all judges of the courts by type and instance of the court in which the candidate exercises judge's office. The session of all judges of one court can propose only one candidate.

By way of exception to paragraph 2 of this Article, the General Session of the Supreme Court of Serbia, that is, the session of all judges of the Higher Commercial Court, may propose more than one candidate.

The candidates from paragraphs 2 and 3 of this Article shall be proposed to the High Judiciary Council within 15 days from the day of coming of this Law into effect.

Not later than 30 days from coming of this Law into effect, the High Judiciary Council shall propose to the National Assembly one or more candidates for each Elected Member of the Council from the ranks of judges, in accordance with the number of judges and type and instance of court, specified in paragraph 1 of this Article. When nominating candidates the High Judiciary Council shall take into consideration the nominations from paragraphs 2 and 3 of this Article.

The High Judiciary Council shall establish the nomination from paragraph 5 of this Article by majority vote of the narrower composition comprising standing members and the invited members-judges. .

Elected Members of the first composition of the Council from among judges are entitled to the basic salary equal to the basic salary of the President of the Supreme Court of Serbia until 1 January 2010.

Elected Members of the First Composition of the Council from the Ranks of Attorneys and Faculty of Law professors

Article 53

The Bar Association of Serbia and the joint session of all Deans of law schools in the Republic of Serbia are obliged to propose to the National Assembly one or several candidates for the election of Elected Members of the first composition of the Council from the ranks of attorneys and Faculty of Law professors, within 30 days from coming of this Law into effect.

The nomination of candidates referred to in paragraph 1 of this Article shall be conducted by the analogous application of this Law.

Constitutive Session of the Council

Article 54

The constitutive session of the Council shall be held within seven days from the day of the election of Elected Members.

The constitutive session of the Council is convened and chaired by the President of the Supreme Court of Serbia.

Termination of Term of Office of the Elected Members of the First Composition of the Council

Article 55

The term of office of the Elected Members of the first composition of the Council from the ranks of judges shall terminate on the day the Elected Members of the standing composition take up office, not later than the expiry of five-year's term of office.

The term of office of the Elected Members of the first composition of the Council from among attorneys and Faculty of Law professors shall end with the expiry of the term of office stipulated by this Law.

The term of office of the Elected Members of the first constitution of the Council shall also end in all other cases specified under the provisions of this Law.

Resumption of Judge's Office of the Elected Members of the Council's First Composition

Article 56

An Elected Member from the ranks of judges shall, on termination of the term of office within the first composition of the Council, resume to perform judge's function in a directly higher instance court than the court where s/he performed judge's duties, provided that s/he meets the requirements to be elected judge in such court.

A judge shall continue to exercise judge's office in the court that has assumed jurisdiction of the court where the judge performed his/her function if s/he fails to meet the requirements to be elected judge in a directly higher instance court.

Decisions from paragraphs 1 and 2 of this Article shall be passed by the Council in standing composition.

Timeframe for Conducting the Electoral Procedure for the Standing Composition of the Council

Article 57

The procedure for the election of the standing composition of the Council from the ranks of judges shall be conducted within six months from the day the courts set under the Law on Organisation of Courts begin to operate. .

Performance of tasks of the Administrative Office and Taking Over of Staff

Article 58

Within 90 days from the day of being set up, the Council shall take over from the Ministry competent for the judiciary the rights, obligations, cases and archives necessary for the performance of the affairs assumed, in accordance with the competence set out in this Law.

The Council shall also take over civil servants and employees who work within the scope assumed.

The manner of assuming the cases, and taking over of civil servants and employees shall be regulated by an act of the Minister competent for the judiciary.

Until the vacancies provided for by the act on internal organisation and job classification in the Administrative Office are filled in, certain professional and administrative tasks for the needs of the Council may be performed by the Ministry competent for the judiciary, in accordance with the act of the Council.

By-laws

Article 59

By-laws provided for by this Law shall be passed within 90 days from the day of the setting up of the Council.

General acts of the High Judiciary Council shall apply until the by-laws from paragraph 1 of this Article are passed, unless they are contrary to this Law.

Assumption of the Competences of the High Judiciary Council

Article 60

On the day of the constitution the Council shall assume the competences of the High Judiciary Council as specified by the Law on Judges ("Official Gazette of the RS", No. 63/01, 42/02, 17/03, 27/03, 29/04, 35/04, 44/04, 61/05, 101/05 and 46/06).

Termination of Effectiveness of the Law on High Judiciary Council

Article 61

On the day of the constitution of the Council, the Law on High Judiciary Council shall cease to be in force ("Official Gazette of the RS", No. 63/01, 42/02, 39/03, 41/03 - correction, 44/04 and 61/05), in the part relating to judges.

Entry into Force

Article 62

This Law shall come into effect on the eighth day after its publication in the "Official Gazette of the Republic of Serbia".

Independent Articles of the Law on Amendments and Additions to the Law on the High Judiciary Council

(“Official Gazette of the Republic of Serbia”, No. 101/ 2010)

Article 8

By way of exception to article 3 of this Law, the judges of misdemeanour courts and Higher misdemeanour court, elected for the tenure office from the rank of misdemeanour judges, are entitled to elect the members of the Permanent Composition of High Judicial Council from the rank of judges from the candidacy list of basic courts, misdemeanour courts and Higher misdemeanour court.

Article 9

The election procedure for the Permanent Composition of the High Judicial Council from the rank of judges shall be performed within 60 days from the entering into force of this Law.

Article 10

This Law shall enter into force the next day upon its publication in the "Official Gazette of the Republic of Serbia".

Independent Article of the Law on Amendments and Additions to the Law on the High Judicial Council

(“Official Gazette of the Republic of Serbia”, No. 88/ 2011)

Article 4

This Law shall enter into force on the eighth day upon its publication in the "Official Gazette of the Republic of Serbia".

Independent Articles of the Law on Amendments and Additions to the Law on the High Judicial Council

(“Official Gazette of the Republic of Serbia”, No.xx/2014)

Article 17

Elected Council members elected in accordance with the Law on High Judicial Council ("Official Gazette of the Republic of Serbia", No . 116/08, 101/10 and 88/11), shall perform their function until the expiration of the term of office which they were elected for.

.Article 18

President and Deputy President of the Council will be elected, in accordance with this Law, within 30 days from the day of entry into force of this Law.

Article 19.

This Law shall enter into force on the eighth day upon its publication in the "Official Gazette of the Republic of Serbia".