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(VENICE COMMISSION)

MONTENEGRO

LAW

ON THE JUDICIAL COUNCIL AND JUDGES

WITH DRAFT AMENDMENTS

LAW**ON JUDICIAL COUNCIL AND JUDGES**

(“Official Gazette of Montenegro” no. 011/15 of 12 March 2015, 028/15 of 3 June 2015)

I. BASIC PROVISIONS**Subject Matter****Article 1 (Article 1 amendment)**

This law regulates the method of election and termination of the term of office for the members **and the president** of the Judicial Council, the organization and manner of work of the Judicial Council, the procedure for the election of judges and lay judges, the rights and duties, the method of determining the termination of judicial office, disciplinary liability and dismissal of judges and lay judges and other issues decided by the Judicial Council.

Independence and Autonomy**Members of the Judicial Council****Article 2**

Judges shall adjudicate and decide independently and autonomously.

The duties of judicial office shall not be performed under anyone’s influence.

No one shall influence judges while they perform their duties of judicial office.

Independence, autonomy, accountability and professionalism of courts and judges shall be ensured by the Judicial Council.

Article 3

Members of the Judicial Council shall be persons of high moral and professional qualities.

Members of the Judicial Council shall act independently and impartially when performing their duties.

When proposing and electing the members of the Judicial Council, the national and gender-balanced representation must be taken into account.

Public Nature of Work**Article 4**

Unless otherwise provided by this Law, the work of the Judicial Council shall be public.

Rights of Judges**Article 5 (Article 2 amendment)**

Judges shall exercise their right to a salary and other work-related and work-based rights in accordance with the law **and other regulations governing the rights and duties of public sector employees.**

Judges shall have the right and duty to develop professionally.

Judges shall have the right to professional association.

Means for Work

Article 6

Means for work of the Judicial Council shall be provided in the Budget of Montenegro. The Judicial Council shall use the funds referred to in paragraph 1 of this Article independently.

Seat

Article 7

The seat of the Judicial Council shall be in Podgorica.

Use of Gender-Sensitive Language

Article 8

The terms used in this Law for individuals in the masculine gender shall equally refer to the same terms in the feminine gender.

II. JUDICIAL COUNCIL

1. The Method of Appointment of Judicial Council Members and End of Their Tenure

Responsibilities of the Conference of Judges

Article 9 (*Article 3 amendment*)

Members of the Judicial Council from the ranks of judges shall be appointed and dismissed by the Conference of Judges, by secret ballot.

The Conference of Judges shall include all judges and court presidents.

~~The Conference of Judges shall pass the Code of Ethics for Judges and shall appoint the Chair of the Commission for Monitoring the Implementation of the Code of Ethics for Judges (hereinafter: Commission for the Code of Ethics for Judges).~~

The Conference of Judges shall pass the Code of Ethics for Judges and shall appoint and dismiss the president and members of the Commission for Monitoring the Implementation of the Code of Ethics for Judges (hereinafter: Commission for the Code of Ethics for Judges) and their deputies.

Decision-Making by the Conference of Judges

Article 10

The Conference of Judges shall work and make decisions in sessions.

The president of the Supreme Court of Montenegro shall convene and chair a session of the Conference of Judges.

A session of the Conference of Judges may be held if at least two-thirds of the members are present, and decisions shall be made by a majority vote of the attending members of the Conference of Judges.

The administrative and technical tasks for the work of the Conference of Judges shall be performed by the Judicial Council Secretariat.

The Conference of Judges shall adopt its Rules of Procedure, which shall govern the method of work and decision-making in more detail.

Commission for the Code of Ethics for Judges
Article 11 (Article 4 amendment)

~~The Commission for the Code of Ethics for Judges shall have a president and two members. The president shall be appointed from among the members of the Judicial Council who are not from among the judges, while one member shall be appointed by the enlarged session of the Supreme Court from among the judges, and the other member shall be the president of the Association of Judges of Montenegro.~~

~~The Commission for the Code of Ethics for Judges shall be appointed for a term of four years.~~

~~Anyone may ask the Commission for the Code of Ethics for Judges for an opinion whether particular conduct of judges is in accordance with the Code of Ethics for Judges.~~

~~The Commission referred to in paragraph 1 of this Article shall submit a report on its work to the Judicial Council once a year, by 31 March of the current for the previous year.~~

~~The administrative and technical tasks for the work of the Commission for Code of Ethics for Judges shall be performed by the Judicial Council Secretariat.~~

~~The Commission referred to in paragraph 1 of this Article shall adopt its Rules of Procedure, which shall govern the method of work and decision-making in more detail.~~

Composition of the Judicial Council from the Ranks of Judges

Article 12 (Article 5 amendment)

Members of the Judicial Council from the rank of judges shall be:

- 1) three members from among the judges of the Supreme Court of Montenegro (hereinafter: the Supreme court), the Appellate court of Montenegro (hereinafter: Appellate court), the Administrative court of Montenegro (hereinafter: Administrative Court), the Higher Court for Misdemeanours of Montenegro (hereinafter: Higher Misdemeanour court), the Commercial court of Montenegro (hereinafter: Commercial court) and higher courts, who have at least ten years of work experience as judges;
- 2) One member from the ranks of judges of basic courts and misdemeanour courts, having at least five years of work experience as a judge.

A member of the Judicial Council from among the judges cannot be:

1) a spouse or a common-law spouse, i.e. a cohabitating partner of the same sex or a relative of a member of a Parliament, member of the Government of Montenegro (hereinafter: the Government) and the President of Montenegro or persons elected, appointed or designated by the President of Montenegro, the Parliament of Montenegro (hereinafter: Parliament) or the Government in the direct line regardless of the degree of kinship, and in the collateral line up to the second degree of kinship or a relative by in-laws up to the first degree;

2) a person who, in the last ten years, was an official of a political party (party president, member of the presidency, deputy president or member, member of the executive or main board, member of the party's council and other party official) or actively engaged in the party, was directly elected in elections or held the function of a member of the Government.

A judge whose performance is appraised as unsatisfactory or who is given a disciplinary sanction may not be appointed as a member of the Judicial Council from among the judges.

Election Commission

Article 13 (Article 6 amendment)

The procedure of preparing the list of candidates for the appointment of members of the Judicial Council from the ranks of judges and the procedure of appointment of members of the Judicial Council from the ranks of judges at the Conference of Judges shall be conducted by the Appointments Commission.

The Appointments Commission shall have a chairman and two members, **who shall have deputies**, ~~who are appointed from the ranks of judges by the enlarged session of the Supreme Court, at the proposal of sessions of judges of all courts.~~

The chairman, the Commission members and their deputies from the ranks of judges shall be appointed by the enlarged session of the Supreme Court, at the proposal of sessions of all courts.

The Commission for Appointment shall be appointed for a term of four years no later than three months before the term of the Judicial Council expires.

Members of the Commission may not be candidates for members of the Judicial Council.

Proposal for Appointment of Members of the Judicial Council from the Ranks of Judges

Article 14 (Article 7 amendment)

The proposal of candidates for the appointment of members of the Judicial Council referred to in Article 12, paragraph 1, item 1 of this Law shall be established:

- 1) At a special session of judges of the Supreme Court, in which two candidates from that court shall be nominated;
- 2) At special sessions of judges of the Appellate Court, Administrative Court, Higher Misdemeanour Court,

Commercial Court and high courts, in which one candidate shall be nominated from these courts, respectively.

The proposal referred to in paragraph 1 of this article shall be established by the session of judges using the method and following the procedure prescribed for establishing the proposal of candidates for a member of the Judicial Council referred to in Article 12 paragraph 1 item 2.

The list of eight candidates referred to in paragraph 1 of this Article shall be prepared, in alphabetical order, by the Appointments Commission, based on the information on nominated candidates.

In order to establish the proposal of candidates for the appointment of members of the Judicial Council referred to in Article 12, paragraph 1, item 2 of this Law, the Appointments Commission shall obtain an initial proposal from each president and judge of misdemeanour courts and basic courts containing the nomination of two candidates, in a manner that ensures confidentiality of the initial proposal.

The list of four candidates who receive the highest number of initial proposals referred to in paragraph 3 of this Article shall be compiled by the Appointments Commission, in alphabetical order.

If, after obtaining the initial proposals referred to in paragraph 3 of this Article, there are more than four candidates with the same number of initial proposals, the Appointments Commission shall make a list consisting of all the candidates with the highest or the same number of initial proposals.

The form of the initial proposal referred to in paragraph 3 of this Article shall be defined by the Rules of Procedure of the Judicial Council.

A candidate for a member of the Judicial Council shall give his written consent to the nomination.

Appointment of a Member of the Judicial Council from the Ranks of Judges

Article 15 (Article 8 amendment)

The lists of candidates for the appointment of members of the Judicial Council prepared in accordance with Article 14 of this Law shall be submitted to all courts to post them on the notice board of the court, no later than two months before the tenure of Judicial Council members ends.

The Conference of Judges shall be convened by the president of the Supreme Court, no later than 30 days before the tenure of the members of the Judicial Council ends.

Three candidates from the list referred to in Article 14, paragraph 2 **paragraph 3** of this Law shall be appointed as members of the Judicial Council, where only one candidate may be appointed from one court and one candidate from the list referred to in Article 14, **paragraph 4 paragraph 5**, or **paragraph 5 paragraph 6** of this Law, who receive the highest number of votes.

If none of the candidates from the lists gets the required majority of votes, the vote shall be repeated among the five candidates from the list referred to in Article 14, **paragraph 2 paragraph 3** of this Law, i.e. among the two candidates from the list referred to in Article 14, **paragraph 4 paragraph 6**, i.e. **paragraph 5 paragraph 7** of this Law, who received the highest number of votes.

If there are several candidates with the same number of votes, based on which they can enter the second round of voting, a list of those candidates shall be prepared and the vote shall be repeated, and only one candidate may be appointed from one court.

Selection of members from among the eminent lawyers

Article 16

~~A person who has fifteen years of work experience in legal affairs and enjoys personal and professional reputation and has not been convicted for criminal offences that render judges unworthy of performing duties of judicial function in accordance with this Law may be appointed as a member of the Judicial Council from among the eminent lawyers.~~

~~The competent working body of the Parliament of Montenegro shall publish a public call for the appointment of a member of the Judicial Council from the ranks of eminent lawyers in the "Official Gazette of Montenegro" and in at least one of the print media based in Montenegro.~~

~~The public call for the appointment of a member of the Judicial Council from the ranks of eminent lawyers shall be published by the competent working body of the Parliament of Montenegro on the website of the Parliament of Montenegro (hereinafter: the Parliament).~~

~~The deadline for candidates to apply shall be 15 days from the publication of the public call.~~

~~The competent working body of the Parliament shall publish the list of applicants, which must be available to the public, on the Parliament's website, at least ten days from the date of publication.~~

~~The competent working body of the Parliament shall submit the proposal for the appointment of a member of the Judicial Council from the ranks of eminent lawyers to the Parliament.~~

~~The proposal for election from paragraph 6 of this Article shall contain as many candidates as there are members of the Judicial Council to be elected.~~

~~If the proposal for the appointment of the Judicial Council referred to in paragraph 6 of this Article contains fewer candidates than the number to be appointed, the election procedure shall be repeated for the number of members not proposed by the competent working body of the Parliament.~~

Article 16a

If the Parliament does not appoint all four members of the Judicial Council from the ranks of eminent lawyers, the competent working body of the Parliament shall publish a public call two months after the previous voting, until all members of the Judicial Council from the ranks of eminent lawyers are appointed.

Article 16b

If the Parliament appoints fewer than four members of the Judicial Council from the ranks of eminent lawyers, the members of the Judicial Council from the ranks of eminent lawyers who are to be replaced by new members of the Judicial Council from the ranks of eminent lawyers shall be selected by drawing lots.

The method of drawing lots shall be governed in more detail by the Rules of Procedure of the Judicial Council.

Conditions for appointment of the members of the Judicial Council from the among the prominent lawyers

Article 16 (Article 9 amendment)

A person who has at least 40 years of age and 15 years of work experience in legal affairs and enjoys personal and professional reputation and has not been convicted for criminal offences that render judges unworthy of performing duties of judicial office in accordance with this Law may be appointed as a member of the Judicial Council from among the eminent lawyers.

A member of the Judicial Council from among the prominent lawyers cannot be a person who is:

1) a spouse or a common-law spouse, i.e. a cohabitating partner of the same sex or a relative of a member of a Parliament, member of the Government of Montenegro (hereinafter: the Government) and the President of Montenegro or persons elected, appointed or designated by the President of Montenegro, the Parliament of Montenegro (hereinafter: Parliament) or the Government in the direct line regardless of the degree of kinship, and in the collateral line up to the second degree of kinship or a relative by in-laws up to the first degree;

2) a person who, in the last ten years, was an official of a political party (party president, member of the presidency, deputy president or member, member of the executive or main board, member of the party's council and other party official) or actively engaged in the party, was directly elected in elections or held the function of a member of the Government.

3) has performed the function of a judge or prosecutor in the last eight years.

Election of the members of the Judicial Council from the among the prominent lawyers

Article 16a (Article 9 amendment)

The competent working body of the Parliament of Montenegro shall publish a public call for the appointment of a member of the Judicial Council from among the eminent lawyers in the "Official Gazette of Montenegro" and in at least one of the print

media based in Montenegro, at least four months prior to the expiry of term of office of the Judicial Council members.

The competent working body of the Parliament publishes the public call from paragraph 1 of this Article at the website of the Parliament.

The deadline for candidates to apply shall be 15 days from the publication of the public call referred to in paragraph 1 of this Article.

The competent working body of the Parliament shall publish the list of applicants, which must be available to the public, on the Parliament's website, at least ten days from the date of publication.

The competent working body of the Parliament shall submit the proposal for the appointment of a member of the Judicial Council from the ranks of eminent lawyers to the Parliament.

The proposal from paragraph 5 of this Article shall contain as many candidates as there are members of the Judicial Council to be elected from among the eminent lawyers.

If the proposal from paragraph 5 of this Article contains fewer candidates than the number of candidates to be elected, the election procedure shall be repeated for the number of members that were not proposed.

In the case referred to in paragraph 7 of this Article, the competent working body of the Parliament shall announce a new public call without delay, until the full composition of the members of the Judicial Council is elected from among the eminent lawyers.

Determination of the members of the Judicial Council by drawing lots

Article 16b (Article 9 amendment)

If the Parliament appoints fewer than four members of the Judicial Council from the ranks of eminent lawyers, the members of the Judicial Council from the ranks of eminent lawyers who are to be replaced by new members of the Judicial Council from the ranks of eminent lawyers shall be selected by drawing lots.

The method of drawing lots shall be governed in more detail by the Rules of Procedure of the Judicial Council.

Appointment of the President of the Judicial Council

Article 16c (Article 10 amendment)

The president of the Judicial Council shall be appointed at the first session, after the proclamation of the Judicial Council composition.

If the office of the president of the Judicial Council ends before the term of office of the Judicial Council expires, the president of the Judicial Council shall be appointed at the earliest forthcoming session.

The Judicial Council may decide for the president of the Judicial Council to perform his/her duties in a manner of the professional function.

Continuation of duties as a member of the Judicial Council from among the eminent lawyers

Article 16d (Article 10 amendment)

The president and members of the Judicial Council from among the eminent lawyers, whose term of office ends after the expiration of the term for which they were elected, shall continue to perform their duties until the election and announcement of new

members of the Judicial Council from among the eminent lawyers, for a period not longer than two years.

The performance of duties referred to in paragraph 1 of this Article shall not constitute the re-election of the members of the Judicial Council.

Ban on Appointment to Judicial Office

Article 17 (Article 11 amendment)

During the term of office in the Judicial Council, a member of the Judicial Council from among the judges ~~cannot be elected to a higher court or as the president of the court~~ **cannot be elected or transferred to another court or elected as the president of the court**, while a member of the Judicial Council from among the eminent lawyers cannot be elected as a judge or president of the court.

Re-Appointment

Article 18 (Article 12 amendment)

A member of the Judicial Council from the ranks of judges or eminent lawyers may be re-appointed as a member of the Judicial Council four years after his previous tenure in the Judicial Council ended.

A same person may be elected as a member of the Judicial Council not more than two times.

Termination of Tenure

Article 19

The tenure of a Judicial Council member shall end before the expiry of the term for which he is appointed if:

- 1) The office based on which he was appointed to the Judicial Council ends;
- 2) He resigns;
- 3) He is convicted to unconditional imprisonment.

In the case referred to in paragraph 1, item 1 of this Article, the tenure of a Judicial Council member shall end on the date when the office based on which he was appointed to the Judicial Council ends.

In the case referred to in paragraph 1, item 2 of this Article, the tenure of a Judicial Council member shall end when the Judicial Council acknowledges his written resignation.

In the case referred to in paragraph 1, item 3 of this Article, the tenure of a member of the Judicial Council shall end on the date when the convicting judgment becomes final and enforceable.

The Judicial Council shall acknowledge the end of tenure of a Judicial Council member and shall inform the authority that appointed him thereof.

Dismissal

Article 20

A member of the Judicial Council shall be dismissed if:

- 1) He performs his duties in an unconscientious or unprofessional manner;
- 2) He is convicted of a criminal offence that renders him unworthy of performance of duties in the Judicial Council.

Unconscientious and unprofessional performance of duties referred to in paragraph 1, item 1 of this Article shall constitute an action of a Judicial Council member that is contrary to the statutory powers, as well as failure to fulfil statutory duties.

Offence referred to in paragraph 1, item 2 of this Article shall be a criminal offence that is prosecuted *ex officio*, for which an imprisonment is prescribed.

A member of the Judicial Council from the ranks of judges shall also be dismissed if he is given a disciplinary sanction.

In the cases referred to in paragraph 1 of this Article, the motion for the dismissal of a Judicial Council member shall be filed by the Judicial Council to the authority that appointed him.

The tenure of a Judicial Council member shall end on the date when the authority that appointed him dismisses him.

The provisions of this Law governing the procedure for establishing disciplinary liability of judges shall be applied accordingly to the procedure of dismissal of a Judicial Council member.

Termination of office of a president of the Judicial Council

Article 20a (Article 13 amendment)

The office of the President of the Judicial Council ends before the expiry of the term of office of the Judicial Council, when he ceases to be a member of the Judicial Council or when he resigns.

Tenure in the Case of Termination and Dismissal

Article 21

In the case of end of tenure of a Judicial Council member from the ranks of judges before the term for which he is appointed expires, the procedure of nomination of candidates for the vacant position of a Judicial Council member shall be conducted in accordance with Articles 14 and 15 of this Law.

In the case of end of tenure of a Judicial Council member appointed by the Parliament before the term for which he is appointed expires, the Parliament shall appoint a new member of the Judicial Council, in accordance with Article 16 of this Law.

The tenure of a Judicial Council member appointed in accordance with paragraphs 1 and 2 of this Article shall end on the date when the tenure of the Judicial Council ends.

Temporary Removal

Article 22 (Article 14 amendment)

A member of the Judicial Council shall be temporarily removed from duty if:

- 1) He is taken into detention, for the duration of detention;
- 2) He is temporarily removed from performing duties or tasks on the basis of which he was appointed to the Judicial Council;
- 3) An indictment against him is confirmed for a criminal offence that renders him unworthy of performing his duty in the Judicial Council, until the criminal proceedings are completed through a final and enforceable decision;
- 4) A motion for his dismissal is submitted, pending a decision on dismissal.

A member of the Judicial Council from among the judges ~~may be~~ **shall be** temporarily removed from duty if a procedure for determining disciplinary liability **for the most serious disciplinary offences has been initiated against him,** until the final conclusion of the disciplinary procedure.

The Judicial Council shall submit a decision on the temporary removal from duty to the member of the Judicial Council who is temporarily removed and to the authority that appointed him.

Absence from Work and Compensation

Article 23 (Article 15 amendment)

Members of the Judicial Council who are employed shall have the right to be absent from work in order to perform duties in the Judicial Council.

During the absence referred to in paragraph 1 of this Article, members of the Judicial Council whose salary is paid from the Budget shall receive their salary and other benefits arising from employment from the authority in which they are employed.

Members of the Judicial Council from the ranks of judges may, for the purpose of performing duties in the Judicial Council, and on the basis of the Judicial Council's decision, spend up to 70% of their work hours during a year by working for the Judicial Council. The decision of the Judicial Council shall identify the duties performed by members in the Judicial Council.

In the case referred to in paragraph 3 of this Article, the workload of judges at the court where they work may be reduced to the appropriate extent.

Members of the Judicial Council shall be entitled to a compensation for work in the Judicial Council in the amount of 80% of the average gross salary in Montenegro in the previous year, and the president of the Judicial Council in the amount of 120% of the average gross salary in Montenegro in the previous year.

The president of the Judicial Council shall not be entitled to the compensation referred to in paragraph 5 of this Article if he earns salary in accordance with the law governing the method for establishing and exercising the right to salary of employees in the public sector.

2. Organization and Method of Work

Session of the Judicial Council

Article 24

The Judicial Council shall work and decide in sessions.

A session of the Judicial Council may be held if a majority of the total number of Judicial Council members is present.

The President of the Judicial Council

Article 25 (Article 16 amendment)

The president of the Judicial Council shall convene and chair the sessions and be responsible for the efficient and timely work of the Judicial Council.

At the request of at least three members of the Judicial Council, the President of the Judicial Council shall be obliged to convene a session with the proposed agenda, no later than within seven days from the date of submission of the request.

Following the proposal of the president of the Judicial Council, the Judicial Council shall designate a member of the Judicial Council from the ranks of eminent lawyers to replace the President in the case of his absence or inability to work and perform other duties stipulated by the Rules of Procedure of the Judicial Council, in order to ensure effectiveness of its work.

Commissions

Article 26 (Article 17 amendment)

In order to effectively perform its tasks under its field of competence, the Judicial Council may establish commissions.

The president of the Judicial Council may not be a chair or a member of the commissions referred to in paragraph 1 of this Article.

The members of the commissions and the Commission for the Code of Ethics for Judges shall be entitled to a net remuneration for their work in the amount determined by the Judicial Council up to 40% of the average gross salary in Montenegro in the previous year, **for the months in which such commissions have worked.**

The method of work of the commissions referred to in paragraph 1 of this Article shall be governed by the Rules of Procedure of the Judicial Council.

Powers of the Judicial Council

Article 27 (Article 18 amendment)

In addition to the powers defined by the Constitution, the Judicial Council shall:

- 1) Decide on disciplinary liability of judges and court presidents;
- 2) Provide for the use, functionality and uniformity of the judicial information system, the part related to the courts;
- 3) ~~Coordinate the education of judges and court presidents;~~ **Coordinate the international cooperation in the matters within its jurisdiction;**
- 4) Keep records of data on judges and court presidents;
- 5) Consider complaints against the work of judges and court presidents;
- 6) Consider complaints of judges and take positions regarding threats to their independence and autonomy;
- 7) Propose framework criteria on the necessary number of judges and other civil servants and state employees in courts;
- 8) Issue opinions on the incompatibility of performing certain duties with the judicial office;
- 9) Form the Commission for Appraisal of Judges;
- 10) Appoint the disciplinary prosecutor;
- 11) Adopt the Rules of Procedure of the Judicial Council **and other acts within its jurisdiction;**
- 12) Define the methodology for preparation of reports on the work of courts and on annual work distribution in courts;
- 13) Issue official identity cards for judges and court presidents and keep records of official identity cards;
- 14) Give opinions on draft regulations **from the field of judiciary, as well as on draft regulations related to salaries, exercising the right to pension and other rights and obligations of judges;**
- 15) Perform other tasks prescribed by law.

Decision on the Number of Judges

Article 28

The number of judges or lay judges shall be determined on the basis of the framework work benchmarks identified in accordance with the law governing the organization of courts.

The number of judges, i.e. lay judges for each court shall be determined by the Judicial Council.

The proposal to determine the number of judges referred to in paragraph 2 of this Article shall be made by the court president.

The decision on the number of judges and lay judges shall be published in the "Official Gazette of Montenegro".

Rules of Procedure of the Judicial Council

Article 29

The Judicial Council shall adopt the Rules of Procedure governing the matters prescribed by this Law and other matters of importance for the organization of work of the Judicial Council.

The Rules of Procedure of the Judicial Council shall be published in the "Official Gazette of Montenegro".

Decision

Article 30 (Article 19 amendment)

Decisions of the Judicial Council shall be final and an administrative dispute may be initiated against them, ~~unless otherwise provided by~~ **defined by the this Law.**

When it decides on the appointment of judges and court presidents, the Judicial Council shall take into account the proportional representation of ethnic minorities and other national minority communities as well as gender-balanced representation.

An administrative dispute may be initiated against the decisions of the Judicial Council on the selection of candidates for judges, judges and presidents of courts, the termination of judicial functions and other rights and obligations of judges, within 15 days from the date of receipt of the decision.

In the administrative dispute referred to in paragraph 3 of this Article, the court shall be obliged to make a decision within 30 days from the date of delivery of the case file.

Annual Report

Article 31

The Judicial Council shall prepare an annual work report that includes information about the work of the Judicial Council, description and analysis of the state of play in the judiciary, detailed information for each court relating to the number of cases received and adjudicated during the year for which the report is prepared, the issues and deficiencies in their operation, as well as measures to be taken to remedy identified deficiencies.

The Judicial Council shall submit a draft annual work report to all courts, for an opinion.

The annual work report shall be submitted to the Parliament, no later than 31 March of the current year for the previous year.

The annual work report shall be explained in the Parliament by the President of the Judicial Council.

The annual work report shall be published on the Judicial Council's website.

Relation between the Judicial Council and Courts

Article 32

At the Judicial Council's request, the courts shall submit to it all the data and information within the scope of their responsibility, within the deadline set by the Judicial Council.

If it does not comply with the request of the Judicial Council referred to in paragraph 1 of this article, the court shall, without delay, state its reasons why it has not acted upon the request.

The court presidents, judges and staff shall, in accordance with the requests of the Judicial Council, attend the sessions of the Judicial Council.

Exclusion of the public

Article 32a (Article 20 amendment)

The public shall be excluded from the voting when decisions by the Judicial Council and Judicial Council bodies are made, as well as from the procedure for appraising the work of the judges and establishing disciplinary liability of judges.

Notwithstanding paragraph 1 of this Article, the debate in the procedure for determining disciplinary liability may be public if so requested by the judge whose liability is being decided.

The method of exercising public nature of work of the Judicial Council shall be governed in more detail by the Rules of the Procedure of the Judicial Council.

III. APPOINTMENT OF JUDGES AND COURT PRESIDENTS

1. Appointment of the President of the Supreme Court

Conditions for Appointment of the President of the Supreme Court

Article 33 (Article 21 amendment)

A person may be appointed as the president of the Supreme Court if he:

- 1) Meets the general conditions for a judge;
- 2) Has at least 15 years of work experience as a judge or state prosecutor **or at least 20 years of work experience as a lawyer, notary, professor of legal sciences or in other legal jobs;**
- 3) Is characterized by his professional impartiality, high professional and moral qualities.

Public Announcement

Article 34

The Judicial Council shall announce the vacancy for the position of the President of the Supreme Court in the "Official Gazette of Montenegro" and in one of the print media based in Montenegro two months before the tenure of the president of the Supreme Court ends or immediately after the termination of office or dismissal of the president of the Supreme Court.

The procedure for candidates to apply for the president of the Supreme Court shall be governed by the provisions of Article 46 of this Law.

Proposal for Appointment of the President of the Supreme Court

Article 35 (Article 22 amendment)

The Judicial Council shall make a list of candidates who meet the statutory requirements for the president of the Supreme Court.

The list of candidates referred to in paragraph 1 of this Article shall be submitted to the General Session of the Supreme Court for the purpose of conducting interviews with the candidates.

After the interviews referred to in paragraph 2 of this Article, the General Session of the Supreme Court by secret ballot decides on the proposal for the election of the president of the

Supreme Court, in accordance with the law regulating the organization of courts, in such a way that each of the judges of the Supreme Court may circle not more than three candidates from the list from paragraph 1 of this Article.

~~The proposal for the election of the president of the Supreme Court from paragraph 3 of this Article must specify only one and must be reasoned.~~

The proposal for the election of the president of the Supreme Court from paragraph 3 of this Article shall contain a maximum of three candidates with the highest number of votes, who received more than a half of the votes of the total number of judges of the Supreme Court and must be reasoned.

If none of the registered candidates receives the required majority in the first vote, the vote shall be repeated among the candidates who received more than a quarter of the votes of the total number of judges of the Supreme Court.

If none of the candidates receives the required majority in the repeated voting, the General Session of the Supreme Court shall declare that the proposal of the candidate for the President of the Supreme Court has not been determined and shall inform the Judicial Council thereabout.

The explanation of the proposal from paragraph 4 of this Article shall include the number of votes received by each of the candidates individually and in which round of voting.

Appointment of the President of the Supreme Court

Article 36 (Article 23 amendment)

The General Session of the Supreme Court submits the proposal for the election of the president of the Supreme Court from Article 35, paragraph 4 of this law to the Judicial Council.

The Judicial Council conducts an interview with the proposed candidate **candidates**.

Based on the conducted interview and the proposal referred to in paragraph 1 of this Article, the Judicial Council shall decide on the appointment of the president of the Supreme Court.

When the term for which he is appointed expires and upon the termination of office of the president of the Supreme Court at his own request, the president of the Supreme Court shall remain as a judge at the Supreme Court.

Acting president of the Supreme Court

Article 36a (Article 24 amendment)

After the expiration of the term of office for which he was elected and the termination of the office of the president of the Supreme Court, as well as in the case of resignation or dismissal, the Judicial Council appoints the acting president of the Supreme Court.

A person from among the Supreme Court judges may be appointed as acting president of the Supreme Court.

The acting president of the Supreme Court shall be appointed for a period of six months.

2. Conditions for Appointment of Judges and Court Presidents

General Conditions

Article 37

A person may be appointed as a judge and a court president if he meets the general conditions for employment in a state authority and if he:

- 1) Graduated from the law faculty – level VII1 of education qualifications;
- 2) Passed the bar exam.

Special Conditions for Judges

Article 38 (Article 25 amendment)

A person may be appointed as a judge of the misdemeanour court if he worked for four years on legal matters, of which at least two years after passing the bar exam.

A person may be appointed as a judge of the basic court if, after passing the bar exam, he worked for at least two years as an adviser in a court or public prosecution office, as an attorney, notary or professor of law, or on other legal matters for at least four years.

A person may be elected as a judge of the Commercial Court who, after passing the bar exam, has worked for at least ~~three years~~ **five years** as an advisor in a court or state prosecutor's office, i.e. at least ~~three years~~ **five years** as a lawyer, notary or professor of legal sciences, or at least ~~four years~~ **six years** in other legal jobs.

~~A person who has worked for at least eight years as a judge, state prosecutor, lawyer, notary, professor of legal sciences or in other legal jobs may be elected as a judge of the Administrative Court.~~

A person may be elected as a judge of the Administrative Court who, after passing the bar exam, has worked for at least six years as an advisor in a court or state prosecutor's office, or at least six years as a lawyer, notary or professor of legal sciences, or at least eight years in other legal jobs.

A person who has worked as a judge or a misdemeanour judge, or as a state prosecutor, for at least four years, may be elected as a judge of the ~~higher~~ **Higher** Misdemeanour court.

A person who has worked as a judge, i.e. state prosecutor, for at least eight ~~eight~~ **six** years may be elected as a judge of a higher court.

A person who has worked as a judge, i.e. state prosecutor, for at least ten years may be elected as a judge of the Appellate Court.

A person who has worked as a judge, i.e. state prosecutor, for at least 15 years may be elected as a judge of the Supreme Court.

Notwithstanding the provisions of paragraph 8 of this Article, a person who has at least 20 years of work experience as a judge, state prosecutor, lawyer, notary, professor of legal sciences or in other legal positions may be elected as a judge of the Supreme Court.

Special Conditions for Court Presidents

Article 39 (Article 26 amendment)

For the president of the court may be elected a person ~~judge, i.e. state prosecutor~~ **judge, i.e. state prosecutor** who, in addition to the general requirements from Article 37 of this Law, also has the work experience, in total amounting to:

- 1) Six years of work experience in legal jobs, of which at least three years as a judge or prosecutor – for the president of the ~~basic~~ misdemeanour court;
- 2) Eight years of work experience in legal matters, of which a minimum of four years as a judge or prosecutor – for the president of a basic court;
- 3) Eight years of work experience in legal matters, of which a minimum of four years as a judge, prosecutor or misdemeanour judge – for the president of the High Misdemeanour Court.

- 4) Ten years of work experience in legal matters, of which a minimum of five years as a judge or prosecutor – for the president of the Commercial Court;
- 5) Twelve years of work experience in legal matters, of which a minimum of eight years as a judge or prosecutor – for the president of the high court;
- 6) Twelve years of work experience in legal matters, of which a minimum of ~~five~~ **eight** years as a judge or prosecutor – for the president of the Administrative Court;
- 7) Sixteen years of work experience in legal matters, of which a minimum of twelve years as a judge or prosecutor – for the president of the Appellate Court.

A judge or a court president or a public prosecutor whose performance is appraised as good or excellent in the performance appraisal procedure may be appointed as a court president, in accordance with this Law.

~~3. Procedure for Appointing a Court President~~

~~Work Programme~~

~~Article 40~~

~~Along with the application to the public announcement, the candidates for a court president shall submit a work programme which includes proposed organization of work in the court with indicators for improvement of work for the period of five years.~~

~~The content of the work programme referred to in paragraph 1 of this Article shall be approved by the Judicial Council.~~

3. Public announcements and application to public announcements

Article 40 (Article 27 amendment)

The Judicial Council shall announce the vacancy for the position of the president of the court in the “Official Gazette of Montenegro” and in one of the print media based in Montenegro two months before the term of office of the president of the court ends or immediately after the termination of office or dismissal of the president of the court.

Along with the application to the public announcement, the candidates for a court president shall submit a work programme which includes proposed organization of work in the court with indicators for improvement of work for the period of five years.

The content of the work programme referred to in paragraph 2 of this Article shall be approved by the Judicial Council.

Criteria for Appointment of a Court President

Article 41 (Article 28 amendment)

The criteria for appointment of a court president shall be:

- 1) Assessment of his work programme;
- 2) Assessment of work as a judge or state prosecutor;
- 3) Assessment of the interview with the candidate.

On the basis of the work programme, a candidate for a court president may get up to 40 points, based on the assessment of the proposed vision of the organization of work in the court.

On the basis of a good performance appraisal, a candidate for a court president may get 30 points, and 40 points on the basis of an excellent performance appraisal.

On the basis of an interview, a candidate for a court president may get up to 20 points, in accordance with Article 49 of this Law.

If two candidates have the same number of points, the priority shall be given to the candidate **is given to the candidate** who has obtained a higher number of points based on the assessment of work.

If the priority of the candidate cannot be established in the manner referred to in paragraph 5 of this Article, the candidate with more years of service in the court or the state prosecutor's office has priority.

Appointment of a Court President

Article 42 (Article 29 amendment)

A same person may be elected president of the same court **court of same jurisdiction** not more than two times.

The changes in the law do not affect the number of terms of office.

Upon the expiry of the term for which he was elected, upon the termination of the office of the president of the court at his request ~~or due to the abolition or merger of courts~~, as well as in the case of dismissal of the president of the court, the president of the court shall remain in such court as a judge.

Appropriate Application

Article 43 (Article 30 amendment)

The provisions of this law regulating the procedure for electing the judges ~~who are elected to the basic court shall apply accordingly to the procedure of public announcement, candidate registration, conducting of interviews, determining the list of candidates and making a decision on the election of the president of the court.~~

4. Plan of Vacancies for Judges

Content and Method of Adoption

Article 44 (Article 31 amendment)

Vacancies for judges in courts shall be filled in accordance with the Plan of Vacancies for Judges at the level of Montenegro (hereinafter: Vacancies Plan).

The Vacancies Plan shall include vacant positions for judges in all courts in the next two years.

The Vacancies Plan shall be made based on an assessment of needs for filling the positions of judges through the voluntary transfer of judges, advancement and public announcements for the first appointment of judges in misdemeanour courts, basic courts, the Commercial Court and the Administrative Court, as well as for one position of a judge of the Supreme Court referred to in Article 38, paragraph 9 of this Law.

While making the assessment referred to in paragraph 3 of this Article, the Judicial Council shall particularly take into account the expected vacancies that may be foreseen based on the influx of cases in the previous three years, the expansion of judicial competencies, the expected termination of judicial office, the decision on the number of judges and the number of judicial vacancies in the past three years.

The vacancy plan shall be adopted by the Judicial Council, no later than by the end of the calendar **current** year for the next two years.

The Vacancies Plan may be amended if, in the course of a year, there is a change of circumstances based on which the assessment for filling the vacancies for judges referred to in paragraph 2 of this Article was made.

5. Procedure for Appointment of Basic Court Judges

Public Announcement of Vacancies

Article 45 (Article 32 amendment)

Vacancies for judges in basic courts shall be filled through an internal announcement for voluntary transfer of judges from one basic court to another, **published by the Judicial Council on its website.**

~~If vacancies for judges are not filled in accordance with paragraph 1 of this Article, the judges in basic courts shall be appointed on the basis of a public announcement.~~

Judicial vacancies that are not filled in accordance with paragraph 1 of this Article shall be filled from the ranks of candidates for judges, in accordance with Article 55 of this Law.

If the vacant positions of judges are not filled in accordance with paragraph 2 of this Article, the Judicial Council, in accordance with the Vacancy Plan, publishes a public announcement for the selection of candidates for judges in basic courts.

The public announcement for the selection of candidates for judges in basic courts at the level of Montenegro shall be published by the Judicial Council in the "Official Gazette of Montenegro" and in one of the print media based in Montenegro.

Filing an Application to the Public Announcement

Article 46 (Article 33 amendment)

An application to the public announcement, along with the evidence of meeting the conditions for appointment of judges **candidates for judges** in basic courts, shall be submitted to the Judicial Council within 15 days from the date the public announcement for filling vacant positions for **candidates for judges** in basic courts is published, using a form prescribed by the Judicial Council.

The Judicial Council shall dismiss untimely and incomplete applications.

Applicants may initiate an administrative dispute against the decision to dismiss an untimely or incomplete application.

Criteria for Selection of Candidates for Judges Appointed for the First Time

Article 47 (Article 34 amendment)

The criteria for selection of judges **candidates for judges** appointed for the first time shall include:

- 1) The score on the written test referred to in Article 48 of this Law, or score on the bar exam, in accordance with the law governing the bar exam;
- 2) The score on the interview with the candidate.

Written Testing

Article 48 (Article 35 amendment)

The Judicial Council shall conduct written testing of persons being selected as **candidates for** judges of basic courts for the first time, who meet the statutory requirements and whose

applications are timely and complete, through a commission consisting of three members of the Judicial Council, of whom two from the ranks of judges and one from the ranks of eminent lawyers.

Written testing shall not be conducted for the persons referred to in paragraph 1 of this Article, who were evaluated at the bar exam, **unless the candidate wants to take the test, in which case the candidate's grade from the written test is evaluated.**

The written test shall be prepared by the commission referred to in paragraph 1 of this Article, and shall include drafting of decisions in criminal and civil matters.

The written test shall be taken under a code.

Assessment of the written test shall be carried out by awarding a certain number of points for the form of the decision, the application of law and the rationale of the decision, so that the maximum of 80 points may be achieved, of which up to 40 for drafting a decision in the criminal field and up to 40 for drafting a decision in the civil field.

The written test shall be examined by the commission referred to in paragraph 1 of this Article, which shall submit it to all members of the Judicial Council together with the proposed score.

The Judicial Council shall decide on the score at the written test.

Organization of the written test shall be governed by the Rules of Procedure of the Judicial Council.

Removal from written testing

Article 48a (Article 36 amendment)

If a candidate uses illegal means, i.e. written or technical aids during a written test, he/she shall be removed from the test, and the Judicial Council, at the proposal of the Testing Commission, shall make a decision to ban such candidate from accessing the written test for a period of two years from the date of the violation.

In the case referred to in paragraph 1 of this Article, it shall be deemed that the candidate did not pass the written test, as confirmed by the Judicial Council at the proposal of the Testing Commission.

Interview

Article 49 (Article 37 amendment)

The Judicial Council shall conduct an interview with persons who score more than ~~60 points~~ **55 points** in the written test or the bar exam.

The following shall be assessed at the interview:

- Motivation to work at a court;
- Communication skills;
- Ability to make decisions and resolve conflicts;
- Understanding of the role of a judge in society.

The assessment based on the criteria referred to in paragraph 2 of this Article shall be carried out by way of each member of the Judicial Council awarding a number of points to each person, where a person may get a maximum of 20 points at the interview.

The final score at the interview shall be the average number of points, which is determined based on the number of points awarded by each member of the Judicial Council.

A person who, based on the interview evaluation, scores less than ~~15 points~~ **10 points** at the interview may not be included in the ranking list of candidates for judges.

The Judicial Council may use the expert assistance of a psychologist when conducting interviews.

Ranking List of Candidates for Judges

Article 50 (Article 38 amendment)

Based on the grade on the written test, i.e. the bar exam and the grade from the interview, a ranking list of candidates for judge (hereinafter: ranking list) is prepared **determined** according to the number of points achieved.

If two candidates in the ranking list have the same number of points, the preference shall be given to the candidate who scores more points on a written test or the bar exam, and if candidates have scored the same number of points on the written test or the bar exam, the preference shall be given to the candidate who is a member of a minority ethnic group and other national minority community.

If preference among candidates may not be determined in the manner referred to in paragraph 2 of this Article, the Judicial Council shall select a candidate by secret ballot.

Selection and assignment of candidates for judges

Article 51

The Judicial Council shall make a decision on the selection of the number of candidates for judges as determined by the announced vacant positions of judges, according to the order from the ranking list, as well as on the assignment of candidates for judges to initial training at the Basic Court in Podgorica.

Rights of Applicants

Article 52 (Article 39 amendment)

A person who applied to the public announcement for the selection of **candidates for** judges in a basic court shall have the right to check the documents, written tests and the scores of persons who have applied to the public announcement, within 15 days from the date of the decision on the assignment of candidates for judges.

Persons referred to in paragraph 1 of this Article may initiate an administrative dispute against the decision of the Judicial Council referred to in paragraph 1 of the Article 51 of this Law.

The Judicial Council shall assign the candidates for judges to initial training, i.e. the judges to the court in which they were elected after the decision in the administrative dispute becomes final.

Rights and Duties of Candidates for Judges

Article 53

During the initial training, the candidate for a judge shall commence his employment at the Basic Court in Podgorica until the decision on the appointment is made.

The candidate for a judge shall be entitled to a salary in the amount of 70% of the salary earned by judges at the basic court.

The rights and duties of the candidate for a judge arising from work and based on work that are not governed by this Law shall be defined by regulations governing the rights and duties of civil servants.

Initial Training

Article 54 (Article 40 amendment)

The candidates for a judge shall complete the initial training consisting of a theoretical and a practical part and lasting ~~18 months~~ **12 months**.

The theoretical part of the initial training shall be conducted by the legal entity authorized for training judges, established under a separate law (hereinafter: the legal entity for training judges), and the practical part of the initial training shall be conducted at the Basic Court in Podgorica

The initial training shall be conducted according to the initial training programme.

The practical part of the initial training shall be conducted under the supervision of a mentor designated by the Judicial Council.

The score of the candidate for a judge during the initial training shall be determined by the Judicial Council, based on the reports received from the legal entity authorized for training judges and the mentor on the conducted training.

The scores referred to in paragraph 5 of this Article may be satisfactory or unsatisfactory, and shall be reasoned.

The initial training programme and the method of assessing candidates for a judge shall be implemented and the conditions for the selection of mentors shall be prescribed in accordance with the law governing the training of judges.

Termination of employment of a candidate for a judge**Article 54a (Article 41 amendment)**

The candidate for a judge with unsatisfactory score in the initial training shall have his employment terminated, by force of law, on the date when the decision on assessment becomes final and enforceable.

Decision on Appointment**Article 55**

~~The candidate for a judge with a satisfactory score at the initial training shall be appointed as a basic court judge by the Judicial Council.~~

~~The candidate for a judge shall exercise the right to choose the basic court to which he will be assigned based on the order on the ranking list referred to in Article 50 of this Law.~~

~~The Judicial Council shall adopt the decision on the assignment of appointed judges to basic courts based on the right of candidates referred to in paragraph 2 of this Article to choose the court.~~

~~The candidate for a judge with unsatisfactory score after the initial training shall have his employment terminated by force of law, on the date when the decision on assessment becomes final and enforceable.~~

~~The candidate for a judge who refuses assignment referred to in paragraph 3 of this Article shall have his employment terminated by force of law.~~

Decision on Appointment**Article 55 (Article 42 amendment)**

The Judicial Council shall adopt the decision on the appointment of judges from among the candidates for judges with a satisfactory score in the initial training.

The candidate for a judge shall exercise the right to choose the basic court to which he/she will be elected, based on the order on the ranking list referred to in Article 50 of this Law.

A candidate for a judge who received a satisfactory grade during the initial training, but was not selected as a judge, shall remain at the Basic Court in Podgorica until the election as a judge and is entitled to the salary referred to in Article 53, paragraph 2 of this Law.

A candidate for a judge from paragraph 3 of this Article has an advantage during the election for a judge compared to candidates for a judge who completed the initial training at a later date.

A candidate for a judge who refuses to be elected as a judge shall be terminated by force of law.

The rights of the elected judge

Article 55a (Article 43 amendment)

A judge who, in accordance with Article 55 of this law, has been elected to a court that is more than 50 km away from his place of residence, i.e. habitual residence, has the right to an official apartment or to reimbursement of rent, transportation expenses, as well as the right to reimbursement of expenses for separate life from the family, if the judge or a member of his family household does not own, co-own or jointly own an apartment, i.e. a residential facility on the territory of the court to which the judge was elected.

The members of the family household referred to in paragraph 1 of this Article are the persons who live in the same household with the judge, namely:

- a spouse or a person who lives with the judge in a cohabitation, i.e. a partner in a cohabitation with a person of the same sex;

- children born in or out of wedlock, adopted children and stepchildren;

- other persons whom the judge, his/her spouse or the person with whom he/she lives in a cohabitation, i.e. in a cohabitation of persons of the same sex, is obliged by law to support, and who live with him/her in the same apartment, i.e. in a same residential building for family housing.

The Judicial Council shall decide about the right from paragraph 1 of this Article, and the funds for the exercise of this right shall be provided from the budget of the court to which the judge is appointed.

6. Appointment of Misdemeanour Court Judges

Public Announcement

Article 56 (Article 44 amendment)

Vacancies for judges in misdemeanour courts shall be filled through an internal announcement for voluntary transfer of judges from one misdemeanour court to another, published by the Judicial Council on its website.

In accordance with the Vacancy Plan, the Judicial Council publishes a public announcement for the positions of judges candidates for judges in misdemeanour courts.

Provisions of Articles 45, 46 and 52 of this Law shall be applied accordingly to the procedure of public announcement, submitting applications and acting upon applications, as well as to the rights of applicants.

Written Testing

Article 57 (Article 45 amendment)

The written testing of persons whose applications for misdemeanour court judges are timely and complete shall include drafting of a decision from the jurisdiction of misdemeanour courts.

Assessment of the written test shall be carried out by awarding a certain number of points for the form of the decision, the application of law and the rationale of the decision, so that the maximum of 80 points may be achieved.

Provisions of Articles 48 and 49 of this Law shall apply accordingly to the procedure of conducting the written test, interview and assessment **procedure of evaluation** of the persons referred to in paragraph 1 of this Article.

Decision on Appointment of Candidates for Judges

Article 58 (Article 46 amendment)

Based on the assessment of the written test or the bar exam and the interview, and according to the criteria referred to in Article 47 of this Law, a ranking list of candidates for judges of the Misdemeanour Court shall be prepared **determined**.

A candidate for a misdemeanour court judge shall enjoy the same rights and duties as a candidate for a basic court judge.

The provisions of Articles 50 and 55 **50, 55 and 55a** of this law shall apply to the procedure of preparation **determination** of the ranking list from paragraph 1 of this Article, making a decision on the selection and the assignment of candidates for the judge of the misdemeanour court.

Initial Training

Article 59

Candidates for judges of misdemeanour courts shall complete the initial training consisting of a theoretical and a practical part and lasting for nine months.

Provisions of Article 54 of this Law shall be applied accordingly to the programme and implementation of initial training, as well as to the assessment of initial training.

Decision on Appointment

Article 60

~~A candidate for a judge of the misdemeanour court who has received a satisfactory score at the initial training shall be selected by the Judicial Council as a judge of the misdemeanour court.~~

~~The right to choose the misdemeanour court to which he/she will be assigned is exercised by the candidate for judge according to the order in the ranking list.~~

~~The Judicial Council shall adopt the decision on the assignment of appointed judges to misdemeanour courts based on the right of candidates referred to in paragraph 2 of this Article to choose the court.~~

~~The candidate for a judge with unsatisfactory score after the initial training shall have his employment terminated by force of law, on the date when the decision on assessment becomes final and enforceable.~~

~~The candidate for a judge who refuses assignment referred to in paragraph 3 of this Article shall have his employment terminated by force of law.~~

Decision on Appointment

Article 60 (Article 47 amendment)

The provisions of Articles 55 and 55a of this Law shall apply accordingly to the adoption of the decision on appointment and on the rights and duties of candidates.

7. Appointment of Administrative Court and Commercial Court Judges

Public Announcement

Article 61 (Article 48 amendment)

The Judicial Council shall publish the public announcement for positions of judges in the Administrative Court or the Commercial Court in accordance with the Vacancy Plan.

Provisions of Articles 45, **paragraph 4 and Articles 46 and 52** of this Law shall apply accordingly to the procedure of public announcement, submitting applications and acting upon applications, as well as to the rights of applicants.

Written Testing

Article 62 (Article 49 amendment)

The written testing of persons whose applications for judges of the Administrative Court and Commercial Court are timely and complete shall include drafting of a decision from the jurisdiction of the Administrative Court or the Commercial Court.

Assessment of the written test shall be carried out by awarding a certain number of points for the form of the decision, the application of law and the rationale of the decision, so that the maximum of 80 points may be achieved.

The provisions of Articles 48 and 49 of this Law shall apply accordingly to the procedure of conducting the written test, interview and **assessment evaluation procedure.**

Decision on Appointment of Candidates for Judges

Article 63

~~Based on the assessment of the written test or the bar exam and the interview, and according to the criteria referred to in Article 47 of this Law, a ranking list of candidates for judges of the Administrative Court or the Commercial Court shall be prepared.~~

~~The Judicial Council shall appoint as many candidates for judges referred to in Article 1 of this Article as there are advertised vacancies for judges, according to the order on the ranking list, and shall adopt the decision on the assignment of candidates for judges to the Administrative Court or the Commercial Court.~~

~~The candidate for a judge of the Administrative Court or the Commercial Court shall enjoy the same rights and duties as the candidate for a judge of the basic court.~~

~~Provisions of Article 50 of this Law shall be applied accordingly to the procedure of preparing the ranking list referred to in paragraph 1 of this Article.~~

Ranking List

Article 63 (Article 50 amendment)

Based on the assessment, i.e. the written test, i.e. the bar exam and the interview, a ranking list of candidates for judges of the Administrative Court or the Commercial Court shall be determined.

Provisions of Article 50 of this Law shall be applied accordingly to the procedure of preparing the ranking list referred to in paragraph 1 of this Article.

Decision on appointment of candidates for judges and judges**Article 63a (Article 51 amendment)**

The Judicial Council makes a decision on the selection of as many candidates for the judges of the Commercial or Administrative Court as there are advertised vacancies for judges in the Commercial or Administrative Court, according to the order from the ranking list.

If there is a candidate for a judge among the candidates from paragraph 1 of this Article, the Judicial Council shall make a decision on his/her election as a judge immediately after determining the ranking list.

If among the candidates referred to in paragraph 1 of this Article there is a candidate who is not a judge, the Judicial Council shall make a decision on the selection of a candidate for a judge of the Commercial or Administrative Court.

The candidate for a judge of the Administrative Court or the Commercial Court shall enjoy the same rights and duties as the candidate for a judge of the basic court.

Initial Training**Article 64 (Article 52 amendment)**

The candidates for judges of the Administrative Court, i.e. the Commercial Court **from Article 63a, paragraph 3**, are required to complete the initial training, which consists of a theoretical and practical part and lasts at least three months for the Administrative Court, i.e. six months for the Commercial Court.

Article 54 of this law shall be applied accordingly to the programme and implementation of the initial training of candidates referred to in paragraph 1 of this Article, as well as to the assessment during the initial training.

The candidate for a judge with a satisfactory score at the initial training shall be appointed as the Administrative Court judge or the Commercial Court judge by the Judicial Council.

The candidate for a judge of the Administrative Court or the Commercial Court with unsatisfactory score at the initial training shall have his employment terminated by force of law, on the date when the decision on assessment becomes final and enforceable.

Decision on Appointment**Article 65 (Article 53 amendment)**

~~The candidate for a judge with a satisfactory score at the initial training shall be appointed as the Administrative Court judge or the Commercial Court judge by the Judicial Council.~~

~~The candidate for a judge of the Administrative Court or the Commercial Court with unsatisfactory score at the initial training shall have his employment terminated by force of law, on the date when the decision on assessment becomes final and enforceable.~~

8. Appointment of Supreme Court Judges**Public Announcement****Article 66**

The Judicial Council shall publish the public announcement for the position of a Supreme Court judge referred to in Article 38, paragraph 9 of this Law in accordance with the Vacancies Plan.

Provisions of Articles 45, 46 and 52 of this Law shall be applied accordingly to the procedure of public announcement, submitting applications and acting upon applications, as well as to the rights of applicants.

Criteria

Article 67 (*Article 54 amendment*)

The criteria for the appointment of a judge of the Supreme Court referred to in Article 38, paragraph 9 of this Law shall be his professional knowledge and ability to perform judicial office.

Professional knowledge shall be assessed on the basis of the following sub-criteria:

- 1) Professional development (~~continuous training and other forms of training~~);
- 2) Published scientific and professional papers and other activities in the profession.

Ability to perform the judicial office shall be assessed on the basis of the following sub-criteria:

- 1) Work experience;
- 2) The quantity and quality of work;
- 3) Motivation to work at the Supreme Court;
- 4) Communication skills;
- 5) Ability to make decisions;
- 6) Understanding of the role of a judge in society.

Assessment of Criteria

Article 68

Professional knowledge of candidates for a judge of the Supreme Court referred to in Article 38, paragraph 9 of this Law shall be assessed on the basis of the evidence submitted together with the candidate's application, and the ability to perform the judicial office shall be assessed based on opinions and the interview.

Opinion

Article 69

The Judicial Council shall obtain the opinion on professional abilities of the applicants to perform the judicial office, as follows:

- From the enlarged session of the Supreme Public Prosecutor's Office, if the applicant performed prosecutorial office;
- From the enlarged session of the Supreme Court, if the applicant performed the judicial office;
- From the Administrative Board of the Bar Association of Montenegro, if the applicant worked as an attorney-at-law;
- From the professional body of the faculty, where the applicant performed teaching activities;
- From the competent bodies of other entities where the applicant performed legal affairs.

The opinion referred to in paragraph 1 of this Article shall include information on work experience, quantity and quality of work of the candidate for judge of the Supreme Court referred to in Article 38, paragraph 9 of this Law.

Interview

Article 70

The Judicial Council shall conduct an interview with the candidates for a judge of the Supreme Court who meet the statutory requirements, during which the following shall be assessed:

- 1) Motivation to work at the Supreme Court;
- 2) Communication skills;
- 3) Ability to make decisions;
- 4) Understanding of the role of a judge in society.

Decision

Article 71 (Article 55 amendment)

Based on the evidence enclosed with the candidate's application, the opinion from Article 69 of this Law and the conducted interview from Article 70 of this Law, the Judicial Council prepares **determines** the ranking list.

The provisions of Article 50 of this Law shall apply accordingly to the preparation **determination** of the ranking list referred to in paragraph 1 of this Article.

The Judicial Council shall appoint the judge of the Supreme Court based on the order from the ranking list referred to in paragraph 1 of this Article.

9. Promotion of Judges

Conditions for Promotion

Article 72

A judge shall be entitled to advancement through the appointment to a higher court, and a public prosecutor shall be entitled to advancement through the appointment to a court, if their work is assessed as excellent or good in accordance with the law and if they meet the specific requirements laid down for the appointment to that court.

A judge or a public prosecutor may be promoted to the Supreme Court if he gets the excellent score and if he meets the special requirement for appointment to the Supreme Court referred to in Article 38, paragraph 8 of this Law.

Public Announcement

Article 73

Within the advancement procedure, vacancies for judges shall be announced in the high court, High Misdemeanour Court, Appellate Court and the Supreme Court, in accordance with the Vacancies Plan.

Provisions of Articles 45, 46 and 52 of this Law shall be applied accordingly to the procedure of public announcement, submitting applications and acting upon applications, as well as to the rights of applicants.

Criteria for the Judge Who Is Promoted

Article 74

The criteria for the appointment of the judge who is promoted shall be:

- 1) Performance appraisal of the judge or public prosecutor;
- 2) The score on the interview with the candidate.

Based on the criterion referred to in paragraph 1, item 1 of this Article, a candidate shall be awarded 60 points for the score 'good' and 80 points for the score 'excellent', whereas up to 20 points shall be awarded based on the interview.

Decision on Appointment

Article 75

The Judicial Council shall conduct an interview with the candidates.

A ranking list shall be prepared on the basis of the performance appraisal and the assessed interview referred to in Article 74 of this Law.

If two candidates in the ranking list have the same number of points, the preference shall be given to a candidate who has scored more points on the basis of performance appraisal, and if candidates have scored the same number of points on those grounds, preference shall be given to the candidate who is a member of a minority ethnic group or other national minority community.

If the advantage of a candidate may not be established in the manner referred to in paragraph 3 of this Article, the Judicial Council shall draw lots.

The Judicial Council shall decide on the appointment of a judge to a higher court according to the order on the ranking list prepared in accordance with paragraphs 3 and 4 of this Article.

Article 49 of this Law shall be applied accordingly to the procedure for conducting the interview.

10. Appointment of Lay Judges

Conditions for Lay Judges

Article 76

A person may be appointed as a lay judge if he meets the general requirements for employment in state authorities, if he has university education, if he is able to work and is least 30 years of age.

Procedure of Appointing Lay Judges

Article 77

The court president shall announce vacancies for lay judges in the court in one of the print media.

The court president shall conduct interviews with the candidates who meet the conditions referred to in Article 76 of this Law and shall, on the basis of the interviews conducted, make a list of candidates and submit it to the Judicial Council, with the opinion of the session of judges on each candidate.

The Judicial Council shall appoint lay judges on the basis of the list and opinion referred to in paragraph 2 of this Article.

Publication of Decision on Appointment

Article 78

The Judicial Council shall inform the selected candidate, the other candidates from the list for appointment and the court to which the lay judge is appointed about the appointment of a lay judge.

The decision on the appointment of a lay judge shall be published in the “Official Gazette of Montenegro”.

11. Oath and Assuming Office Oath and Assuming the Judicial Office

Article 79 (Article 56 amendment)

A judge shall assume office from the day he takes the oath.

Judges shall take an oath before the Judicial Council, not later than 15 days from the day of appointment **date the decision on the appointment becomes final and enforceable.**

A lay judge shall take an oath before the president of the Judicial Council or a member of the Judicial Council.

Text of the Oath

Article 80

The oath shall read: “I swear that I will perform the judicial office honourably, independently, impartially, fairly, equitably and responsibly, according to the Constitution and the law.”

The oath shall be taken by pronouncing and signing the text of the oath.

If a judge or lay judge does not take the oath or refuses to take the oath, they shall be deemed not appointed.

A judge who is appointed within the advancement procedure to a higher court shall not pronounce the text of the oath referred to in paragraph 1 of this Article, but shall instead symbolically sign the oath.

Official Identity Card

Article 81

Judges and court presidents shall have official identity cards.

The official identity card shall be issued by the Judicial Council on a prescribed form and the Council shall also keep records of issued official identity cards.

The form and method of issuing identity cards for judges and court presidents and the method of keeping records of issued official identity cards shall be prescribed by the public administration body in charge of judicial affairs (hereinafter: Ministry).

IV. ASSIGNMENT AND TRANSFER OF JUDGES Deployment to another Court with Judge’s Consent

Article 82

Judges shall perform judicial office in the court to which they were appointed.

The Judicial Council may deploy a judge, with his consent, to another court of the same or lower instance for a period of up to one year, if the regular performance of duties in the court to which the judge is deployed becomes unlikely due to recusal or inability of a judge of that court to perform judicial office or due to a large backlog of cases that may not be adjudicated with the existing number of judges or due to some other justified reason.

In the cases referred to in paragraph 2 of this Article, the judge shall receive the salary at the court to which he is deployed.

Reimbursement of expenses incurred as a result of deployment of a judge to another court shall be paid by the court to which the judge is deployed, in line with the regulations governing the reimbursement of expenses to civil servants and state employees.

The procedure for temporary deployment to another court

Article 83

The Judicial Council shall decide on temporary deployment of the judge referred to in Article 82 of this Law, at the request of the president of the court to which the judge is deployed.

Before it decides on temporary deployment of the judge referred to in Article 82 of this Law, the Judicial Council shall consult the president of the court who filed the request, the judge who is temporarily deployed and the president of the court at which the judge performs his judicial office.

The expenses incurred through deployment of the judge in accordance with paragraph 1 of this Article shall be paid by the court to which the judge is temporarily deployed.

Deployment to another Authority

Article 84

The Judicial Council may deploy a judge, with his consent, to the Ministry, legal entity authorized to train judges and to the Secretariat of the Judicial Council for a period of up to three years, to participate in the affairs of those authorities related to the improvement of the work of courts, and especially to participate in the introduction of international standards in the work of courts.

The deployment referred to in paragraph 1 of this Article shall be made upon the proposal of the head of authority to which the judge is deployed, based on the previously obtained opinion of the president of the court in which the judge performs his judicial office and the consent of the judge.

The judge shall not perform his judicial office while working for the authority to which he is deployed.

In the case referred to in paragraph 1 of this Article, the judge shall keep his salary, and the expenses incurred due to deployment of the judge shall be paid by the authority to which the judge is deployed.

Transfer to another Court without Judge's Consent

Article 85 (Article 57 amendment)

In the case of a reorganization of the courts, which reduces or abolishes a number of judges' positions, **whereby the number of courts or the number of judges' positions is reduced**, the Judicial Council may transfer a judge to work in another court, without his/her consent.

Permanent Voluntary Assignment of Judges

Article 86

~~The Judicial Council shall publish an internal announcement for filling vacancies for judges on its website.~~

~~The judges who wish to be permanently assigned to another court of the same or lower instance shall have the right to apply to the internal announcement.~~

~~The Judicial Council shall make a list of candidates for the assignment referred to in paragraph 2 of this Article based on their performance in the last three years or based on the performance appraisal of the judge in accordance with this Law.~~

~~Based on the list of candidates from paragraph 3 of this Article, the Judicial Council shall make a decision on assigning a judge to another court of the same level, taking into account~~

the needs of the court in which the judge performs his/her judicial function and the court to which he/she is assigned.

Permanent Voluntary Transfer of Judges

Article 86 (Article 58 amendment)

The Judicial Council shall publish an announcement for permanent voluntary transfer of judges on its website.

The judges who wish to be permanently transferred to another court of the same jurisdiction and of the same or lower degree and who have a performance evaluation in accordance with this law have the right to apply for permanent voluntary transfer.

The Judicial Council determines the list of registered candidates from paragraph 2 of this Article, especially taking into account the evaluation of the judge's work in accordance with this law, the length of the judge's service, place of residence and family circumstances of the judge, as well as the needs of the court in which the judge performs his/her judicial function and of the court to which he/she is transferred.

Based on the list of candidates from paragraph 3 of this Article, the Judicial Council makes a decision on the permanent voluntary transfer of a judge to another court.

An administrative dispute may be initiated against the decision from paragraph 4 of this Article by persons referred to in paragraph 2 of this Article.

If an administrative dispute is initiated against the decision on permanent voluntary transfer of a judge, the Judicial Council may transfer the judge when the decision on permanent voluntary transfer becomes final.

Rights of a judge who has been permanently voluntarily transferred

Article 86a (Article 59 amendment)

A judge who, in accordance with Article 86 of this law, has been transferred to a court that is more than 50 km away from his place of residence, i.e. habitual residence, has the right to an official apartment or to reimbursement of rent, transportation expenses, as well as the right to reimbursement of expenses for separate life from the family, if the judge or a member of his family household does not own, co-own or jointly own an apartment, i.e. a residential facility on the territory of the court to which the judge was transferred.

The members of the family household referred to in paragraph 1 of this Article are the persons who live in the same household with the judge, namely:

- a spouse or a person who lives with the judge in a cohabitation, i.e. a partner in a cohabitation with a person of the same sex;

- children born in or out of wedlock, adopted children and stepchildren;

- other persons whom the judge, his/her spouse or the person with whom he/she lives in a cohabitation, i.e. in a cohabitation of persons of the same sex, is obliged by law to support, and who live with him/her in the same apartment, i.e. in a same residential building for family housing.

The Judicial Council shall decide about the right from paragraph 1 of this Article, and the funds for the exercise of this right shall be provided from the budget of the court to which the judge is transferred.

V. APPRAISAL OF JUDGES

Objective of Appraisal

Article 87

~~The performance of judges, except for judges of the Supreme Court, shall be appraised every three years, with a view to assess their expertise, quantity and quality of work, ethics and training needs, as well as for the purpose of advancement to a higher court.~~

~~Scores awarded to judges within their performance appraisal shall be excellent, good, satisfactory and unsatisfactory.~~

~~The performance of judges shall be appraised before the period referred to in paragraph 1 of this Article expires, if:~~

- ~~1) The judge gets the unsatisfactory score,~~
- ~~2) The judge has applied to the announcement for advancement to a higher court, and does not have an appraisal score or if more than two years have passed since the previous appraisal score.~~

~~In the case referred to in paragraph 3, item 1 of this Article, the performance appraisal of a judge shall be carried out one year after the decision on his appraisal score becomes final and enforceable.~~

~~Performance appraisal of a judge shall not be carried out if the judge was absent for at least a year in the period for which the appraisal referred to in paragraph 1 of this Article is done.~~

Objective of Appraisal

Article 87 (Article 60 amendment)

The performance of judges, except for judges of the Supreme Court, shall be appraised every five years, with a view to assess their expertise, quantity and quality of work, ethics and training needs, as well as for the purpose of advancement to a higher court.

Exceptionally, evaluation of the work shall be carried out before the expiration of the period from paragraph 1 of this Article, namely for the judge:

- 1) was elected for the first time – after three years from taking office;**
- 2) whose appraisal score is unsatisfactory, upon the expiry of the period of one year after the decision on the appraisal score has become final and enforceable;**
- 3) has submitted an application for the announcement for advancement to the higher instance court or for the president of a court, and does not have a performance appraisal score or more than three years have passed from the last appraisal score.**

In cases referred to in paragraph 2, items 2 and 3 of this Article, the judge's work is evaluated in the period since the last evaluation.

In the case referred to in paragraph 2, item 3 of this Article, for the evaluation of the work of judges, the total period of three years preceding the evaluation of the judge will be taken into account.

Scores awarded to judges within their performance appraisal shall be excellent, good, satisfactory and unsatisfactory.

Appraisal Commission

Article 88

The appraisal of judges shall be carried out by the Appraisal Commission, established by the Judicial Council (hereinafter: Appraisal Commission).

The Appraisal Commission shall include the president of the Supreme Court and four members of the Judicial Council, three of whom from the ranks of judges and one from the ranks of eminent lawyers.

The Appraisal Commission shall adopt the decision on the performance appraisal of judges at the proposal of the panel of judges for performance appraisal of judges, which is composed of the president of the court at which the judge is appraised and four judges of higher-level courts (hereinafter: Panel of Judges for Appraisal).

The Panel of Judges for Appraisal shall be established by the Judicial Council.

The Judicial Council may adopt a decision on recusal of a member of the Appraisal Commission or the Panel of Judges for Appraisal.

The method of work of the Appraisal Commission and the Panel of Judges for Appraisal, as well as the cases and method of recusal of members of the Appraisal Commission and the Panel of Judges for Appraisal shall be governed by the Rules of Procedure of the Judicial Council.

Appraisal Criteria

Article 89

~~The criteria for performance appraisal of judges shall be:~~

- ~~1) Professional knowledge;~~
- ~~2) General abilities to perform judicial office.~~

Appraisal Criteria

Article 89 (Article 61 amendment)

The criteria for performance appraisal of judges shall be:

- 1) Effectiveness of judge's work;**
- 2) General abilities and professional activities.**

Professional Knowledge of Judges

Article 90

~~The professional knowledge of judges shall be appraised on the basis of the following sub-criteria:~~

- ~~1) Quantity and quality of work;~~
- ~~2) Preparation for trials;~~
- ~~3) Ability to plan and efficiently execute procedural actions and skills to manage hearings;~~
- ~~4) Professional development.~~

~~The quantity and quality of work shall be appraised on the basis of the number of pending cases, the number of adjudicated cases, the number of revoked decisions, the number of open hearings and hearings held by the second instance court, the number of adopted control requests, the number of decisions made within the statutory deadline and the quality of rationale.~~

~~Based on his quantity of work, judge's performance shall be appraised as unsatisfactory if his performance is more than 20% below the average benchmarks for quantity of work in certain types of cases, which are set by the Judicial Council based on the size of the court, unless the judge provides justified reasons for such performance.~~

~~Preparation for trial shall be appraised based on accurately defined actions to be taken at the preliminary hearing and evidence to be presented with their concentration.~~

~~The ability to plan and efficiently implement procedural actions shall be appraised based on the ability of the judge to organize and efficiently execute procedural and other actions in accordance with the principle of efficiency and effectiveness of proceedings, and the skill~~

to manage hearings shall be appraised based on the ability of a judge to manage a hearing in a clear and understandable manner while respecting the procedural roles of the parties to the proceedings.

Professional development shall be appraised based on all activities undertaken by the judge in order to improve and apply knowledge and methods in work.

Effectiveness of Judge's Work

Article 90 (Article 62 amendment)

The effectiveness of judge's work shall be appraised on the basis of the following sub-criteria:

1) Quantity of work;

2) Quality of work;

3) Quality of rationales for the decisions.

The quantity of work is evaluated based on the number of completed cases.

Based on the quantity of work, a work of a judge shall be graded as unsatisfactory if his work results are below 80% of the number of completed cases stipulated by the Framework Criteria for determining the required number of judges, unless the judge provides justified reasons.

The quality of work is evaluated based on the ratio of abolished decisions of the judge being evaluated and the average number of abolished decisions in a certain type of case at the level of the competent courts and based on the number of open hearings or hearings by the second instance court.

The quality of work appraisal shall be governed in more detail by the rules from Article 101 of this Law.

The quality of rationale shall be appraised for its clarity, conciseness and comprehensiveness of provided reasons.

General Abilities

Article 91

General abilities to perform judicial office shall be appraised based on the following sub-criteria:

1) Communication skills;

2) Ability to adapt to changing circumstances;

3) Participation in various professional activities;

4) Ability to organize and coordinate the court staff.

Communication skills shall be appraised based on the respect shown for the parties, colleagues, and the court staff, while performing judicial office.

Ability to adapt to changing circumstances shall be appraised based on the ability to adapt to structural and organizational changes in the court in which the judge performs his judicial office, to changes in laws and procedural rules, as well as to new technologies and work rules.

Participation in various professional activities shall be appraised based on the participation of the judge in trainings and other professional activities.

The ability to organize and coordinate court staff shall be appraised based on the ability of the judge to cooperate, organize and control the work of advisers, trainees and employees who work with him.

General Abilities and Professional Activities

Article 91 (Article 63 amendment)

General abilities and professional activities shall be appraised based on the following sub-criteria:

- 1) Communication skills;**
- 2) Ability to adapt to changing circumstances;**
- 3) Participation in various professional activities.**

Communication skills shall be appraised based on the respect shown for the parties, colleagues, and the court staff, while performing judicial office.

Ability to adapt to changing circumstances shall be appraised based on the ability to adapt to structural and organizational changes in the court in which the judge performs his judicial office, to changes in laws and procedural rules, as well as to new technologies and work rules.

Participation in various professional activities shall be appraised based on the participation of the judge in trainings and other professional activities.

Appraisal Sources

Article 92 (Article 64 amendment)

Performance appraisal of judges according to the criteria referred to in Article 89 of this Law shall be carried out by checking:

- ~~1) Five cases adjudicated by a final and enforceable decision, selected randomly;~~
- ~~2) Five cases adjudicated by a final and enforceable decision, selected by the judge himself;~~
- 3) Five cases adjudicated by a final and enforceable decision in which the decisions were repealed **repealed**, selected randomly;
- 4) A statistical report on the work of a judge, which contains data on the work of a judge, data from the records on judges and **data on violations of the Code of Ethics and disciplinary liability**, data on the number of complaints and decisions on complaints about the work of a judge, data on the number of control requests in judge's cases and decisions based on the control requests, as well as data on the number of cases in which the court decision was not made within the legally prescribed deadline;
- 5) Reports from controls of court work; and
- 6) A report from the legal entity authorized for training judges.

5) Data on training and other professional activities of judges, and

6) Judge's report.

Rules on the Selection of Cases

Article 93 (Article 65 amendment)

The cases referred to in Article 92, paragraph 1, items 1, 2 and 3 of this Law shall be selected from among final adjudicated cases from the period for which the appraisal is conducted, in which the judge acted as a single judge, rapporteur judge or the panel president, where, in addition to the cases that the judge dealt with in the court in which he performs his judicial office, the cases

that the judge dealt with in courts to which he was deployed shall also be taken into account, in accordance with the law.

The cases referred to in Article 92, paragraph 1, item 1 of this Law shall be selected from among adjudicated cases from the period for which the appraisal is conducted, and in addition to the cases that the judge dealt with in the court in which he performs his judicial office, the cases that the judge dealt with in courts to which he was assigned shall also be taken into account, in accordance with the law.

The selection of cases referred to in paragraph 1 of this Article shall be made after the appraisal of the judge commences, with the mandatory presence of the judge.

The type, method and procedure of selecting cases using the method of random sampling cases from paragraph 1 of this Article are regulated in more detail by the rules from Article 101 of this law.

Reports by Judges

Article 94

The judge whose work is appraised shall prepare, on a prescribed form, a report containing a description of his judicial actions according to the criteria and sub-criteria prescribed by this Law, own performance appraisal, and a list of cases that he chose for appraisal.

The judge shall submit the report referred to in paragraph 1 of this Article to the president of the court in which he performs his judicial office, within eight days from the commencement of appraisal.

The president of the court where the judge performs his judicial office shall also submit the report referred to in paragraph 1 of this Article and the documentation necessary for the appraisal of the judges referred to in Article 92 of this Law to the Panel of Judges for Appraisal, within five days from the date of receipt of the judge's report.

Report and Proposal of the Panel of Judges for Appraisal

Article 95

The Panel of Judges for Appraisal shall prepare a report on the appraisal of judges according to the criteria and sub-criteria prescribed by this Law, within 30 days from the submission of documents referred to in Article 92 of this Law.

On the basis of the report referred to in paragraph 1 of this Article and the judge's report referred to in Article 94 of this Law, the Panel of Judges for Appraisal shall prepare a proposal for appraisal score for the judge who is appraised and shall submit it to the Appraisal Commission.

Statement of Opinion about the Proposal for Appraisal Score

Article 96

The Appraisal Commission shall submit the proposal for the appraisal score referred to in Article 95 of this Law to the judge whose work is being appraised, who shall have the right to state his about the proposal within five days from the submission of the proposal for the appraisal score.

The Appraisal Commission may request additional information and clarification from the Panel for Appraisal.

The Appraisal Commission may invite the judge for an interview before determining the final appraisal score, for the purpose of clarification of certain issues.

Setting the Appraisal Score

Article 97 (Article 66 amendment)

~~A judge shall get the appraisal score excellent if his performance is appraised as excellent under all sub-criteria, or as good in two sub-criteria and excellent in others.~~

~~A judge shall get the appraisal score good if his work is appraised as good according to at least five sub-criteria.~~

~~A judge shall get the appraisal score satisfactory if his performance in at least four sub-criteria is appraised as satisfactory.~~

~~A judge shall get the appraisal score unsatisfactory if his performance is appraised as unsatisfactory in at least two sub-criteria.~~

A judge shall get the appraisal score Excellent if his work is appraised as excellent according to all sub-criteria, i.e. if the sub-criteria of quantity of work, quality of work, quality of rationale of decisions and communication skills are appraised as excellent, and if the other sub-criteria are appraised at least as good.

A judge shall get the appraisal score Good if his work is appraised as good according to the sub-criteria of quantity of work, quality of work, quality of rationale of decisions and communication skills.

A judge shall get the appraisal score Satisfactory if his work is appraised as satisfactory according to the sub-criteria of quantity of work, quality of work, quality of rationale of decisions and communication skills.

A judge shall get the appraisal score Unsatisfactory if, according to the sub-criterion of quantity of work or the quality of work, the work has been appraised as unsatisfactory, or if, according to those two sub-criteria, his work is appraised with a different grade, and according to two of the sub-criteria pertaining to the quality of the rationale of decisions, communication skills, the ability to adapt to changed circumstances and participation in various professional activities, his work was appraised as Unsatisfactory.

Appraisal Score

Article 98

The decision of the Appraisal Commission shall be final and an administrative dispute may be initiated against it.

The final decision on appraisal score of a judge shall be entered into the records of judges.

Consequences of Appraisal Scores

Article 99 (*Article 67 amendment*)

A judge whose performance is appraised as satisfactory and unsatisfactory shall be referred to the mandatory programme of continuous training, in accordance with the law governing the training of judges.

A judge whose performance is appraised as excellent or good may be promoted to a higher court.

~~If a judge whose performance is appraised as excellent does not get promoted to a higher court within one year from the date his performance was appraised as excellent, he shall be entitled to a salary in the amount of the salary of the president of the court in which he performs his judicial office, until he is appointed to a higher court or until his performance is appraised with a score lower than excellent.~~

The provisions of the law governing the protection of personal data shall apply to the protection of data on the procedure and the results of the evaluation of the judge.

Appraisal of Court Presidents

Article 100 (Article 68 amendment)

A president of the court shall be appraised both as a judge and as a president of the court.

The president of the court is evaluated as a judge by applying the provisions of this law which prescribe the evaluation of the work of judges.

The president of the court shall be appraised as a president of the court when he applies for the position of the president of the court.

Appraisal of court presidents shall be conducted by the Appraisal Commission.

Appraisal of court presidents shall be conducted on the basis of a proposal for appraisal score of the Panel of Judges for Appraisal, which includes, in addition to judges referred to in Article 88, paragraph 3 of this Law, also the president of the High Misdemeanour Court when appraising the president of a misdemeanour court, or the president of a high court when appraising the president of a basic court from the territory of that high court, then the president of the Appellate Court when appraising the president of the Commercial Court, and the presidents of high courts, or the president of the Supreme Court when appraising the president of the Administrative Court or the Appellate Court.

The proposal for appraisal score referred to in ~~paragraph 2~~ **paragraph 5** of this Article shall include the performance appraisal of a court president as a president and as a judge.

As a president of the court, the president shall be appraised as ~~good~~ **successful** or unsatisfactory **based on his organizational abilities related to the allocation of work and provision of conditions for regular and timely completion of tasks in the court or related to the success rate in implementation of the work programme referred to in Article 40 of this Law.**

If the court president's performance is appraised as unsatisfactory, he shall be dismissed from the office of the court president.

~~The procedure of appraisal of the court president as a court president shall be carried out according to the procedure and in the manner prescribed by this Law.~~

Special Rules for Appraisal

Article 101

The procedure of appraisal and indicators for preparation of reports and proposals for appraisal scores based on the criteria prescribed for judges, as well as the appraisal criteria and indicators for preparation of reports and proposals for appraisal scores of court presidents shall be governed in more details by the Judicial Council, through special rules.

VI. INCOMPATIBILITY AND TERMINATION OF JUDICIAL OFFICE

Opinion on other Activities

Article 102

At a request of a court president or a judge, the Judicial Council shall issue an opinion on whether certain activities are deemed professional performance of an activity that is incompatible with the judicial office.

A judge who performs scientific, educational and artistic activities, as well as activities protected by copyright, shall not be deemed to professionally perform other activity within the meaning of the Constitution.

Approval for Detention

Article 103 (Article 69 amendment)

~~When the competent court finds that there are grounds for detention of a judge, for a criminal offence committed while performing his judicial office, it shall immediately request the Judicial Council to decide whether it approves the detention to be imposed.~~

When the competent court or the competent prosecutor's office concludes that there are reasons for a judge to be deprived of his liberty due to a criminal offence committed in the exercise of his judicial function, such body shall be obliged to immediately request the approval for the deprivation of liberty from the Judicial Council.

The Judicial Council shall make the decision **on the request** referred to in paragraph 1 of this Article within 24 hours from the receipt of the request.

Notwithstanding the provisions of paragraph 2 of this Article, if **deprivation of liberty of a judge** is sought against a judge due to the criminal offence of organized crime, high corruption or money laundering under the jurisdiction of the Special Department of the Higher Court in Podgorica **or the jurisdiction of the Special State Prosecutor's Office**, committed in performing the function of a judge, the Judicial Council renders a decision **on request** from paragraph 1 of this Article within 6 hours from the time of receipt of the request.

Liability for Damage

Article 104

The state shall be liable for damage caused to a party to the proceedings by a judge through illegal, unprofessional or unconscientious work while performing his judicial office.

The state shall have the right to require the judge to reimburse the amount paid to the party to the proceedings on the basis of the damage caused referred to in paragraph 1 of this Article, if the judge causes damage intentionally.

If the judge causes the damage referred to in paragraph 1 of this Article through gross negligence, the state shall have the right to claim the reimbursement of the amount paid to the party to the proceedings, up to 1/3 of annual net salary of the judge.

Termination of office

Article 105 (Article 70 amendment)

When one of the grounds for the termination of judicial office arises, the Judicial Council shall be immediately notified thereof: by the court president for a judge, by the president of the immediately higher court for the court president, and by the General Session of the Supreme Court for the president of the Supreme Court.

The Judicial Council shall decide on the termination of office of the president of the Supreme Court, the court president or a judge not later than 30 days from the date of receipt of the notification.

The office of the persons referred to in paragraph 2 of this Article shall terminate on the date of adoption of the decision of the Judicial Council, except in the case of termination of office due to end of tenure, when the office shall terminate on the date when the tenure ends.

The Judicial Council shall submit the decision on termination of office to the court president or to the judge whose office is terminated and to the court in which the person performs his office, and publish it in the "Official Gazette of Montenegro".

An administrative dispute may be initiated against the decision from paragraph 2 of this Article by a judge whose function has been terminated.

If an administrative dispute is initiated against the decision on the termination of a judge's function, the Judicial Council may elect a new judge to replace the judge whose function has been terminated when the decision on the termination of the function becomes final

Termination of Office of a Court President

Article 106

The court president's office shall terminate:

- 1) Upon the expiry of the term for which he is appointed;
- 2) When his judicial office is terminated;
- 3) At his own request; or
- 4) In the case of dissolution or merger of courts.

Annulment of Decision on Appointment

Article 107

The Judicial Council shall annul the decision on the appointment of a judge if it is proven that, at the time of appointment, the judge did not meet the conditions for appointment, or if it receives information that would, had it been known at the time when the Judicial Council appointed the judge, present a reason for the Judicial Council not to adopt the decision on appointment.

The Judicial Council may postpone the date of commencement of judicial office performance in order to verify the information referred to in paragraph 1 of this Article.

If the Judicial Council annuls the decision on the appointment of a judge, it shall appoint the first next candidate from the ranking list to that position, or shall repeat the procedure for the appointment of judges if there are no more candidates.

Via. THE CODE OF ETHICS AND DECIDING ON RIGHTS AND OBLIGATIONS OF JUDGES

(Article 71 amendment)

The Code of Ethics for Judges

Article 107a

The Code of Ethics for Judges shall define ethical principles and rules of conduct of judges and govern in more detail the procedure for identification of Code of Ethics violations.

Commission for the Code of Ethics for Judges

Article 107b

The Commission for the Code of Ethics for Judges shall have a chairman and two members, who shall have their deputies.

The President of the Commission for the Code of Ethics for Judges and his deputy are elected from among the members of the Judicial Council who are not judges, while two members and their deputies are elected from among the judges by the Conference of Judges, on the proposal of the sessions of judges of all courts.

The proposal from paragraph 2 of this Article shall include two candidates.

A judge from among the judges and their deputy may be elected as a member of the Commission for the Code of Ethics for Judges if such judge:

- has served as a judge for at least five years;
- has not been sanctioned for his/her discipline;
- has not violated the Code of Ethics for Judges.

The Commission for the Code of Ethics for Judges shall be appointed for a term of four years.

The Members of the Commission for the Code of Ethics for Judges and their deputies shall be dismissed if they are sanctioned for their discipline or if they violate the Code of Ethics for Judges.

In its work, the Commission for the Code of Ethics for Judges makes decisions, gives opinions and guidelines, in accordance with the Rules of Procedure from paragraph 10 of this Article.

The report on the work prepared by the Commission for the Code of Ethics for Judges is submitted to the Judicial Council, once a year, by 31 March of the current year for the previous year.

The administrative and technical tasks for the needs of the Commission for Code of Ethics for Judges shall be performed by the Judicial Council Secretariat.

The Commission for the Code of Ethics for Judges shall adopt its Rules of Procedure, which shall govern the method of work and decision-making in more detail.

Decisions of the Commission for the Code of Ethics

Article 107v

Anyone may submit an initiative to the Commission for the Code of Ethics for Judges to determine whether particular conduct of judges is in accordance with the Code of Ethics for Judges.

The Commission for the Code of Ethics for Judges, after the procedure, makes a decision to reject the initiative from paragraph 1 of this Article or to confirm a violation of the Code of Ethics for Judges.

If, during the procedure of deciding on the violation of the Code of Ethics for Judges, the Commission for Code of Ethics for Judges concludes that actions of a judge include elements of a disciplinary offence, it shall suspend the procedure for establishing the violation of the Code of Ethics for Judges and submit a proposal to determine disciplinary liability of the judge, and later suspend the procedure if disciplinary liability of the judge is determined.

If the disciplinary liability of the judge is not established, the Commission for the Code of Ethics for Judges shall continue the procedure and decide whether there is a violation of the Code of Ethics for Judges.

An objection may be lodged with the Judicial Council against the decision of the Commission for the Code of Ethics for Judges within eight days from the date of receipt of the decision.

The Judicial Council shall decide on the objection referred to in paragraph 5 of this Article within 30 days from the date of receipt of the objection.”

The opinion of the Commission for the Code of Ethics for Judges

Article 107g

A judge, i.e. the president of the court may ask the Commission for the Code of Ethics for judges for an opinion on whether particular conduct would constitute a violation of the Code of Ethics for judges.

Deciding on the rights and obligations of judges

Article 107d

The president of the court decides on the labour and labour-related rights and obligations of judges.

An appeal against the decision of the president of the court may be lodged to the president of the immediately higher court, and against the decision of the president of the Supreme Court to the General Session of the Supreme Court.

An administrative dispute may be initiated against the decision from paragraph 2 of this Article.

VII. DISCIPLINARY LIABILITY AND DISMISSAL

1. Disciplinary proceedings

Disciplinary Offences

Article 108 (Article 72 amendment)

A judge and a court president as a judge shall be disciplinary liable for minor, severe and the most severe disciplinary offences.

A minor disciplinary offence of a judge shall exist if he:

- 1) Fails, without justified reason, to take cases for work in the order in which they are received in line with the law and the Court's Rules of Procedure;
- 2) Comes late or ~~does not come~~ to scheduled trials, hearings, sessions of the panel or sessions of judges without justified reason;

2a) without a justified reason, exceeds the legally prescribed deadline for making a decision in at least 10 cases within one year, and such exceeding is not longer than 30 days;

- 3) Does not attend mandatory training programmes without justified reason;
- 4) Does not meet the obligations of a mentor during initial training and training of trainees;
- 5) Does not take statutory measures to show respect for the court and the parties to the proceedings.

Severe disciplinary offence of a judge shall exist if the judge:

- 1) Fails, without justified reason, to schedule trials or hearings in cases assigned to him, or delays the proceedings in another manner;

1a) does not attend scheduled hearings, discussions, council sessions or sessions of judges and the Conference of Judges without a justified reason;

- 2) Delays the proceedings or does not take the case for work without justified reason, ~~where, due to statute of limitations, such action results in barred criminal prosecution or barred enforcement of criminal sanctions for the criminal offence for which a prison sentence of at least one year is prescribed;~~

- 3) ~~without a justifiable reason, exceeds three times the legally prescribed deadline for making a decision in at least three cases;~~ **without a justified reason, exceeds the legally prescribed deadline for making a decision in at least 20 cases within one year, and such exceeding is not longer than 30 days, or without a justified reason, exceeds three times the legally prescribed deadline for making a decision in at least five cases or exceeds six times the legally prescribed deadline for making a decision in a court case.**

- 4) Fails to seek a recusal **in a case** in at least three cases in which **in which** he knew there was a reason for his mandatory recusal in the course of one calendar year;
- 5) Fails, without justified reason, to observe the programme for resolving backlog of cases or ~~does not act upon the decision under a control request~~ **does not act upon the decision resulting from a legal instrument for protection of the right to a trial within reasonable time;**
- 6) Prevents supervision to be conducted in accordance with the law;
- 7) Brings himself into a state or behaves in a manner that is not appropriate to the judicial office, while performing his judicial office or in a public place;
- 8) Behaves inappropriately **offensively** towards the participants in court proceedings and court staff;
- 9) Discloses confidential information that he learned while acting in cases or performing his judicial office;
- 10) Uses the judicial office to achieve his private interests and interests of his family or close persons;
- 11) Accepts gifts or **knowingly** does not submit information about assets and income in accordance with **or knowingly submits such information contrary to** the regulations governing the prevention of conflicts of interest;
- 12) Has been absent from work for five consecutive days without excuse;
- 13) Publicly declares an opinion about the case that has not become final and enforceable;

The most severe disciplinary offence of a judge shall exist if he:

- 1) Has been convicted for an offence that renders him unworthy to perform judicial office;
- 2) Performs the judicial office incompetently or unconscientiously.

3) Without a justified reason, exceeds the legally prescribed deadline for making a decision in at least 30 cases within one year, and such exceeding is not longer than 30 days, or without a justified reason, exceeds three times the legally prescribed deadline for making a decision in at least 10 cases.

An act that renders a judge unworthy to perform the function of a judge in the sense of paragraph 4, item 1 of this Article shall include a criminal offence for which the judge is prosecuted *ex officio*, for which a prison sentence is prescribed, **and which is committed with intent.**

Incompetent or unconscientious performance of judicial office **in the sense of paragraph 4, item 2 of this Article** shall exist if:

~~1) A judge, without justified reason, does not achieve at least 50% of the results in terms of quantity of work in relation to the average quantity benchmarks for certain types of cases, as determined by the Judicial Council, unless the judge provides valid reasons for not achieving results in terms of quantity of work;~~

1) without a justified reason, the judge does not achieve at least 60% of the results in terms of the quantity of work in relation to the Framework Criteria for determining the required number of judges;

1a) without justifiable reason, continuously over the period of two years, in one year, on average has more than 40% of abolished decisions in relation to the number of cases returned by the higher court, which ratio includes at least 30 abolished decisions on an annual level;

1b) without a justified reason does not accept the cases or delays the procedure in at least three cases

- 2) **if he/she becomes a member of a political party or** starts performing parliamentary or other a public office or professionally performing other activities **contrary to Article 102 paragraph 2 of this Law;**

- 3) Judge's performance has been appraised as unsatisfactory twice in a row;
- 4) If disciplinary sanctions for severe disciplinary offences have been imposed twice.

Disciplinary Sanctions

Article 109 (Article 73 amendment)

Disciplinary sanctions shall include a warning, a fine, an advancement ban and dismissal.

A warning and a fine in the amount of 20% of the judge's salary, for a period of up to three months, shall be imposed for minor disciplinary offences.

A fine in the amount of 20% to 40% of the judge's salary, for a period of three to six months and an advancement ban **shall be imposed** for severe disciplinary offences.

For serious disciplinary violations, in addition to a fine, a ban on advancement may be imposed, depending on the severity of the disciplinary violation committed.

If the proceedings are conducted for two or more minor disciplinary offences, the judge may be imposed disciplinary sanctions for a severe disciplinary offence.

Dismissal shall be imposed for the most serious disciplinary offences.

The ban on advancement implies that a judge cannot be ~~elected~~ **appointed** to a higher instance court, **i.e. for the president of the court** before the expiry of two years from the date of the finality of the decision by which the disciplinary sanction was imposed.

Motion to Establish Disciplinary Liability

Article 110 (Article 74 amendment)

If there is reasonable suspicion that a judge has committed a disciplinary offence, the motion to establish disciplinary liability of the judge may be filed by **a member of the Judicial Council**, the court president, the president of the immediately higher court and the president of the Supreme Court or by the Commission for Monitoring the Implementation of the **Code of Ethics** for Judges.

The motion to establish disciplinary liability of the president of the Supreme Court may be filed by the General Session of the Supreme Court.

~~In the case referred to in paragraph 1 and 2 of this Article, the court president, the president of the immediately higher court and the president of the Supreme Court may approach the Commission for Monitoring the Implementation of the Code of Ethics for Judges with a request for an opinion whether certain behaviour of a judge is in accordance with the Code of Ethics for Judges.~~

The motion to establish disciplinary liability of a judge shall be filed without delay, immediately after one becomes aware of the disciplinary offence.

Content of the Motion

Article 111

The motion to establish disciplinary liability shall be filed to the Judicial Council in written form and shall contain personal data of the judge, factual and legal description of the disciplinary offence, the proposal for the imposition of a certain disciplinary sanction and an explanation from which the reasonable suspicion that the judge committed a disciplinary offence arises.

The Judicial Council shall submit the motion for establishing disciplinary liability to the disciplinary prosecutor, no later than five days from the receipt of the motion.

Disciplinary Prosecutor

Article 112 (Article 75 amendment)

The disciplinary prosecutor conducts the investigation based on the submitted proposal for the determination of disciplinary liability and presents the indictment in the procedure for determining the disciplinary liability of the judge.

The disciplinary prosecutor shall have a deputy.

The disciplinary prosecutor and his deputy shall be appointed by the Judicial Council from the ranks of judges with at least 15 years of work experience as a judge, upon the proposal of the General Session of the Supreme Court **for the period of four years.**

Completion of Investigation by Disciplinary Prosecutor

Article 113 (Article 76 amendment)

The disciplinary prosecutor shall complete the investigation referred to in Article 112 of this Law within 45 days from the date of submission of the motion to establish disciplinary liability.

The judge's refusal to take part in the investigation shall not halt the execution and completion of the investigation.

The disciplinary prosecutor shall be bound by the factual description of the disciplinary offence from the motion to establish disciplinary liability.

After conducting the investigation upon the submitted motion, the disciplinary prosecutor may propose to the disciplinary panel or the Judicial Council to:

- 1) Dismiss the motion to establish disciplinary liability because it was:
 - a) Filed for an action that is not prescribed as a disciplinary offence,
 - b) Barred by the statute of limitations; or
 - c) Filed by an unauthorized person;
- 2) Reject the motion to establish disciplinary liability as unfounded, for lack of evidence that the judge has committed a disciplinary offence;
- 3) File a bill of indictment to establish disciplinary liability of the judge.

If he disagrees with the proposal of the disciplinary prosecutor from ~~paragraph 3~~ **paragraph 4**, items 1 and 2 of this Article, the disciplinary panel or the Judicial Council may require from the disciplinary prosecutor to conduct an investigation and submit the indictment.

Competent Authorities for Establishing Disciplinary Liability

Article 114

The procedure to establish disciplinary liability for minor and severe disciplinary offences shall be conducted by the disciplinary panel based on the bill of indictment of the disciplinary prosecutor.

The disciplinary panel shall consist of three members of the Judicial Council, two members from the ranks of judges and one member from the ranks of eminent lawyers who shall be the chairman of the disciplinary panel.

The members of the disciplinary panel and their deputies shall be appointed by the Judicial Council, on the proposal from the president of the Judicial Council.

The procedure to establish disciplinary liability for the most severe disciplinary offences shall be conducted by the Judicial Council based on the bill of indictment of the disciplinary prosecutor.

Defence

Article 115

A judge whose liability is looked into shall be entitled to a defence counsel.

At the hearing, the judge shall be given the opportunity to state his defence personally, in writing or via a defence counsel of his choice.

Hearing

Article 116

Within the procedure to establish disciplinary liability, the disciplinary panel or the Judicial Council shall hold a hearing.

The disciplinary prosecutor, judge and his defence counsel shall be summoned to the hearing.

The disciplinary panel or the Judicial Council shall present evidence which it finds necessary for fair and full determination of the factual situation.

If the judge whose disciplinary liability is being looked into fails to respond to the summons of the disciplinary panel or the Judicial Council without justified reason, the procedure shall be conducted in his absence.

Decision

Article 117

Within the procedure to establish disciplinary liability of a judge, the disciplinary panel or the Judicial Council may decide to:

- 1) Reject the bill of indictment as unfounded;
- 2) Adopt the bill of indictment and pronounce a disciplinary sanction.

When deciding on disciplinary liability and on imposing disciplinary sanctions, the disciplinary panel or the Judicial Council shall not be bound by the proposal of disciplinary prosecutor.

The disciplinary panel or the Judicial Council shall complete the procedure to establish disciplinary liability of a judge within 60 days from the receipt of the bill of indictment of the disciplinary prosecutor.

Deadline for Drafting a Decision

Article 118 (Article 77 amendment)

The decision establishing disciplinary liability of a judge and imposing disciplinary sanctions shall be drafted and submitted to the judge whose liability is established and to the disciplinary prosecutor, within 15 days from the date of adopting the decision.

The disciplinary prosecutor and the judge whose liability is established shall be entitled to file an appeal against the decision referred to in paragraph 1 of this Article to the Supreme Court which shall decide in a panel of ~~three~~ **five** judges.

The appeal referred to in paragraph 2 of this Article shall be lodged within eight days from the day of receipt of the decision, through the Judicial Council.

The panel referred to in paragraph 2 of this Article shall decide on the appeal within 30 days from the receipt of the appeal.

Statute of Limitations

Article 119 (Article 78 amendment)

The conduct of the procedure for the establishing of disciplinary liability of a judge shall become barred by the statute of limitations after the lapse of two years from the date of committing a minor disciplinary offence, or four years from the date of committing a severe disciplinary offence and six years from the date of committing the most severe disciplinary offence.

Notwithstanding paragraph 1 of this Article, the period of statute of limitations for conducting the procedure to establish disciplinary liability, in the case of a conviction for a criminal offence that rendered the judge unworthy to perform judicial office, shall begin to run from the date when the judgment by which the judge is convicted becomes final and enforceable.

The execution of a disciplinary sanction expires within one year from the day when the disciplinary sanction enters into force.

~~The imposed disciplinary sanction shall be deleted from the records on the judge after the expiry of four years from the date when the disciplinary sanction became final and enforceable.~~

The imposed disciplinary sanction shall be deleted from the records on the judge after the expiry of:

- four years from the effective date of the disciplinary sanction for the most serious disciplinary offences;

- three years from the effective date of the disciplinary sanction for serious disciplinary offences; and

- four years from the effective date of the disciplinary sanction for the minor disciplinary offences.

The Judicial Council shall delete the data on imposed disciplinary sanctions after the deadline referred to in paragraph 4 of this Article *ex officio*.

Recusal

Article 120 (Article 79 amendment)

~~When deciding on the liability of a judge, those members in relation to whom there are circumstances that raise doubts as to their impartiality may not participate in the work of the disciplinary panel or the Judicial Council.~~

In the procedure to determine the disciplinary liability of a judge, the disciplinary prosecutor, a member of the Disciplinary Council or a member of the Judicial Council, in relation to whom there are circumstances that raise doubts to their impartiality, may not participate in the proceedings.

The recusal referred to in paragraph 1 of this Article shall be decided upon by the president of the Judicial Council, while the recusal of the president of the Judicial Council shall be decided upon by the Judicial Council.

Temporary Removal

Article 121

A judge shall be temporarily removed from his duty if:

- 1) Detention is ordered against him, for the duration of the detention; or
- 2) Criminal proceedings are initiated against him for a criminal offence that renders him unworthy of performing the judicial office.

A judge may be temporarily removed from his duty after the submission of the proposal for initiation of disciplinary proceedings for the most severe disciplinary offence.

The decision on temporary removal from duty shall be made by the Judicial Council.

The request for temporary removal from duty referred to in paragraphs 1 and 2 of this Article shall be filed by the disciplinary prosecutor.

Effects of Decision

Article 122

Actions taken by the judge with regard to the trials in legal matters after the date when he was removed, dismissed or when his office was terminated, shall have no legal effect.

Costs of Proceedings

Article 123

If the proposal to establish disciplinary liability was rejected, the costs of disciplinary proceedings shall be paid by the Judicial Council.

Disciplinary Liability of a Lay Judge

Article 124

Provisions of this Law governing the disciplinary liability of judges shall be applied accordingly to the disciplinary liability and procedure to establish disciplinary liability of a lay judge.

Appropriate Application of Law

Article 125

Unless otherwise provided by this Law, provisions of the Criminal Procedure Code shall be applied accordingly to the disciplinary proceedings.

Keeping Records of Court Documents

Article 125a (Article 80 amendment)

Receipt, keeping records and handling of court documents in disciplinary proceedings shall be governed in more detail by the Rules of Procedure of the Judicial Council.

2. Dismissal of a Court President

Reasons for Dismissal

Article 126 (Article 81 amendment)

A court president shall be dismissed from the duty of a court president if he/she:

- 1) Changes the annual work allocation of the court contrary to the law;
- 2) Prevents supervision to be conducted in the court in accordance with the law;
- 3) Treats the parties and the court staff inappropriately;
- 4) Fails to submit or submits incomplete or inaccurate work reports and other information in accordance with the law;
- 5) Does not act on complaints against the work of judges in accordance with the regulations, as well as under control requests;
- 6) Does not respect the principle of random allocation of cases;
- 7) Deprives judges of assigned cases contrary to the law;
- 8) In the process of supervision of judicial administration, illegalities and irregularities are found in the performance of judicial administration that damage orderly and timely performance of the duties and functions of the court;
- 9) Fails to submit a motion to establish disciplinary liability of a judge in the cases prescribed by this Law, and he knows or should have known that there are grounds for disciplinary liability in accordance with Article 110, paragraph 4 of this Law;
- 9a) if, without a justified reason, he/she delays the procedure for enforcement of criminal sanctions, as a result of which their enforcement is barred due to the statute of limitations;**
- 10) Has been temporarily removed from judicial duty;

11) His/her performance has been appraised as unsatisfactory.

Motion for Dismissal

Article 127

The motion for dismissal of the court president may be submitted by a president of the immediately higher court and the president of the Supreme Court.

The motion for dismissal of the court president shall be filed without delay, immediately after one becomes aware of the committed disciplinary offence.

Appropriate Application

Article 128

Provisions of this Law governing the procedure to establish disciplinary liability of judges shall be applied accordingly to the procedure for dismissal of the court president.

3. Dismissal due to Permanent Incapacity to Perform Judicial Office

Procedure and Decision-Making

Article 129

The motion for dismissal of a judge in the case of permanent incapacity to perform his judicial office shall be filed based on the final and enforceable court decision on the loss of working ability or a decision of the competent authority establishing that the physical and psychological characteristics of the judge are such that they prevent him from performing his judicial office.

If judge's behaviour or his attitude towards work raises doubt that he has permanently lost the ability to exercise the judicial office, the Judicial Council may independently or at the motion of the court president order that the judge undergo medical examination.

The motion for dismissal of a judge due to permanent incapacity to perform judicial office shall be filed by a court president, and for a court president by the president of the immediately higher court and the president of the Supreme Court, and for the president of the Supreme Court by the General Session of the Supreme Court.

Within the procedure of dismissal due to permanent incapacity to perform judicial office, the judge shall have the right to state his opinion on the motion for dismissal.

The decision on dismissal due to permanent incapacity to perform judicial office shall be made by the Judicial Council, and an administrative dispute may be initiated against this decision.

VIII. RECORDS

Content of Records

Article 130 (*Article 82 amendment*)

The Secretariat of the Judicial Council shall maintain records on judges, which shall include, in particular, information on:

- 1) Personal name, nationality if the judge declares himself, address, date and place of birth and sex;
- 2) The date of appointment to the office;

- 3) Work experience;
- 4) Scientific title (master, MSc, PhD);
- 5) Professional development;
- 6) Knowledge of a foreign language;
- 7) Published scientific and professional papers and other professional activities;
- 8) Disciplinary liability and dismissal;
- 8a) violations of the Code of Ethics;**
- 9) Work report (the number of cases, quantity and quality of work, exceeding statutory deadlines);
- 10) Performance appraisal;
- 11) Termination of office;
- 12) ~~Permission to access secret data.~~

The judge shall have the right to propose other information to be entered in the records referred to in paragraph 1 of this Article, as well as the right to inspect the records and documents based on which records on him are kept.

The method of keeping records referred to in paragraph 1 of this Article shall be defined by the Rules of Procedure of the Judicial Council.

IX. FUNDS

Funds for Work of the Judicial Council

Article 131

Funds for the work of the Judicial Council shall be provided in the section of the Budget of Montenegro for judiciary, as a separate programme.

The Judicial Council shall propose the annual budget for the work of the Judicial Council.

The Judicial Council shall submit an annual budget proposal to the Government of Montenegro.

The president of the Judicial Council shall have the right to participate in the work of the session of the Parliament in which the budget proposal of the Judicial Council is discussed.

Financial Principal

Article 132

The president of the Judicial Council shall be the financial principal in the Judicial Council.

The president of the Judicial Council may delegate the authorization referred to in paragraph 1 of this Article to the Secretary of the Secretariat of the Judicial Council.

X. SECRETARIAT OF THE JUDICIAL COUNCIL

Secretariat

Article 133

For the purpose of professional performance of all financial, administrative, IT, analytical and other tasks of the Judicial Council and activities of mutual interest to the courts, the Secretariat of the Judicial Council shall be formed (hereinafter: Secretariat).

Secretary of the Secretariat

Article 134

The Secretariat shall be managed by the secretary.

The secretary of the Secretariat shall be appointed and dismissed by the Judicial Council, upon a proposal of the president of the Judicial Council, following a public announcement.

The secretary of the Secretariat shall be appointed for a period of five years.

The proposal for appointment of the secretary of the Secretariat shall contain the name and surname of the candidate, a short biography and a rationale.

A person who, in addition to the general requirements for employment in state authorities, meets the following special conditions may be appointed as the secretary of the Secretariat:

- 1) Graduated from law faculty – level VII1 of education qualifications;
- 2) Passed bar exam;
- 3) At least ten years of work experience;
- 4) Having organizational skills.

Accountability

Article 135

The secretary of the Secretariat shall be accountable for his work to the Judicial Council.

The office of the secretary of the Secretariat shall end before the term for which he was appointed expires through a resignation or dismissal.

The secretary of the Secretariat may be dismissed upon a reasoned proposal of the president or a member of the Judicial Council.

Appropriate Application

Article 136

Provisions of the law governing the rights, obligations and responsibilities of civil servants and state employees relating to the senior managerial staff shall be applied accordingly to the employment, rights, duties and responsibilities of the Secretariat secretary.

Provisions of regulations governing employment, rights, obligations and responsibilities of civil servants and state employees shall be applied accordingly to the employment, rights, duties and responsibilities of other staff at the Secretariat.

Act on Internal Organization and Jobs Classification of the Secretariat

Article 137

The internal organization of the Secretariat, the number of civil servants and state employees and a description of their jobs shall be governed by the regulation on internal organization and jobs classification, in accordance with this Law and regulations on public administration.

The regulation referred to in paragraph 1 of this Article shall be adopted by the Judicial Council, following a proposal from the secretary of the Secretariat, upon previously obtained opinion of the Ministry and the competent authorities, in accordance with the law governing the rights and obligations of civil servants and state employees.

XI. TRANSITIONAL AND FINAL PROVISIONS

Deadline for Adoption of Secondary Legislation

Article 138

The secondary legislation for the implementation of this law shall be enacted no later than six months from the date of entry into force of this law.

Tenure of the Judicial Council

Article 139

The Judicial Council appointed in accordance with the Law on the Judicial Council ("Official Gazette of Montenegro" no. 13/08, 39/11, 31/12, 46/13 and 51/13) shall continue to operate until its tenure ends.

Article 139a

The president and members of the Judicial Council from the rank of eminent lawyers, whose mandate ends due to the expiration of the term for which they were elected, shall continue to perform their duties until the election and proclamation of the new members of the Judicial Council from the ranks of eminent lawyers.

The performance of the duties referred to in paragraph 1 of this Article does not constitute the re-election of the members of the Judicial Council.

Article 139b

If the conditions from Article 139a of this Law are fulfilled, the Judicial Council shall elect the President of the Judicial Council for a certain period of time, until the election and proclamation of new members of the Judicial Council from among eminent lawyers.

Article 139c

If the conditions from Article 139a of this Law are fulfilled, President of Montenegro shall proclaim the composition of the Judicial Council which consists of members of the Judicial Council elected by the Conference of Judges and acting members of the Judicial Council from among eminent lawyers who shall continue to perform their duties until the election and proclamation of new members of the Judicial Council from among eminent lawyers.

Continuation of Work

Article 140

Director of the Secretariat who is appointed in accordance with the Law on the Judicial Council ("Official Gazette of Montenegro" no. 13/08, 39/11, 31/12, 46/13 and 51/13) shall continue to work as the secretary of the Secretariat until the term for which he is appointed expires.

Deferred Application

Article 141

Provisions of Articles 37 to 75 and 87 to 101 of this law shall be applied as of 1 January 2016.

Until the date of implementation of the provisions from paragraph 1 of this Article, Articles 28 to 41a of the Law on Judicial Council ("Official Gazette of Montenegro", no. 13/08, 39/11, 31/12, 46/13 and 51/13) shall apply.

Application of Regulations

Article 142

Provision of Article 79, paragraph 1 of the Law on the Judicial Council ("Official Gazette of Montenegro" no. 13/08, 39/11, 31/12, 46/13 and 51/13) shall be applied until the implementation of the law governing salaries in the public sector commences.

Repeal

Article 143

On the date of entry into force of this law, the Law on the Judicial Council (“Official Gazette of Montenegro”, no. 13/08, 39/11, 31/12, 46/13 and 51/13) ceases to be valid, except for the provisions of Articles 28 to 41a, which cease to be valid on 1 January 2016.

Entry into Force

Article 144

This Law shall enter into force eight days after its publication in the “Official Gazette of Montenegro”.