

CROATIAN PARLIAMENT

2900

Pursuant to article 88 of the Constitution of the Republic of Croatia, I issue

DECREE

ON THE PROMULGATION OF THE LAW ON AMENDMENTS TO THE LAW ON STATE JUDICIAL COUNCIL

I promulgate the Law on Amendments to the Law on State Judicial Council, adopted by the Croatian Parliament at session held on 29th of November 2005.

Number: 01-081-05/3529/2

Zagreb, 15 December 2005.

President of
Republic of Croatia
Stjepan Mesić, in one's hand

LAW

ON AMENDMENTS TO THE LAW ON STATE JUDICIAL COUNCIL

Article 1.

Article 3 of the Law on State Judicial Council (»Official Journal«, No. 58/93., 49/99., 31/00., 107/00., 129/00. and 59/05.) shall be amended as follows:

»(1) In a procedure for election of Council members the Justice Committee of the Croatian Parliament shall request that the President of the Supreme Court of Croatia, the President of Croatia Bar Association and the deans of the Law faculties initiate procedure for nomination of Council members.

(2) The President of the Supreme Court of the Republic of Croatia shall request that the Courts nominate candidates from the ranks of judges. On the basis of collected proposals a Common session of the Supreme Court of the Republic of Croatia with participation of two representatives of the High Misdemeanor Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia, the Administrative Court of the Republic of Croatia, as well as with participation of one representative of each County Court shall identify candidates and shall submit its proposal to the Justice Committee of the Croatian Parliament.

(3) Proposal of candidates from the ranks of judges must ensure that candidates from different courts are represented.

(4) Candidates from the ranks of attorneys at law shall be identified on the basis of collected proposals by the Assembly of Croatia Bar Association, and candidates from the ranks of university professors of law shall be identified at session of Deans of the Law faculties and shall be submitted to the Justice Committee of the Croatian Parliament.

(5) For each slot for the Council the authorised proposer referred to in paragraphs 2 and 4 of this article must propose minimum three candidates.

(6) The Justice Committee of the Croatian Parliament shall request also that the Minister of Justice propose persons he considers possible Council members.

(7) The Justice Committee of the Croatian Parliament shall submit proposal to the Croatian Parliament of all proposed candidates who fulfill conditions for appointment.«

Article 2.

Article 9 shall be amended as follows:

»(1) A member's term in Council shall expire by law the day the duty he performed expired during the period he was elected a president or member of the Council.

(2) It shall not be considered that the term has expired if a Council member has become appointed a judge of another Court.

(3) Member of Council shall be relieved of duty before the period he/she was elected for has elapsed as a result of incompetent performance of duties of President or member of the Council.

(4) Member of the Council shall be relieved of duty before the period he/she was elected for has elapsed:

- at his/her own request,
- if he/she has been appointed president of Court, the day he/she has assumed duty,
- if sentenced to prison,
- if he/she has become permanently incapacitated to perform his/her duties,
- at his/her loss of Croatian citizenship.

(5) Proposal on relief of duty of a member of the Council before the period he/she was elected for has elapsed may be submitted by Common session of the Supreme Court of the Republic of Croatia with participation of two representatives of the High Misdemeanor Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia, the Administrative Court of the Republic of Croatia, as well as with participation of one representative of each County Court, the Assembly of Croatian Bar Association and the session of the Deans of law faculties, each in respect of Council members they proposed during the process of identifying candidates for Council members.

(6) Existence of reasons for relieving of duty of a Council member before the period he/she was elected for has elapsed shall be determined by the Justice Committee of the Croatian Parliament, and he/she shall be relieved of duty by the Croatian parliament.«

Article 3.

Article 17 is amended as follows:

»(1) After the expiry of the period referred to in paragraph 3 of article 16 of this Law, the Minister of Justice shall request an opinion on all the candidates for judges from competent judicial council. Along with the reference for opinion, the minister shall submit to the judicial council the applications with arguments and information submitted by the candidates and other information about the candidates which is at disposal to the Ministry of Justice.

(2) In a process of opinion making, the judicial council may also request information on candidates for judges:

- from the president of the Court where he/she has performed duties or from the president of directly higher court, if the candidate has already performed duties as a judge, a judicial adviser or judicial trainee,
- from other bodies able to provide information relevant for meeting general and special requirements for appointment of judges to appropriate court, if the candidate has not performed duties within the system of justice,
- from the Justice Academy, if the judge has been a lecturer or if he/she participated as a student in professional training course.

(3) If the candidate has already been evaluated in terms of his/her performance of duties, the judicial council shall take such evaluation into account during opinion making, and if such evaluation is not at disposal to the Council, the council shall provide such evaluation from the competent judicial council or from the Ministry of Justice.«

Article 4.

After article 17, the following new article 17.a shall be inserted:

»Article 17.a

- (1) The opinion of judicial Council on candidates for judges shall be prepared in written and shall contain explanation on fulfilling general and special requirements for appointment of judges.
- (2) The judicial Council shall be required to submit its opinion within period no later than 60 days. If such opinion has not been submitted, the Minister of Justice shall request within further 8 days period that the opinion be submitted.
- (3) If within a further 15 days period the opinion has not been submitted, the Minister of Justice shall submit to the Council a list of all applied candidates for judges along with the information at his disposal. The Council, during the appointment procedure, may request only an information on candidates referred to in paragraph 2 of this article, from competent bodies and organizations.
- (4) The minister of Justice shall submit to the Council a list of all applied candidates by separately notifying the Council on which of the candidates meet the requirements for appointment with the opinion of the judicial council. Together with the list of the candidates, there shall be submitted also the applications of the candidates with all the information gathered during the process of opinion making.
- (5) The Council may request from competent judicial council an amendment to the opinion on the candidates.«

Article 5.

Article 18 shall be amended as follows:

- »(1) In a procedure of appointment and/or relief of duty of a judge, the Council shall obtain opinion from the Justice Committee of the Croatian Parliament.
- (2) In a procedure of appointment of a judge, the Council shall obtain opinion from the Justice Committee of the Croatian Parliament only on candidates who meet requirements to be appointed a judge.
- (3) During decision making on appointment of a judge, the Council shall take into account the opinion of the judicial council and the opinion of the Justice Committee of the Croatian Parliament.
- (4) During decision making on appointment of judges, the Council shall also take into account the provision of article 74 paragraphs 7 and 8 of the Law on Courts.
- (5) The Council decision with written explanation shall be served to all candidates within 15 days period from the day the appointment has been promulgated.
- (6) The decision on appointment shall be published in the "Official Journal".
- (7) The judge is required to assume duty within a period determined by the Council, but no later than six months from the day of the appointment.
- (8) If the judge has not assumed duty within the period referred to in paragraph 7 of this article, it shall be considered that he/she has not even been appointed.«

Article 6.

Article 18 shall be amended as follows:

- »(1) The Council, upon request by the Minister of Justice, the President of the Supreme Court of the Republic of Croatia, the judicial council of the court where the judge shall perform judicial duties, the president of the court or the president of the immediately higher court or

ex officio shall initiate procedure for the purpose of cancellation of the decision on appointment.

(2) The Council shall cancel the decision on appointment if established:

- that the judge has not met the requirements for appointment,
- that the decision has been based upon false information and arguments,
- that the judge, on no reasonable grounds, has not taken an oath not even within 6 months period after the appointment,
- that the appointment has taken place during criminal offence established by effective decision of a court on the existence of criminal offence and criminal liability.«

Article 7.

After article 19, the following new paragraph 19.a shall be inserted:

»Article 19.a

(1) Judge's term in office shall expire if, in accordance with the Constitution and this Law, relieved of duty by the Council.

(2) Appeal to the Constitutional Court of the Republic of Croatia shall not prolong the execution of the decision«

Article 8.

Article 20 shall be amended as follows:

»(1) The Judge shall be held responsible for committed disciplinary offences.

(2) Disciplinary offences shall be considered:

1. abuse of position or exceeding official authority,
2. incompetent performance of judicial duties,
3. performance of duties, affairs or activities incompatible with judicial duties,
4. cause of disturbances to the work of the court that significantly affect the operation of the judiciary,
5. violation of official secret regarding performance of judicial duties,
6. cause of damage to the reputation of the Court or judicial duties in other way.

(3) Disciplinary proceedings on disciplinary offences referred to in paragraph 2 of subparagraph 2 of this article shall be initiated particularly:

1. if the judge on no reasonable grounds shall not prepare and serve judicial decisions,
2. if the judicial council has evaluated the performance of the judge with a negative mark,
3. if on no reasonable grounds the number of decisions the judge has made in one year period shall be significantly below average in the Republic of Croatia.«

Article 9.

After article 21. the following new article 21.a shall be inserted:

»Article 21.a

Judge, whom the State Judicial Council has sentenced to a disciplinary measure reprimand shall not be appointed to a higher court prior to expiry of two year period from the day of the legal effectiveness of the decision containing the sentence, and if a fine has been sentenced he/she shall not be appointed to a higher court prior to expiry of three year period from the day of the legal effectiveness of the decision containing the sentence.«

Article 10.

In article 22. paragraph 1. the word : »two« shall be replaced by the word: »three«.

Article 11.

Article 23. is amended as follows:

- »(1) Bodies for disciplinary proceedings shall be the Council and disciplinary Council.
- (2) Disciplinary Council shall carry out proceedings and shall propose decision to the Council.
- (3) Disciplinary Council shall carry out disciplinary proceedings, shall establish facts and prepare decision-proposal. Disciplinary Council shall consist of a president and two members.
- (4) Disciplinary Council shall be appointed by State Judicial Council.
- (5) Two members of the Disciplinary Council always shall be judges. Members of the Disciplinary Council shall elect the president of the Council from among themselves. President of the Council must be at least a judge at same level as the judge who shall be initiated disciplinary proceedings against.
- (6) On the basis of initiated proceedings, the Disciplinary Council shall prepare decision-proposal with explanation that shall be submitted to the Council.
- (7) President of the Disciplinary Council shall orally present the course of the proceedings, the derived(submitted) arguments(evidence) and the established facts and shall explain the proposal on disciplinary sentence. The session of the council shall be attended by the judge who the disciplinary proceedings has been initiated against, his/her advocate and the submitter of the action.
- (8) The Council shall make a decision on disciplinary responsibility, such decision not related to the proposal of the Disciplinary council.
- (9) If disciplinary proceedings shall be initiated against a member of the Council, such member shall be excluded from the decision-making in the disciplinary proceedings.«

Article 12.

Article 25. shall be amended as follows:

- »(1) Disciplinary proceedings shall be initiated by submitting a demand for disciplinary proceedings.
- (2) A demand for disciplinary proceedings shall be submitted in written and it shall contain personal information about the judge on disciplinary responsibility, the description of facts and legal description of the disciplinary offence, a proposal on specific disciplinary sentence as well as an explanation of reasonable doubts.
- (3) Immediately after the demand has been received, the Council shall appoint Disciplinary Council for the purpose of execution of disciplinary proceedings.
- (4) In the course of disciplinary proceedings the Disciplinary Council shall be given the right to determine that certain inspection shall be executed by a member of the Disciplinary Council, member authorized by the Council itself.«

Article 13.

Article 26 shall be deleted.

Article 14.

In Article 27, paragraph 1, in the second clause after the words: »to amend the demand«, the following word shall be inserted: »Disciplinary«.

Article 15.

Article 28. shall be amended as follows:

- »(1) In the decision-making process on the disciplinary responsibility of the judge the proceedings has been initiated against, he/she must be given the opportunity to present his/her defence personally, in written, or by an advocate he/she shall choose.

(2) The decision that shall establish that the judge shall be disciplinary responsible and that shall sentence him/her to a disciplinary penalty shall only refer to the disciplinary offence and to the person that has been specified in the demand by the submitter.

(3) The decision must be prepared and served to the parties within 15 days period from the day such decision has been made.«

Article 16.

Article 31 is amended as follows:

»(1) A judge shall be relieved of duty:

– if he/she has been subject of criminal proceedings for criminal acts punishable by law to five years imprisonment or more severe penalty, or while being in custody,

– if he/she has been sentenced for a criminal offence which makes him unworthy to hold judicial office or

– if he/she has committed serious disciplinary offence.

(2) A judge shall be relieved of duty:

– if he/she has been subject of criminal proceedings for criminal acts punishable by law to five years imprisonment,

– if he/she shall perform duties, affairs or activities incompatible with judicial duties,

– if in the demand for disciplinary proceedings the authorized submitter has proposed a disciplinary sentence- relief of duty .

(3) The demand for relief of duty shall be submitted to the Council by the president of the court where the judge shall perform his/her judicial duties, the president of the immediately higher court, competent judicial council or by the President of the Supreme Court of the Republic of Croatia.

(4) The decision on relief of in cases duty referred to in paragraph 1 of this article shall be made by the president of the court, and in cases referred to in paragraph 2 of this article shall be made by the Council without delay.

Article 17.

After article 31, articles 31.a and 31.b shall be inserted as follows:

»Article 31.a

(1) Decision on temporary relief of duty must be in written and with explanation.

(2) Against the decision on temporary relief of duty, appeal shall be excluded.

Article 31.b

(1) Temporary relief of duty shall be determined within a 3 month period, after the expiry of the period the Council shall have the right to prolong it, on reasonable grounds, in an equal way for three months further. Temporary relief of duty shall last until the effective ending of the disciplinary proceedings, which, in such case, must be executed by the Council within a one year period.

(2) During temporary relief of duty the judge shall have the right to one half of his/her salary.

(3) In case of acquittal in a disciplinary proceedings, the decision on temporary relief of duty shall cease to be valid by law the day of the effective decision of the Council. In such cases or in cases where disciplinary sentences in fine or reprimand have been sentenced, the judge shall be given the right to be paid the difference of unpaid salary during the period of effects of the decision on relief of duty.«

Article 18.

Article 32 shall be amended as follows:

»(1) The Council shall relieve of duty a judge:

1. at his/hers own request,
2. if he has become permanently incapacitated to perform his duties,
3. if he has been sentenced for a criminal offence which makes him unworthy to hold judicial office,
4. if, in conformity with law, so decides the State Judicial Council due to the commission of an act of serious infringement of discipline,
5. when reaching seventy years of age.

(2) If the judge has requested to be relieved of duty at his/her own request, the proposal on relief of duty procedure shall be submitted to the Council by the president of the court where that judge shall perform his duties.

(3) If a judge has become permanently incapacitated to perform his duties, or he has been sentenced for a criminal offence which makes him unworthy to hold judicial office, or he has reached seventy years of age, the proposal on relief of duty procedure shall be submitted to the Council by the president of the court, the president of the immediately higher court, or by competent judicial council.

(4) The Minister of Justice or the President of the Supreme Court of the Republic of Croatia shall have the right to submit proposal on relief of duty procedure referred to in paragraph 3 of this article on each judge.«

Article 19.

In article 34, paragraph 1 shall be amended as follows:

»(1) When the Council decides to initiate a proceeding, the Disciplinary Council or the court empowered by the Council shall supply evidence.«

Article 20.

(1) The procedures of appointment and relief of judges, as well as disciplinary proceedings that have begun prior to entry into force of this Law shall be completed according to the regulations that were into force until the entry into force of this Law.

(2) The appointment and relief of judges under the provisions of this Law shall be executed in cases where the notice on available judicial office has been announced or a request on relief of duty of a judge has been submitted after the entry into force of this Law.

Article 21.

This Law shall enter into force eight days after the date of its publication in the "Official Journal".

Class: 700-01/05-01/01

Zagreb, 29 November 2005.

Croatian Parliament
Speaker of
the Croatian Parliament
Vladimir Šeks, in one's hand