

LAW ON JUDGES

Chapter One

PRINCIPLES

Independence

Article 1

A judge shall be independent in dispensing justice.

He shall judge and pass judgement according to the Constitution, laws, other general acts and his conscience.

Permanency and Non-transferability

Article 2

A judge shall perform his duties as a permanent function, in the court to which he has been elected.

A judge may not be transferred or directed to another court against his will.

Preserving of Confidence in Independence

Article 3

A judge shall at all times preserve confidence in his independence.

This Law shall stipulate services, jobs and activities that are incompatible with the duty of a judge.

Financial Independence

Article 4

A judge shall have the right to salary suitable to maintain his/her independence and sustain his family.

The salary of a judge shall be determined by law, pursuant to criteria stipulated in this Law.

**Immunity
Article 5**

A judge shall not be accountable to any person for an opinion or vote rendered in performance of judicial duty.

A judge may not be detained in custody without the consent of the National Assembly, during a procedure initiated for a criminal offence committed in performance of judicial duties.

**Liability
Article 6**

The Republic of Serbia shall be liable for damages caused by a judge through unlawful or improper work.

The Republic of Serbia may demand that the judge compensate the paid amount if the damage was caused wilfully or by gross negligence.

**Right to Association
Article 7**

Judges shall be entitled to associate for protection of their interests.

They may undertake measures for protection and preservation of their independence and autonomy.

**Right to Advanced Training
Article 8**

A judge shall be entitled to advanced training at the cost of Republic of Serbia.

Types and manner of advanced training shall be prescribed by the Supreme Court of Serbia.

**Election and Termination of Office and Number of Judges and Lay Judges
Article 9**

The National Assembly shall decide on election and termination of office of judges and president of the court.

The number of judges and lay judges for each court shall be determined by the National Assembly, at the proposal of the High Judicial Council.

The general framework for determining the number of judges, lay judges and court staff shall be determined by the High Judicial Council.

Chapter Two

JUDGESHIP

I. PERMANENCY OF JUDGESHIP

1. Concept

Article 10

A judgeship shall last continuously from first election as judge until retirement.

Judgeship may terminate prior to above only under conditions set forth in this Law.

2. Decrease of Number of Judges and Closing of Courts

Article 11

Judgeship shall not cease with decrease in number of judges.

If a court is closed down, a judge shall continue his office in a court of same type and instance, or approximately of same instance.

The High Judicial Council shall decide on the court where a judge is to continue with performing his function.

3. Suspension of Judgeship

Grounds for Suspension

Article 12

A judge shall be suspended from duty if remanded in custody.

A judge may be suspended from duty if proceedings for his dismissal or criminal proceedings for an offence subject to dismissal have been initiated against him.

Decision on Suspension

Article 13

A president of the court shall decide on mandatory suspension of a judge, and on mandatory suspension of a president of the court – the president of the directly higher court.

If suspension is not mandatory, it shall be ruled upon by the president of the Supreme Court of Serbia.

The High Personnel Council shall decide on suspension of the president of the Supreme Court of Serbia.

**Duration of Suspension
Article 14**

A judge shall be suspended until detention is revoked, conclusion of dismissal proceedings or conclusion of criminal proceedings.

The High Personnel Council may reinstate a judge prior to conclusion of dismissal proceedings.

**Right to Complaint
Article 15**

A judge shall have the right to file a complaint against the decision on suspension with the High Personnel Council, within three days.

The president of the Supreme Court of Serbia shall voice his complaint at the General Session.

II. NON-TRANSFERABILITY OF A JUDGE

**1. Concept
Article 16**

A judge shall have the right to perform his duties for the duration of judgeship in the court of appointment.

He/she may be transferred from one to another court only with his/her consent.

Consent shall be in written form and must precede the passing of decision on transfer or secondment.

**2. Transfer
Article 17**

A judge may be transferred only to another court of same type and instance.

Permanency of judgeship shall continue in the court to which he/she is transferred.

The High Judicial Council shall pass the decision on transfer.

3. Secondment to Another Court Article 18

A judge may be seconded only to another court of same type, same or immediately lower instance, for maximum one year.

He/she shall be seconded to a court where deficiency, hindrance, suspension of judges or other reasons inhibit or slow the workload.

The decision on secondment shall be made by the president of the Supreme Court of Serbia.

III. MUTUAL INDEPENDENCE OF JUDGES FROM EACH OTHER

1. Generally

Article 19

A judge shall be free in holding his view of facts and law in all matters under his deliberation.

He shall not be required to justify his understanding of fact and law to anyone, including other judges and the president of the court, except in justification of the judgement or when so particularly stipulated by law.

2. Immutability of Type of Work and Random Choice Allocation of Cases

Immutability of Annual Work Load

Article 20

A judge shall be entitled to have the type of his workload defined by an annual work schedule and not to have it changed during the year.

However, due to election of a new judge, long absence of a judge or vacant judge's position, the type of work of a judge may be changed during a year.

Random Choice Allocation of Cases

Article 21

A judge shall be allocated cases according to an order independent of personalities of the parties and circumstances of the legal matter.

The manner of allocation of cases shall be prescribed by the Court Rules of Procedure.

**Deviation
Article 22**

The order of allocated cases may be deviated from only if a judge is overworked or if he is legitimately hindered.

A case may be taken away from a judge only in the event of his prolonged absence or protraction of proceedings.

**Right to Objection
Article 23**

A judge shall be entitled to file an objection, within three days, with the president of the directly higher court on the annual schedule of work, change of the type of work, deviation from the order of case allocation or taking away of cases.

The High Personnel Council shall rule on the objection from the president of the Supreme Court.

A party in the proceedings shall also be entitled to object on deviation from the order of case allotment and to taking away of cases.

**Mandatory Notification of the President of the Directly Higher Court
Article 24**

A president of the court shall, regardless of whether an objection has been filed or not, notify in writing the president of the directly higher court on any deviation.

**3. Notice on Duration of Proceeding
Article 25**

A judge shall notify the president of the court on the reasons why a first-instance proceeding has not been concluded within a six-month statutory term, and shall thereupon inform him monthly on further developments in the proceeding in relation to time.

First notice in the proceedings pursuant to legal remedies shall be given after one month, and the next shall be given every fifteen days.

Deadlines for notification in enforceable, special litigation and other non-litigious matters shall be determined by the court Rules of Procedure.

4. Right of Judge to Complaint Article 26

A judge may complain to the High Personnel Council for violation of a right for which this Law does not envisage particular procedure for protection.

The High Personnel council shall deliberate on the complaint within eight days and shall immediately inform the president of the court, the president of the directly higher court and the president of the Supreme Court of Serbia on their decision.

IV. INCOMPATIBILITY OF JUDGESHIP WITH OTHER FUNCTIONS, ENGAGEMENTS AND ACTIVITIES

1. Incompatibility of Other Functions, Engagements and Activities with Judgeship Article 27

A judge may not hold office in legislative or executive bodies, may not be a member of a political party, engage in any public or private compensated work, nor may he/she offer paid legal services or advice.

Other functions, engagements or activities that are adverse to the dignity and independence of a judge or detrimental to the dignity of the court shall also be incompatible with judgeship.

The Supreme Court of Serbia shall prescribe which activities shall be considered adverse to the dignity and independence of a judge and detrimental to the dignity of the court.

2. Procedure on Incompatibility Deliberation

Mandatory Notification and Initiation of Proceedings Article 28

A judge shall notify the president of the court, in writing, on any function or engagement that could be deemed incompatible with judgeship.

The president of the court shall inform the president of the directly higher court of such his/her function or engagement, and the president of the Supreme Court of Serbia – the High Personnel Council.

The president of a court shall initiate proceedings before the High Personnel Council on deliberation on incompatibility, immediately upon finding out that a judge is holding office or engagement, or is performing activities that could be deemed incompatible with his duties.

Pronouncement of Caution and Complaint Article 29

The High Personnel Council may concurrently with determination of incompatibility, pronounce a caution to a judge that shall be entered into his personnel file.

A judge shall be entitled to complain to the High Judicial Council, within eight days.

A judge may express his contentions verbally, by himself or through a proxy.

V. JUDGE'S FINANCIAL STATUS

Base Salary Article 30

A judge's salary shall be determined pursuant to base salary.

Base salary, for the purpose of this Law, shall mean the amount without the percentage increment that fall within the retirement years of service.

Base Salary of a Judge Article 31

The base salary of a judge of the Supreme Court of Serbia may not be less than the base salary of a Minister in Government.

The base salary of the judge of the Appellate Court, High Commercial Court and the Administrative Court shall be 6% lower from the base salary of the judge of the Supreme Court of Serbia, and the base salary of a judge of the next lower instance court shall be 10% lower than the base salary of the judge of the directly higher court.

Base Salary of the President of the Court Article 32

The base salary of the president of the Supreme Court of Serbia shall be equal to the base salary of the Prime Minister.

The base salary of the presidents of other courts shall be by 5% higher from the base salary of a judge in the court where they preside.

The High Judicial Council may, depending on the scope and complexity of court activities, determine that presidents of some courts may have a base salary equal to the base salary of the president of the directly higher court.

The Base Salary of a Judge Seconded to another Court
Article 33

A judge seconded to another court shall have the right to the base salary of a judge in that court if it is more favourable for him.

The High Judicial Council shall prescribe compensation and other incomes of a judge seconded to a another court.

Increments of Judges' Base Salary
Article 34

Base salary an investigative judge and a judge who exclusively or predominantly handle criminal cases in the district court shall be increased up to 20%, in the increment determined by the High Judicial Council.

The High Judicial Council may decide to increase the base salary for up to 75% in a court where the judges' posts may not be filled.

Supplement to the Judge's Salary
Article 35

The High Judicial Council may propose the National Assembly to introduce a supplement to the judicial salary.

Introduction of a supplement to the judge's salary shall be proposed in exceptional cases such as where the increase of living costs starts to influence the independence of judges.

Chapter three
HIGH PERSONNEL COUNCIL
Scope of activities
Article 36

The High Personnel Council shall be established within the Supreme Court of Serbia.

The High Personnel Council shall decide on the status of judges that is prescribed by law.

Composition
Article 37

The High Personnel Council shall comprise of nine judges from the Supreme Court of Serbia.

The judges shall enter the Council pursuant to the schedule established by the Rules of Procedure of the High Personnel Council.

The High Personnel Council shall comprise of approximately equal number of judges from each division of the Supreme Court of Serbia.

Passing Decisions Article 38

The High Personnel Council shall pass decisions by majority vote of all members.

Incompatibility Article 39

The President of the Supreme Court of Serbia may not be a member of the High Personnel Council.

In case of a procedure against a member of the High Personnel Council, he/she shall be replaced by a judge selected by other members of the Council by lot.

Mandate and Management Article 40

A mandate of a member of the High Personnel Council shall last two years.

The President, chosen by the members among themselves, shall chair the High Personnel Council.

Chapter four

ELECTION OF JUDGE

CONDITIONS FOR ELECTION Article 41

A Yugoslav citizen meeting all conditions for employment with government authorities who is a Bachelor of Law, has passed the Bar Exam and is worthy of the judge's function may be elected judge.

The following working experience in legal practice following the passed Bar Exam shall be required:

- two years for a judge at municipal court
- four years for a judge at commercial court

- six years for a judge at district court
- eight years for a judge at the Court of Appeal, High Commercial Court and Administrative Court
- twelve years for a judge at the Supreme court of Serbia.

II. ELECTION PROCEDURE

Notice of Election

Article 42

The High Judicial Council shall announce the election of judges.

The announcement shall be published in the “Official Gazette of the Republic of Serbia” and other media.

Application

Article 43

Every application for election shall be submitted to the High Judicial Council within fifteen days following the day of publishing of announcement in the “Official Gazette of the Republic of Serbia”.

All the required documents proving that the conditions for the election have been met shall be enclosed with the application.

The High Judicial Council shall be provided with the personal record of each candidate originating from a court.

Obtaining Data and Opinion

Article 44

The High Judicial Council shall obtain data and opinion on professional ability and worthiness of a candidate.

The data and opinion shall be obtained from the bodies and organisations in which the candidate has worked in legal practice.

Nomination for Election

Article 45

The High Judicial Council shall, whilst nominating a judge, take into consideration only his/her professional ability and worthiness.

Every nomination for election shall be justified.

**Election
Article 46**

The National Assembly may only elect a candidate nominated by the High Judicial Council.

If he/she is not elected, the High Judicial Council shall reconsider the proposal.

III. JUDGE'S OATH AND TAKING OFFICE

**Taking Oath
Article 47**

Prior to taking office, a judge shall take an oath before the President of the National Assembly.

The President of the Supreme Court of Serbia shall take an oath before the National Assembly.

A judge, elected from the judge's profession shall not take the oath again.

**Oath
Article 48**

The judge' oath shall be as follows: " I swear, by my honour, to perform my duty and in accordance with the Constitution and law, by the best of my knowledge and ability and serve solely to truth and justice".

**Taking Office
Article 49**

A judge shall take the office at the solemn session of all judges at the court to which elected.

A judge's previous function in the original court shall cease with taking the new office.

A higher instance court judge, elected for a president of a lower instance court, may return to his/her judge's function at the higher instance court after termination of the elected function.

**Not Elected Judge
Article 50**

A judge shall be deemed not elected if he/she fails to take office within two months of election without a justifiable reason.

The High Judicial Council shall, upon a proposal by a president of a court, pass a decision on the above-mentioned and inform both the National Assembly and the High Judicial Council.

A judge shall have the right to file an objection against the aforesaid decision to the High Judicial Council within eight days.

**Chapter five
TERMINATION OF JUDGE'S FUNCTION
I. THE REASONS FOR TERMINATION OF JUDGE'S FUNCTION**

**1. All Reasons
Article 51**

The judge's function shall cease with the judge's request for the same, when he/she reaches the retirement years of service or when removed from office.

2. Reaching the Retirement Years of Service

**In General
Article 52**

A judge shall be deemed to have reached the retirement years of service when reaching the age of sixty or forty years of years of service.

A president of a court shall, at latest until 1 October, inform in writing the President of the Supreme Court of Serbia which judges and presidents of the directly lower courts are reaching the retirement years of service next year and when.

**The Prohibition of Extension and Reduction of the Number of Years for
Retirement
Article 53**

The number of years required for retirement in respect of a judge may not be extended.

Any decrease of the time period required for retirement shall not influence a judge's termination of duty.

3. Reasons for Removal from Office

All Reasons Article 54

A judge shall be removed from office when he/she is convicted for a criminal offence to unconditional prison sentence of six months, or more or for a punishable offence making him/her unworthy of judge's function, or when he/she performs the judge's duty negligently and unprofessionally, and when he/she permanently loses the working capacity to perform the function.

Negligent Performance of Duty and Insufficient Legal Ability Article 55

A judge shall be deemed to negligently perform his/her duty if he/she delays a case, ignoring the prescribed statutory deadlines in proceedings or issuing decision, or otherwise acts contrary to the criteria prescribed by the Supreme Court of Serbia.

A negligent performance of duty shall be when a judge continues with the function, duties or the same or similar activities to those determined to be incompatible with his/her function or if he/she fails to take office without the justifiable reasons.

A judge shall be deemed to perform his/her function unprofessionally when he/she performs the function with a lack of success according to the standards prescribed by the Supreme Court of Serbia.

II Determination of Reasons for Termination of Judge's Function

1. DETERMINATION OF REACHING THE RETIREMENT YEARS OF SERVICE ESTABLISHING REASONS FOR REMOVAL FROM OFFICE

Competence and Initiation of the Proceedings Article 56

The High Personnel Council shall determine whether a judge has reached the years of service for retirement and shall establish the reasons for removal from office.

President of the Court, President of Directly Higher Court, President of the Supreme Court shall initiate the procedure.

The High Personnel Council shall initiate the procedure for determining whether the President of the Supreme Court of Serbia has reached the years of service for retirement and shall determine whether there are reasons for his/her removal.

Procedure before the High Personnel Council Article 57

The High Personnel Council shall determine the facts and decide in the procedure, which shall be closed to public.

It may request the necessary data from competent authorities and organisations.

The decision of the High Personnel Council shall be justified.

Pronouncement of Measures and the Right to Objection Article 58

The High Personnel Council may, during the procedure for removal from office of a judge due to negligent and unprofessional performance of judge's function, pronounce the measure of caution or removal from office for the period from one month to one year.

A judge shall have the right to, within eight days, file an objection to the General Session.

The General Session shall be closed to public.

Status of Judge During the Procedure Article 59

During the procedure, a judge shall have the right to be immediately informed of the reasons for initiating the procedure, acquaint with the case and documents relating to case, course of the procedure, report of reporting judge in charge, and shall have the right to give an explanation and prove his evidence himself, or through his representative.

A judge may present his/her claims verbally before the High Personnel Council and the General Session.

Notifying the National Assembly Article 60

There shall be no objection to the decision by the High Personnel Council whereby established that judge has reached the years of service for retirement nor to a decision on removal from office.

The President of the Supreme Court of Serbia shall, immediately upon the receipt of the decision, notify the National Assembly that a judge has reached the years of service for retirement or that there are reasons for his/her removal from office.

The Effect of Measures Article 61

The measures of caution and removal from office shall be recorded in the judge's personal record.

AS long as the measure of removal from office is effective, the judge shall be considered as if he/she is suspended from duty.

The measure of caution may not be pronounced two times to the same judge.

2. Termination of Judge's Function on his/her Request Article 62

A judge who wants his judge's function to be terminated shall file a request in writing to the High Personnel Council, which shall immediately communicate valid request to the National Assembly.

The request may be withdrawn until the judge's function is terminated by the decision of the National Assembly, or until the expiration of the deadline prescribed by this Law.

A request for termination of judge's function filed by a judge after the initiation of the procedure for removal from office shall not be considered until the end of removal procedure.

III. DECISION ON TERMINATION OF JUDGE'S FUNCTION

Decision Making and Appeal to the Constitutional Court Article 63

The National Assembly shall decide on termination of judge's function.

A judge may appeal to the Constitutional Court, within fifteen days from publishing of the decision on termination of his/her duty in the "Official Gazette of the Republic of Serbia".

The Constitutional Court shall accordingly apply the provisions on decisions in election disputes.

Deadline for Termination of Judge's Function Article 64

If the decision on the request for termination of judge's duty has not been made within one month, it shall be considered that the judge's function is terminated after the expiration of one month from the date of filing the request, which shall be published in the "Official Gazette of the Republic of Serbia".

In all other cases the judge's function shall be terminated with the day specified in the decision of the National Assembly.

2. The Consequences of Removal from Office Article 65

The employment of judge shall end by his/her removal from office.

He/she may not apply for the nomination in court or prosecutor's office, nor for the nomination for deputy public prosecutor or misdemeanour judge.

Chapter six

PRESIDENT OF COURT

Duration of Mandate Article 66

The President of Court shall be elected among judges, to a five-year mandate, and he/she may be re-elected.

The mandate of the President of Court shall begin with the day of taking the office.

Acting President of Court Article 67

Upon the termination of duty of the President of Court, the President of Directly Higher Court shall appoint a judge for the position of Acting President of Court who shall perform this duty until a new President of Court takes the office, one year the most.

An Acting President of Court in a municipal court shall be appointed by the president of the Court of Appeal.

The General Session shall appoint a judge for the position of the Acting President of Supreme Court of Serbia.

**Status of the President of Court upon the Termination of Duty
Article 68**

The President of Court who has not been re-elected, who was removed from duty or whose function was terminated on his request shall continue the performance of judge's function.

A judge who has been re-elected president of lower instance court, whose term of office for president has expired, shall have the right to continue the performance of judge's function at the higher instance court.

**Removal of the President of Court from Duty
Article 69**

The President of Court shall be removed from duty if he/she performs his duties negligently and inadequately.

The negligent performance of duty shall, in the first place, refer to failing to organise proper work of court and work in timely manner, as well as to prevent the activities that are harmful to the independence or reputation of the court.

**Provisions on Judges
Article 70**

The President of Court shall be appointed and removed from duty in accordance with the same procedure as the procedure for the appointment and removal of judges.

Other provisions of this Law referring to judges shall also refer to presidents of courts.

Chapter Seven

SPECIAL PROVISIONS ON LAY JUDGES

**Conditions for the Appointment and Duration of Mandate
Article 71**

A Yugoslav citizen, who reached twenty-six, who is worthy to be a lay judge may be appointed a lay judge.

During the appointment to the position of a lay judge the following shall be taken into account: sex, age, vocation and social status, knowledge, expertise and affiliation for specific legal matters.

A lay judge shall be appointed to a five-year period and may be re-elected.

Appointment Procedure **Article 72**

The High Judicial Council shall appoint a lay judge at the proposal of the Minister in charge of judiciary.

Before making a proposal, the Minister shall obtain the opinion from the court for which the lay judge is being appointed.

The Oath **Article 73**

A lay judge shall take an oath before the President of the Court for which he has been appointed.

The text of the oath shall be as follows: I swear by my honour to perform my duty in accordance with the Constitution and law, consciously and with dedication”.

Suspension from Office **Article 74**

The President of Court may remove a lay judge from duty if the proceedings for committing a criminal offence have been initiated against him that might result in the removal from office or the initiation of the removal procedure.

The lay judge shall be removed from office until the end of procedure.

Incompatible with other Services, Jobs and Activities **Article 75**

A lay judge may not be a lawyer nor may perform any legal services or give legal advice for remuneration.

Other services, jobs and activities contrary to the dignity and independence of a judge or damaging to the reputation of court shall be deemed incompatible with the position of a lay judge.

Termination of Duty Article 76

If a court is abolished, the duty of a lay judge shall be terminated, but not due to the fact that a lay judge came to the years of service for retirement, nor due to unprofessional performance of duty, except when the lay judge meets the professional requirements for a judge.

The procedure for determination of reasons for termination of lay judge from duty shall be initiated by the President of Court, President of Higher Instance Court, President of Supreme Court of Serbia and the Minister in charge of judiciary.

The High Judicial Council shall conduct the procedure and decide on the matter.

The measures of caution and the removal from court may not be pronounced to a lay judge.

Remuneration and Reward to Lay Judges Article 77

A lay judge shall be entitled to a remuneration of the expenses emerging from performance of his/her duty, remuneration for the lost income and right to a reward.

The conditions and the amount of remuneration and reward shall be prescribed by the High Judicial Council.

Application of the Provisions on Judges Article 78

The provisions on judges shall accordingly be applied to lay judges.

Chapter Eight

TRANSITIONAL AND FINAL PROVISIONS

I. TRANSITIONAL PROVISIONS

Continuation of Performance of Judge's Function Article 79

The judges elected on the basis of the Law on Courts ("Official Gazette" of the Republic of Serbia" No. 46/91, 60/91, 18/92 and 71/92) shall continue to perform the function to which elected or posted pursuant to the Law on Courts.

**Election of Judges to the Court of Appeal and Administrative Court
Article 80**

A decision on the number of judges and lay judges for the Court of Appeal and judges for the Administrative Court shall be reached by 1 May 2002.

A president and judges to the Court of Appeal and Administrative Court shall be elected by 30 September 2002.

**Base Salary for District Court Judges Prior to Commencement of the Work of
the Court of Appeal
Article 81**

Prior to commencement of work of the Court of Appeal, a judge of a district court shall have the same base salary as he/she would have if the Court of Appeal commenced its work.

II. FINAL PROVISION

**Entry into Force
Article 82**

This Law shall enter into force with 1 January 2002.