

Belgrade, Dec. 24, 2007

Mr. Raffaele Sabato  
Chair of the CCJE  
Council of Europe  
Strasbourg

Dear colleague Sabato,

As I announced at the eighth plenary meeting of the CCJE in Strasbourg, I am addressing you on behalf of the Judges' Association of Serbia<sup>1</sup> with the plea for CCJE to take a position regarding the intention of Serbian politicians to reelect all judges.

## **LEGAL FRAMEWORK**

### **National Judicial Reform Strategy**

**1.** In May 2006, the National Assembly of the Republic of Serbia adopted the National Judicial Reform Strategy (hereinafter: the Strategy – Annex 1) and the Plan of Activities for

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<sup>1</sup> With their decision to refuse the inappropriate role demanded from the judges in the disputes related to the tampering with the results of local elections in 1996, the judges in Serbia have shown that they are aware of their responsibility, that they value their profession, and that they are intent to make it respectable. The Judges' Association of Serbia was founded on April 26, 1997 under the slogan "I DO NOT AGREE," with about 600 judges (one quarter of all judges in Serbia) present at the constitutional assembly. Contrary to the views of politicians, the judges had no intention to enter politics. The intention was and remained to publicly condemn and stop all meddling of politics in judicial decisions, and to persist with the requests for judicial independence and the principles of division of government. At the same time, there was a need for judges in Serbia to have a professional association to protect their interests, which are also the strategic interests of any democratic society. This is where the goals of the Association came from: the organization of a state based on the rule of law, establishment of an independent and impartial judiciary, affirmation of law as a profession and science, improvement of the reputation and financial position of judges, and improvement of regulations on the organization and work of the courts of law.

Because of their pleading for these goals, the Judges' Association, and especially its most distinguished members, have been targeted by the regime, and the period from the constitution to the year 2000 was actually a struggle to realize the constitutional rights of judges as citizens to form professional associations. The Association was under pressure and persecution, which culminated in 1999 and 2000 with illegal suspension of several dozens of its most distinguished members. The Board of the Judges' Association was left without the majority of its members, and the work of the Association ceased.

After the democratic changes in 2000, the Judges' Association finally obtained an official status and resumed its activities on April 7, 2001, when the membership rose to 1400. Today, the Judges' Association counts over 1600 members, and is the only professional association of judges in Serbia. Such an example of constitution of a judges' association is unique in the countries in transition. In other countries, the organization of judges was provided by new governments after the democratic changes.

its implementation over the period 2006-2011. The responsibility for the realization of goals and activities defined by the Strategy has been given to a ten-member Commission for Implementation of the Strategy (hereinafter: the Commission). The members of the Commission, according to their function, are: the Minister of Justice (President of the Commission), the President of the Supreme Court of Serbia, the Attorney General of the Republic of Serbia, and one representative from each of the following: Judicial Board of the Assembly of the Republic of Serbia, the Judges' Association, the Association of Prosecutors and Deputy Public Prosecutors of Serbia, the Bar Association of Serbia, the Judicial Training Center, The Faculty of Law of the University of Belgrade, and the Ministry of Finance of the Republic of Serbia. The Commission formed working groups for the drafting of several model laws.

2. Over the past six months, since the constitution of the new Government, the Commission had no meetings, and has not reviewed the work of its working groups, or taken a position in respect of their activities. There were only some informal announcements that the Commission might meet shortly, which may not be for certain.

### **The Constitution of the Republic of Serbia**

3. The new Constitution (Annex 2) of Serbia was adopted in November 2006, and regulates the judiciary in accordance with the solutions proposed in the Strategy. Although the previous Constitution from 1990 prescribed a very strict procedure for its amendments, the new Constitution was adopted in full accordance with the provisions of the previous one.

4. Namely, the previous Constitution, in the provisions of Articles 132 and 133, prescribed that the proposal for the change of the Constitution is decided by a two-third majority of the total number of deputies of the National Assembly. Upon the adoption at the Assembly, the act on the change of the Constitution is to be put on the referendum at the level of the Republic for confirmation, and is considered adopted if it is approved by more than one half of the total number of voters. Only thereafter can the National Assembly proclaim the new Constitution.

5. The new Constitution (in Article 146 Paragraph 1), as well as the previous one (in Article 101 Paragraph 1), prescribes the principle of permanence of judicial function, and the adoption of the new did not interrupt the constitutional and legal continuity with the previous one.

### **Constitutional Law for Implementation of the Constitution of the Republic of Serbia**

6. The Constitutional Law for Implementation of the Constitution of the Republic of Serbia (hereinafter: the Constitutional Law – Annex 3) was adopted on the day of the proclamation of the new Constitution, on November 8, 2006. The provision of Article 5 Paragraph 2 prescribes the obligation of the Assembly to harmonize with the Constitution all laws that are covering the implementation of Constitutional provisions in the courts of law and the public prosecution offices: the laws governing the organization and competence of courts, the election and cessation of function of the presidents of courts and judges, the High Judicial Council, the organization and competencies of public prosecution offices, the

election and cessation of function of public prosecutors and deputy public prosecutors, and the State Prosecutors Council.

7. According to the previous Constitution, the highest court in the Republic of Serbia was the Supreme Court of Serbia, and according to the new Constitution, this is going to be the Supreme Court of Cassation. The provision of Article 7 of the Constitutional Law prescribes that the election of the President of the Supreme Court of Cassation, and the first election of judges for the Supreme Court of Cassation are going to be performed at the latest within 90 days of the constitution of the High Judicial Council, and the election of judges and presidents of other courts at the latest within one year of the constitution of the High Judicial Council.

### **Opinion of the Venice Commission on the Constitution of Serbia**

8. On March 19, 2007, the Venice Commission has issued the Opinion No. 405/2006, on the newly adopted Constitution (Annex 4), expressing concern and several objections on some constitutional solutions on the judiciary. Commenting the implications of the Constitutional Law, the Venice Commission, through its doubts and assumptions about the essence of Article 7 of the Constitutional law, expressed its concern and dilemma about its possible interpretations as a basis for the reelection of judges, and specified several conditions that need to be fulfilled in the implementation of the reelection procedure.

### **Current Situation**

9. Not one of the judiciary laws has been adopted. The latest acts of the Ministry of Justice state that their adoption is planned for March and April 2008.

## **PREPARATION OF NEW JUDICIARY LAWS**

### **Working groups of the Judicial Reform Commission**

10. For timely legal harmonization of the judicial system with the Constitution, the Commission has formed several working groups, such as the Working group Establishing the Basic Principles for Drafting the System Laws Regulating the Judiciary, and the Working group for Drafting the Laws on Judges and Prosecutors.

### **Working group Establishing the Basic Principles for Drafting the System Laws Regulating the Judiciary**

11. The Working group Establishing the Basic Principles worked within the framework of the solutions defined by the Strategy and the new Constitution, with the goal of reaching optimal an applicable solutions for upcoming changes, harmonized with both international standards and the traditions and social conditions in Serbia. Bearing in mind the parallel experiences, as well as the experiences of other countries in transition, and taking into consideration the traditional specifics of the judicial system in Serbia, this Working group

defined the guidelines – the Basic Principles for Drafting the System Laws Regulating the Judiciary (hereinafter: the Basic Principles – Annex 5) for future judiciary laws, implementing the European standards into them, to the extent possible.

12. In the development of the guarantees of judicial independence, the Workgroup concluded that the permanence of judicial function originates from the constitutional and legal continuity of both the old and new Constitution, which both guarantee the permanence of judicial function. Therefore, it was concluded that the provision of Article 7 of the Constitutional Law cannot be interpreted as a basis for reelection of all judges in the Republic, but is applicable solely to the judges that are to be appointed to the courts that currently do not exist, and that are going to be formed when the new Constitution enters into force, as well as to the judges appointed for the first time, or into courts of higher instance. In addition, the position was taken that the elections for newly formed courts will be performed solely for places that remain unfilled after the transfer of judges from courts that are abolished, or the courts of law the prevailing competence of which has been transferred to newly established courts.

### **Opinion of the Experts of the European Council about the Basic Principles**

13. The results of this Workgroup have been evaluated positively by the experts of the OSCE and the European Council, which submitted the opinion of its experts (Annex 6) to the Minister of Justice at the end of July 2007. Ian Burns Campbell CMG, one of the four experts of the European Council who expressed their opinion about the Basic Principles, among other things, states that he fully agrees with the stated comments. He further adds:

"With all due respect to the authors of the Venice Commission Opinion of March 2007 it would appear that they have unfortunately misinterpreted the above Article. At paragraph 61 of their Opinion they comment that the above law (and it would seem clear that they are referring to Article 7 thereof) "provides that all sitting judges within the Republic of Serbia have to be reappointed following the entry into force of the new Constitution." As is clear from the above citation of Article 7, what is being referred to is not a "reappointment" process but an election process following upon either 90 days or one year respectively from the date of the constitution of the High Judicial Council – and certainly not "*following the entry into force of the new Constitution*" as the Venice Commission Opinion puts it. This misreading of Article 7 then leads the Venice Commission Opinion into further error in paragraph 72 where puzzlement is expressed over the reason for such reappointment process. Then in paragraph 73, the error is compounded by setting out a suggested manner of carrying out such a non process which is neither *acquis* compliant nor required either by the Constitution or the Constitutional Implementation Law. In my view the Venice Commission Opinion is wrong both as to interpretation and as to the *acquis*, since Article 7 must in my view, in the light not least of Articles 1, 3, 146 and 194 of the Constitution itself, and bearing in mind the *acquis*, be interpreted without the slightest deviation in an *acquis* compliant manner. The *acquis* leaves no room for a re-election process as referred to in paragraph 73 of that Opinion or at all however carried out."

## SOCIAL CONTEXT

### Introduction

14. During the 90s, the wars on the territory of the former SFRY, the interference of politics in all social fields, the enormous inflation of the dinar at the beginning of that period, almost one-third (about 800) judges left the judiciary. Inexperienced and insufficiently trained judges<sup>2</sup> filled the void left behind, and a significant number of judges who remained were demoralized, burdened in many ways, anxious, and frightened. That is how it came about, among other reasons, that some judges placed obedience before their profession and adopted disputable decisions, tampering with the results of local elections in 1996. The Judges' Association of Serbia was formed out of the revolt with such and similar behavior, and the decision to disagree with the improper role demanded from the judges at the time.

15. Despite the fact that more than 2/3 of judges were appointed in Serbia since the democratic changes in 2000 (either by being appointed for the first time, or by being appointed to higher instance courts<sup>3</sup>) and that the composition of the Supreme Court was changed by almost 80%, the politicians are leading a steady campaign through the media against the judiciary, charging it with all problems in the system. The position that it is necessary to change the judges, by either lustration or reelection, in order to solve the problems of the judiciary, is being put forward continuously and systematically. This created an atmosphere that gives the politicians a free hand to reelect all judges, irrespective of the legal basis for such a move.

### Insistence on Respecting the Permanence of the Judicial Function as a Guarantee of Judicial Independence

16. Although the problems with the judiciary in Serbia, including the ones related to the competence of judges and their responsibility and integrity, really do exist, they are primarily the consequence of the weakness of the judicial system. Therefore, their resolution requires a comprehensive change (reform) of the system, especially in the field of election and training of judges, regular evaluation of the work of all judges as a foundation for accountability in cases of incompetent performance of judicial function, and establishing a disciplinary responsibility for incompetent work and improper behavior. The changes to the judiciary, without the changes to the judicial system, are not changing its weaknesses, but postponing and deepening them.

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<sup>2</sup> There is no system for initial training of judges in Serbia, and the candidates that are to become judges are trained for the job in the court itself, by learning from other judges, without a joint and standardized program of training. The results of such training depend, of course, on the competence and motivation of the candidate to become a judge, but also largely from the competence, inventiveness, skill, knowledge, motivation, but also availability of the judge in charge of a particular candidate.

<sup>3</sup> There was not system of career advancement in Serbia until now, so that the candidates already on judicial functions, in order to be appointed to a higher court (i.e. to advance), had to go through the whole process of being a candidate, going through proposal, and appointment by the National Assembly, as when they were first appointed to a judicial position.

**17.** Over the period of about ten days between the publishing of the draft Constitution and the vote in the Assembly, on October 20, 2006, the Judges' Association organized a round table on the subject "Towards the New Constitution – Judiciary, the Day After," with the intention to timely indicate the required improvements of the constitutional solutions covering the judiciary. The first extraordinary confederal Assembly of the Judges' Association was organized soon after the adoption of the Constitution, on December 23, 2006, on the subject of the constitutional solutions on the judiciary and possible legal methods for their implementation. In the beginning of June 2007, the Judges' Association organized the International Conference "Judicial Independence and the Trials of Transition."

**18.** Conclusions were reached (Annexes 7, 8, and 9) at each of these events, and their essence is:

- There is no legal or constitutional basis for new election of all judges (reelection of current judges),
- The new election of all judges (reelection of current judges), since there is no legal foundation for it, would be in direct contradiction with the constitutional definition of the Republic of Serbia as a state based on the rule of law (Article 1 Paragraph 1 of the Constitution), and the principle of prevention of retroactive effect of the law (Article 197 of the Constitution), and would represent a severe breach of the Constitution, making Serbia a state based on political autocracy rather than the rule of law.
- The problems of the judiciary would be fundamentally changed with:
  - A fundamental and comprehensive change of the judicial system, and not a simple change of the existing judges and prosecutors,
  - The establishing of firm guarantees of independence and impartiality of the High Judicial Council and the State Prosecutors Council, through both the creation of the legal framework for the election of their members from the judges and prosecutors based on the proposals by their colleagues, and the creation of conditions for their work through appropriate budgeting, premises, and technical working conditions, and an adequate number of employees in their service,
  - The establishing of suitable comparable criteria of competence, knowledge, and values of the candidates to be appointed judges and prosecutors, and objective measures for continuous evaluation of their work, as the sole basis for advancement, accountability, and suspension,
  - The training (initial and permanent) of judges and prosecutors, that would become both their right and obligation, in order for them to master the theoretical and practical knowledge, with the goal of free-minded, expert, and independent fulfillment of the office in the right and efficient manner, under the supervision of the High Judicial Council / State Prosecutors Council,
  - The establishment of a system of disciplinary responsibility of judges and prosecutors, which is a balance and guarantee of their independence.

19. The Judges' Association of Serbia has written several times to the new Minister of Justice in order to organize a meeting and possible cooperation on strategic judicial issues, but without a formal answer. The last letter is dated December 6, 2007 (Annex 10), and a meeting was held on December 10, 2007 with the State Secretary for Judicial Matters, expressing general readiness for such cooperation.

### **Intention to Perform the Reelection**

20. Despite all of the above, the politicians in Serbia are expressing their intention to carry out the reelection of all judges. Neither the Government, which was constituted six months ago, nor the Minister of Justice, are denying the announced reelection. The deputies in the Parliament, the ministers in public addresses, and the media are openly discussing the reelection as a done and finished affair. Over the last few weeks, during talks between the Ministry of Justice and the representatives of international organizations and foreign states, the expression "reducing the number of judges" is becoming increasingly common. This expression is actually a euphemism for reelection, because the reduction of the number of judges with permanent mandate requires a review of the status of all judges, keeping some of them. Moreover, the website of the Ministry of Justice, in its plan of activities for the period 2007-2011, mentions the reelection of all judges.

### **PROPOSAL**

21. Bearing in mind that the permanence of the judicial function, and the independence of the judicial branch of government, are fundamental principles of the rule of law, guaranteeing the right of each citizen to fair trial, the Judges' Association of Serbia proposes your review of all counts of this application, and invites you to present your opinion on whether the intended reelection of judges in Serbia would be in accordance with the international standards covering the functioning of the judicial branch of government in a democratic society.

Believing that you will carefully review our proposal and submit your opinion shortly,  
With gratitude and my deepest respect,

Dragana Boljević  
President of the Judges' Association of Serbia

## ANNEXES ATTACHED TO THIS LETTER

1. National Judicial Reform Strategy
2. Constitution of the Republic of Serbia
3. Constitutional Law for the Implementation of the Constitution of the Republic of Serbia
4. Opinion of the Venice Commission about the Constitution, No. 405/2006 dated March 19, 2007
5. Basic Principles for judiciary laws
6. Opinion of the experts of the European Council about the Basic Principles
7. Conclusions of the Judges' Association dated October 20, 2006, from the round table "Towards the New Constitution – Judiciary, the Day After"
8. Conclusions of the Judges' Association from the First Extraordinary Assembly held on December 23, 2006
9. Conclusions from the International Conference "Judicial Independence and Trials of Transition" held on June 2, 2007
10. Letter to the Minister of Justice dated December 6, 2007



## **Remarks and suggestion regarding the draft Law on Judges and draft Law on Organization of Courts**

### **ANEX**

#### **Law on Judges**

1. Solutions taken from the draft Law on Judges represent significant improvement concerning the legal solutions that were provided so far and especially in the light of improved definition on newly adopted criteria for election of the judges, evaluation of judges' work and disciplinary responsibility.
2. We would like to underline the fact that the draft Law on Judges, which was sent to Judges' Association of Serbia didn't contain the later added provision, concerning the number of 15 judges in Supreme Court of Cassation, nor the provision defining that High Court Council needs approval of the Minister in charge of judiciary concerning the decision in judges number.
3. The current Law dictates that High Court Council proposes the needed number of judges to the RS Parliament, which makes the final decision about it. Solution to determine the number of judges by Law (if only in High Cassation Court), is not good, because it is not based on clear criteria. The provision concerning stipulation of High Court Council with Ministers approval in appointing the needed number of judges isn't proper as well. This makes the constitutional role of High Court Council more difficult, because it should guarantee and insure the independence and impartiality of the courts and judges. Furthermore, this solution is opposite to the National Strategy for Judicial Reform which provides transfer of the jurisdiction from Minister of Justice to High Court Council, and not the other way around.
4. We would especially like to point out that draft Law on Judges that was submitted to Judges' Association of Serbia did not contain transitional nor final provisions.
5. Accomplishment of the needed strategic goals depends on defining the time limits and implementation of certain solutions and especially the newly adopted ones (ending or reducing the jurisdiction of certain courts, eventual decreasing the number of judges and

their removal, evaluation of work, criteria, procedure of founding council of departments and/or some other organs to do so, appointing disciplinary responsibility system, etc).

6. Furthermore, it is more than obvious that transitional and final provisions could contain the often announced solution concerning reelection of all the judges. This solution would make pointless all the good solutions provided by the new Law on Judges. It could not be justified with already wrong interpretation of the Constitutional Law, which can be the subject of constitutionality evaluation and could change the essence of constitutional solutions.

### **Law on Organization of Courts**

6. We stress the assurance of the Judges' Association of Serbia's in the appropriateness of introducing a two-instance administrative judicial system, as well as establishing the second instance jurisdiction of appellate courts (which would "overtake" the second-instance jurisdiction of the Supreme Court), as a realistic and immediately applicable solution. We do not think it is purpose-serving to introduce the exclusive second-instance jurisdiction of appellate courts, as they would be unnecessarily overburdened with a large number of cases of a relatively small social importance, while their remoteness from the first-instance courts would lead to citizens' having an unequal position in exercising their right to a fair trial.

7. We particularly emphasize that the state is obliged to envisage a number of comprehensive measures in order to enable the citizens to achieve the right to a trial, not only within reasonable, but also optimal and predictable time-limits, which we have stressed in more detail in the remark on Article 89 of the Draft version of the Law.

### **Both Laws**

8. We think that both laws would have been reviewed in a more coherent and better way had they been reviewed together with the law on the so-called network of courts, which, unfortunately, was not the case.

9. The newly envisaged solutions in both laws, due to their importance, comprehensiveness and systemic changes that their implementation requires, call for a careful consideration of the consequences they may bear, as well as their applicability, but also a precise and harmonized elaboration. In this way it would be enabled that the laws are implemented within the envisaged time-limits, without later changes and postponements, ensuring that the newly established solutions really start giving the wanted results.



**LAW ON ORGANISATION OF COURTS  
WITH COMMENTS MADE BY JUDGES ASSOCIATION OF SERBIA**

**Chapter One  
PRINCIPLES**

**Judicial Power  
Article 1**

Judicial power is vested with the courts.

Courts are autonomous and independent state bodies protecting the freedoms and rights of citizens, rights and interests of legal subjects stipulated by law and ensure constitutionality and legality.

Courts adjudicate on basis of the Constitution, laws and other general acts, generally accepted rules of international law and ratified international agreements.

**Establishing of Courts  
Article 2**

Courts are established and abolished by law.

Temporary courts, courts marshal or courts of not of record may not be established.

Separate regulations shall govern conciliation councils, arbitration and other elected courts.

**Independence of the Judicial Branch  
Article 3**

The judicial branch is independent of the legislative and the executive.

Judicial decisions are binding to all and may not be subject to extra-judicial examination.

Judicial decision may be reviewed only by the court of competent jurisdiction in due process of law.

Everyone is obliged, and particularly the executive, to comply with judicial decision.

**Judicial Competence  
Article 4**

Judicial competence is defined by the Constitution and law.

A court may not refuse to act and adjudicate in matters under its competence.

**Appointment of a Sitting Judge  
Article 5**

A sitting judge shall be appointed independent of the parties involved and circumstances of the legal matter.

Only the judicial branch may allocate cases to judges, in accordance with pre-determined rules.

### **Prohibition of Influence on Courts**

#### **Article 6**

Use of public office, public media and any public appearance that may influence the course and outcome of judicial proceedings is prohibited.

Any other form of influence on the courts is also prohibited.

### **Publicity**

#### **Article 7**

Hearings before the court are public and may be restricted only by law.

### **Right to Complaint**

#### **Article 8**

A party or other participant in court proceedings have the right to complain against the work of the court when considering that the proceedings are dilatory, irregular or that there is any influence on its course and outcome.

### **Legal Assistance**

#### **Article 9**

Courts are required to provide legal assistance to each other, and other government authorities and organisations shall provide legal assistance to courts and forward necessary data.

Courts may provide files and documents necessary to conduct proceedings to government authorities only when this does not impede judicial proceedings.

### **Symbols of State Authority**

#### **Article 10**

The court shall have a seal bearing the name and seat of the court and the coat of arms of the Republic of Serbia.

The name and seat of court, the seal and flag of the Republic of Serbia are displayed in visible place in the court building.

The flag and seal of the Republic of Serbia are displayed also in the courtroom.

## **Chapter Two**

## **EXTERNAL ORGANISATION OF COURTS**

### **I. TYPES OF COURTS**

#### **Courts of the Republic of Serbia**

##### **Article 11**

There is a single judicial power on the territory of the Republic of Serbia.

Judicial power in the Republic of Serbia belongs to courts of general and special jurisdiction.

Courts of general jurisdiction are municipal courts, district courts, Appellate Courts and the Supreme Court of Cassation.

Courts of special jurisdiction are commercial courts, the High Commercial Court, the High Magistrates Court and the Administrative Court.

**COMMENT:**

**One Administrative Court for the territory of the whole republic is not a good solution bearing in mind the huge caseload it would undoubtedly have, as well as impaired access to the court and the right to equal legal protection.**

**In this view, it is necessary to provide for a network of administrative courts – first-instance administrative courts that would be established for the territory of one or more municipalities and the High Administrative Court, as it is envisaged under the Basic Principles for the Judicial Set of Laws.**

To this end, article 14 (“immediately higher court”), article 15 (“municipal, district, commercial and misdemeanour courts”) and article 29 (“the jurisdiction of the Administrative Court”) should be amended.

## **Supreme Court of Cassation**

### **Article 12**

The Supreme Court of Cassation is the highest court in the Republic of Serbia. The seat of the Supreme Court of Cassation is in Belgrade.

## **Other Republican Level Courts**

### **Article 13**

The High Commercial Court, the High Magistrates Court and the Administrative Court are established for the territory of the Republic of Serbia with seats in Belgrade.

Appellate Courts shall have seats in Belgrade, Novi Sad, Nis and Kragujevac.

The Administrative Court and the High Magistrates Court may have departments outside the seat in accordance with law.

**COMMENT:**

**Para 2 of this article should be moved to article 14 as a separate paragraph and accordingly amend the title of this article. Namely, appellate courts are not courts at the republic level, as it is envisaged to have four of them (with their seats in Belgrade, Novi Sad, Nis and Kragujevac).**

**If the appellate courts have the jurisdiction as proposed in the draft, the draft should also provide for a fifth appellate court either in Cacak or Uzice, so that the citizens could have equal access to the court in light of equal and fair possibility for the exercise and protection of their rights.**

**If it is accepted that the appellate court should take over only the second-instance jurisdiction of the Supreme Court (comment to Chapter IV „Jurisdiction of Courts“), then it would suffice to have four appellate courts or one with four territorial units.**

## **Municipal, District, Commercial and Magistrates Courts**

### **Article 14**

A municipal court is established for the territory of one or more municipalities and a district court for the territory of several municipalities.

A commercial court is established for the territory of several municipalities.

A magistrates court is established for the territory of one or more municipalities.

Establishing, seats and territorial jurisdiction of municipal, district, commercial and magistrates courts and departments of municipal and magistrates courts is regulated by separate law.

### **COMMENT:**

**This article should be amended in accordance with the comments on articles 11 and 13.**

## **Court of directly higher instance**

### **Article 15**

The Supreme Court of Cassation is the directly higher instance court to the Appellate Court, the High Commercial Court, the High Magistrates Court and the Administrative Court.

The Appellate Court is the directly higher instance court to the district court and the municipal court, the High Commercial Court is the directly higher instance court to the commercial court and the High Magistrates Court is the directly higher instance court to the magistrates courts.

The district court is the directly higher instance court to the municipal court when so set forth under this Law, as well as for issues of internal court organisation and application of the Law on Judges.

### **COMMENT:**

If the proposal is accepted for the district court to retain the current jurisdiction (comment to Chapter IV „Jurisdiction of Courts“), **the final paragraph should provide that the district court is the directly higher court to the municipal court.**

Also, amendments should be made in accordance with comment on article 11, by providing for **the High Administrative Court to be the directly higher court to the Administrative Court.**

## II. TERRITORIAL JURISDICTION AND PERMANENCY OF COURT

### 1. Territorial Jurisdiction of Court

#### Seat and territory of Court

##### Article 16

The seat of the court is in the building wherein is the court.

The territory of a court is the area whereupon it exercises jurisdiction.

#### Venue of Court Activities

##### Article 17

Court activities are undertaken in the seat of the court and outside the seat – only when so set forth by law.

A municipal court may hold court days outside its seat.

#### Court Days

##### Article 18

During court days a municipal court adjudicates and extends legal aid to citizens.

Venue, date and time of holding court days are set by the president of the Municipal Court.

Court days are announced in the place of their holding.

#### Departments outside the seat of municipal court

##### Article 19

A municipal and magistrates court may have department outside their seat wherein they permanently adjudicate and carry out other court activities.

A department outside the seat of a municipal or magistrates court is established for the territory of one or more municipalities under the court's territorial jurisdiction.

#### **COMMENT:**

The content of this article shows that it refers not only to the municipal but also to the magistrates court; **hence the word “municipal” should be deleted or the phrase “and the magistrates court” added.**

### 2. Permanency of Court

#### When Court Activities are Undertaken

##### Article 20

Court activities are carried out throughout the year, every working day, and actions that do not tolerate postponement also during non-working days.

The Court Rules define what actions are undertaken on non-working days.



Provisions of paragraphs 1 and 2 of this Article appropriately apply to court and administrative staff.

**COMMENT:**

**In para 1, stating that court activities are carried out “throughout the year” is redundant, as there are no provisions on court recess (that do exist in article 20 of the applicable Law on the Organisation of Courts).**

**Also, para 3 is redundant, as paras 1 and 2 refer both to court and administrative staff.**

**Compliance with Working Hours  
Article 21**

Judges and court and administrative staff are required to comply with working hours and rules of conduct in court.

A judge shall notify the court president of the reasons preventing him to work within 24 hours of occurrence of the reasons.

The court and administrative staff shall notify their direct superior of the reasons preventing them to work within 24 hours of occurrence of the reasons.

**COMMENT:**

**This article is redundant and offensive, being a matter that is not regulated by the law.** The obligation of compliance with the working hours and rules of conduct in court, as well as notification of absence from work is understood, and incompliance is sanctioned in another way.

**Chapter Three  
JURISDICTION OF COURTS**

**COMMENT:**

**Bearing in mind the comprehensiveness of the judicial reform and its real implementation, it should be envisaged that the Law is implemented in phases when the second-instance jurisdiction is concerned.**

**It is more realistic and economical that in the first phase of the implementation of the new judicial laws the appellate court(s), which would take over the jurisdiction of the Supreme Court, start functioning, together with the administrative and magistrates courts, and the district courts to retain second-instance jurisdiction in criminal and civil matters.**

**Besides, an exclusive second-instance jurisdiction of the appellate courts is on no account an appropriate solution.**

A high number of appealed first-instance decisions before the appellate courts would create a bottleneck of the judiciary if the entire second-instance jurisdiction would be on these courts. Bearing this in mind, as well as a large number of first-instance cases of minor social significance (e.g. small value claims, trespassing, probate proceedings, extra-judicial proceedings in civil matters, or criminal offences carrying short-term imprisonment sentences or fines), time limits, road infrastructure and the need for equal access to courts, it is reasonable to retain the second-instance jurisdiction of district courts for particular cases.

## **FIRST-INSTANCE JURISDICTION**

### **Municipal – District Courts**

**Decisions on rehabilitation and ban on dissemination of press and information by the media should be within the jurisdiction of a district court** given that the importance of the rights that are considered in these cases requires significant professional and life experience.

**Ordinary slander or libel should be within the jurisdiction of the magistrates court (and should be decriminalised); these offences should be under the jurisdiction of the municipal court only if committed through the public media.**

**Disputes related to mandatory social insurance and central registers should be moved from the jurisdiction of the district court to the municipal court** that anyway has first-instance jurisdiction in all labour disputes, and there is no reason not do so in these cases as well.

## **SECOND-INSTANCE JURISDICTION**

### **District Courts**

**The second-instance jurisdiction of the district court both in criminal and civil matters should be retained.**

**Alternative:** to retain second-instance jurisdiction in criminal matters for offences carrying imprisonment sentence up to five years, as well as jurisdiction over the conflict of jurisdiction of the municipal courts from the territory of the same district court.

### **Appellate Courts**

**The Appellate Court(s) should immediately take over the second-instance jurisdiction of the Supreme Court in criminal and civil matters.**

**Alternative:** provide for the jurisdiction of appellate courts in criminal matters related to appeals against the decisions of municipal courts for offences carrying imprisonment sentence exceeding five years.

## **1. Jurisdiction of Municipal Court**

### **Article 22**

A municipal court adjudicates in first instance for criminal offences carrying as the main penalty a fine or imprisonment up to ten years unless some of these offences fall under the jurisdiction of another court and shall decide on appeals to suspend a security measure or legal effects of conviction for a criminal offence under its competence.

A municipal court adjudicates in first instance in civil actions, unless some of these fall under the jurisdiction of another court, and shall conduct enforcement procedure and non-contentious procedures that are not under jurisdiction of another court.

A municipal court adjudicates in first instance for housing disputes; disputes on commencement, existence and termination of employment; rights, obligations and responsibilities pursuant to employment; compensation for the damage suffered by an employee during work or related to work; disputes related to satisfying housing needs on basis of work.

A municipal court decides in first instance on ban to disseminate newspapers and disseminating information through public media; decides on applications for rehabilitation.

A municipal court extends legal aid to citizens, provides international legal assistance and carries out other tasks provided under law.

It may be provided by law that only certain municipal courts from the territory of the same district court act in particular legal matters.

## **2. Jurisdiction of District Court**

### **Article 23**

A district court shall in first instance:

1. adjudicate criminal offences carrying as the main penalty a term of imprisonment exceeding ten years or higher penalty;

2. adjudicate criminal offences against the Army of Serbia; disclosing of state secret; incitement to violent change of constitutional order; provoking national, racial and religious hatred, violation of territorial sovereignty; conspiracy for anti-constitutional activity; organising and incitement to perform genocide and war crimes; damaging the reputation of the Republic of Serbia; damaging the reputation of a foreign state or international organisation; disclosing of official secret; violation of law by a judge, public prosecutor and his deputy; endangerment of air traffic safety; provoked murder; rape;

3. adjudicate in juvenile criminal proceedings;

4. decide on appeal to suspend security measure or legal effects of conviction for criminal offences under its jurisdiction;

5. adjudicate in civil actions where the value of the subject of the lawsuit allows review; paternity or maternity lawsuits; copyright and other related rights, protection and

use of inventions, models, samples, hallmarks and designations of geographic origin unless under jurisdiction of another court;

6. adjudicates in lawsuits on strikes; collective agreements if the lawsuit is not resolved through arbitration; mandatory social insurance unless under the competence of another court; on registry records; appointment and dismissal of bodies of legal entities unless under the jurisdiction of another court;

A district court conducts proceedings for extradition of indicted and convicted persons, enforces criminal sentence of a foreign court, decides on recognising and enforcement of foreign court and arbitration decisions unless under the jurisdiction of another court and performs other tasks set forth under law.

### **3. Jurisdiction of Appellate Court**

#### **Article 24**

The Appellate Court decides on appeal against decisions of municipal and district courts.

The Appellate Court decides on conflict of jurisdiction between lower instance courts on its territory, on transfer of jurisdiction of municipal and district courts when prevented or unable to proceed in a legal matter and performs other tasks set forth by law.

### **4. Jurisdiction of Commercial Court**

#### **Article 25**

A commercial court adjudicates in first instance:

1. in lawsuits between domestic and foreign commercial companies, enterprises, co-operatives and entrepreneurs and associations thereof (economic entities), in lawsuits between economic entities and other legal entities relating to conduct of business activities of economic entities, even when one of the parties in above lawsuit is a natural person if there is a substantive joinder of parties;

2. in lawsuits on copyright and other related rights and protection and use of inventions, models, samples, hallmarks and designation of geographic origin when such lawsuits occur between entities referred under item 1 of this paragraph; in lawsuits relating to enforcement and securing of decisions of commercial courts, and in lawsuits relating to decisions of chosen courts only when passed in lawsuits referred in item 1 of this Article;

3. in lawsuits resulting from application of the Law on Companies or application of other regulations on organisation and status of economic entities, as well as in lawsuits on application of regulations on privatisation;

4. in lawsuits relating to foreign investment; ships and aircraft, sailing at sea and inland waters and lawsuits involving maritime and aeronautical law, except for lawsuits relating to passenger transport; protection of company name; registration in the court register; bankruptcy and liquidation.

A commercial court in first instance conducts proceedings for recordation in the court register of legal entities and other subjects unless this is under the competence of another body; conducts bankruptcy and reorganisation proceedings; rules on and conducts enforcement and securing of decisions of commercial courts, and decisions of chosen courts only when issued in lawsuits specified in item 1), paragraph 1 of this

Article; orders and implements enforcement and securing on ships and aircraft; conducts non-contentious procedures deriving from application of the Law on Companies.

A commercial court in first instance decides on economic offences and relative thereto on termination of security measure or legal effect of conviction.

A commercial court performs also other tasks set forth by law.

**COMMENT:**

The following should be done:

- systematize article 25 regarding the jurisdiction of commercial courts, so as to have a new item for every dispute within the jurisdiction of the commercial court;
- in para 1, item 2, fifth line, the phrase “in item 1 of this Article“ should be replaced with “from the jurisdiction of commercial courts“; in para 2, the phrase “lawsuits specified in item 1), paragraph 1 of this Article” should be replaced with “disputes within the jurisdiction of commercial courts“;
- in para 1, item 4, add “registered name” after “the company name”;
- in para 1, item 4, insert the omitted disputes related to the violation of competition rules that are provided under the Law on Organisation of Courts;
- in para 1, item 4, regarding registration in the court register, add the phrase “or the register of economic entities”;
- it has been omitted that the commercial court decides on and carries out enforcement and securing on the basis of valid documents, as envisaged under article 15 of the Law on Courts that will be applicable by 1 January 2009, and which is currently done by commercial courts;
- it should be added that, in addition to bankruptcy and reorganization, commercial courts deal with liquidation proceedings in cases stipulated by the law;
- it should be added that commercial courts decide on and carry out enforcement on stocks and shares of economic entities.

**DRAFT PROVISION FOR ARTICLE 25 OF THE LAW ON ORGANISATION OF COURTS:**

The commercial court shall adjudicate in first-instance proceedings on disputes:

1) between domestic and foreign economic entities, enterprises, cooperatives, and entrepreneurs and their associations (economic entities); in disputes between economic entities and other legal entities in the performance of activities of economic entities, and also if one party is a natural person, in the case of substantive joinder of parties;

2) on copyright and other related rights, as well as on the use and protection of patents, models, samples, hallmarks and designation of geographic origin, where the dispute arises between the parties specified in item 1 of this para;

3) arising from the operation of the Law on Economic Entities or other regulations pertaining to the organization and status of economic entities, as well as in disputes related to privatization, foreign investment, protection of company name or registered name, breeches of competition rules.

- 4) on ships and aircraft, sailing at sea and inland waters and lawsuits involving maritime and aeronautical law, except for lawsuits relating to passenger transport;
- 5) in relation to the enforcement and securing of the decisions of commercial courts, and in disputes about the decisions of chosen courts, foreign courts and arbitrations where the decisions are within the jurisdiction of commercial courts;
- 6) related to registration in the court register or the register of economic entities;
- 7) related to bankruptcy and liquidation.

The commercial court shall in the first instance:

- 1) conduct the proceedings for entry in the court register of legal or other entities if other body is not the competent one;
- 2) conduct bankruptcy, reorganization and liquidation proceedings where provided by the law;
- 3) decide on and carry out the enforcement and securing on the basis of valid documents on the stocks and shares of economic entities; decide on and carry out the enforcement and securing of decisions of commercial courts, and decisions of chosen courts in the disputes from the jurisdiction of commercial courts;
- 4) decide on recognition and enforcement of foreign court and arbitration decisions in disputes from the jurisdiction of commercial courts;
- 5) decide on and carry out the enforcement and securing on ships and aircraft;
- 6) conduct extrajudicial proceedings arising from the operation of the Law on Economic Entities.

The commercial court shall in the first instance decide on economic offences and relative thereto on termination of security measure or legal effect of conviction.

The commercial court shall also perform other tasks provided by the law.

## **5. Jurisdiction of the High Commercial Court**

### **Article 26**

The High Commercial Court decides on appeal against decision decisions of commercial courts and other bodies, in accordance with law.

The High Commercial Court decides on conflict of jurisdiction and on transfer of jurisdiction of commercial courts, sets legal opinions aimed at uniform application of law under the competence of commercial courts and performs other tasks set forth by law.

### **COMMENT:**

**In para 1, the phrase “other bodies, in accordance with law” should be deleted (it would not be good to have other regulations determining the subject matter jurisdiction of the High Commercial Court).**

## **6. Jurisdiction of Magistrates Court**

### **Article 27**

A magistrates court in first instance adjudicates minor offences unless an administrative body has competence and performs other tasks set forth by law.

## **7. Jurisdiction of the High Magistrates Court**

### **Article 28**

The High Magistrates Court decides on appeal against the decisions of magistrates courts, on appeal against the decisions of administrative bodies taken in proceedings for minor offences, on conflict and transfer of jurisdiction *ratione loci* and performs other tasks set forth by law.

## **8. Jurisdiction of the Administrative Court**

### **Article 29**

The Administrative Court adjudicates in administrative actions.

The Administrative Court also performs other tasks set forth by law.

The decision of the Administrative Court is final except in cases provided by law.

#### **COMMENT:**

**The law should provide for two-instance proceedings in administrative disputes, so that the Administrative Court has jurisdiction at first instance and the High Administrative Court to adjudicate on appeals against the decisions of first-instance courts.**

## **9. Jurisdiction of the Supreme Court of Cassation**

### **Trial Jurisdiction**

#### **Article 30**

The Supreme Court of Cassation decides on extraordinary legal remedies filed against decisions of courts of the Republic of Serbia and in other matters set forth by law.

The Supreme Court of Cassation decides on conflict of jurisdiction between courts and on transfer of jurisdiction of courts to facilitate proceedings or for other important reasons.

#### **COMMENT:**

**In para 2, the phrase “decides on conflict of jurisdiction between courts and on transfer of jurisdiction of courts” is vague, given that the Appellate, the Commercial and the High Commercial Court have the same jurisdiction.**

## **Jurisdiction outside trial**

### **Article 31**

The Supreme Court of Cassation determines general legal views in order to ensure uniform application of law by courts; gives opinions on draft laws and other regulations governing issues of relevance for the judicial branch, reviews application of law and other regulations and the work of courts; appoints judges of the Constitutional Court, gives opinion on the candidate for the president of the Supreme Court of Cassation and exercises other competencies set forth by law.

*Adjudication by Panel*  
*Article 32*

*The Supreme Court of Cassation adjudicates on legal remedies in panel.*

**COMMENT:**

The phrase “legal remedies” should be replaced with “extraordinary legal remedies”, given that article 30 provides that the jurisdiction of the High Court of Cassation is to “adjudicate on extraordinary legal remedies against the decisions of the courts of the Republic of Serbia”.

**Publishing of Decisions of the Supreme Court of Cassation**  
**Article 33**

Decisions of the Supreme Court of Cassation relevant for case law and all general legal views shall be published in a special collection.

**Chapter Four**  
**INTERNAL ORGANISATION OF COURTS**

**I. ANNUAL CALENDER OF TASKS**

**Article 34**

Following opinions obtained from judges the administrative-judicial panel sets the calendar in writing for the coming year and announces it at the session of all judges by 1 December.

An objection on the annual calendar of judges’ tasks may be filed within three days from the day of announcement at the session of all judges.

The administrative-judicial panel of the directly superior court decides on the objection of a judge, within eight days from the day of filing of objection.

Objection of a judge to the Annual Calendar of Tasks in the Supreme Court of Cassation is decided by the General Session.



## II. COURT DEPARTMENT AND SESSION OF ALL JUDGES

### 1. Court Department

#### Establishing and Management

##### Article 35

Court departments are established in courts where a number of panels or judges sitting alone proceed in the same field of law.

A court department is managed by the president of the department who is appointed by the administrative-judicial panel following opinion obtained from the department's judges.

##### Purview

##### Article 36

The session of a court department shall review the work of department, legal issues, potential for improving operation and expertise of judges, judges' assistants and judge's trainees and other issues relevant for the department.

Departments of the Appellate Court, the High Commercial Court and the High Magistrates Court review also issues relevant for the work of courts on their respective territory.

#### **COMMENT:**

**In para 2, it should be added "and the High Administrative Court", if it is accepted to have administrative courts and the High Administrative Court (comment to article 11)**

#### Convening and Chairing the Session

##### Article 37

The president of the department or the court president may convene the session of a department.

The court president may always take part in the work and decision taking of the departmental session.

#### **COMMENT:**

**In para 1, it should be added that one third of judges may also convene a session.**

**The work of a department should be regulated in detail by the Court Rules.**

### 2. Case Law Department

##### Article 38

A court with a higher number of judges shall have a Case Law Department, in accordance with Court Rules.

The Case Law Department follows and studies case law and informs judges, judges' assistants and judge's trainees on interpretation of law by courts.

The Case Law Department is managed by a judge appointed by the administrative-judicial panel.

### **3. Special Departments in District Courts and the Appellate Court**

#### **Article 39**

Juvenile justice and labour disputes departments shall be established in district courts and the Appellate Court.

Departments for criminal offences against the Army of Serbia, for organised crime criminal offences, for war crimes and high-tech crime may be established in some district courts and the Appellate Court, in accordance with law.

The Appellate Court shall have a department for urgent procedure in cases where the law prescribes that procedure on appeal is urgent.

#### **COMMENT:**

**Para 3 has no meaning in practice and could not be applied**, given that, for instance, in civil matters, at least on third of cases is urgent under the law, and if the provision of the Court Rules saying that urgent procedure should also be used for cases that by their nature require urgency of proceedings is applied, this number accounts for one half.

### **4. Joint Session of Departments**

#### **Article 40**

A joint session of departments shall be convened when collaboration of at least two departments is required to review a legal issue.

It is jointly convened by department presidents or the court president and is chaired by the court president or the president of the department in whose purview is the issue under deliberation.

### **5. Session of All Judges**

#### **Article 41**

The session of all judges takes under review the reports on the work of judges and the court, takes decision to initiate proceedings for assessment of constitutionality of law and legality of regulations and other general act, reviews application of regulations governing the issues under the purview of courts, gives opinion on candidates for judges and lay judges and decides on other issues if relevance for the whole court.

The session of all judges is chaired by the court president and is convened as required and/or at the motion of a court department or minimum one quarter of the number of all judges.

#### **COMMENT:**

**In para 2, it should be added that one third of judges may also convene a session of all judges.**

### **III. INTERNAL ORGANISATION OF THE SUPREME COURT OF CASSATION**

#### **1. Departments in the Supreme Court of Cassation**

##### **Article 42**

The Supreme Court of cassation of Serbia may have departments in compliance with Rules.

##### **COMMENT:**

**The Supreme Court of Cassation must have the criminal, civil, administrative and case law departments.**

#### **2. Session of Departments of the Supreme Court**

##### **Article 43**

The session of departments of the Supreme Court of Cassation deliberates issues from the purview of court departments.

The session of departments is convened also due to incoherence between departments in application of regulations or if one department diverges from legal opinion adopted by its case law or legal opinion accepted by all departments.

A legal opinion adopted at the session of department is binding for all panels comprising the department.

#### **3. General Session of the Supreme Court of Cassation**

##### **Purview**

##### **Article 44**

The general session of the Supreme Court of Cassation adopts general legal views; gives opinions on draft laws and other regulations governing issues of relevance for the judicial branch; reviews application of laws and other regulations and the work of courts; appoints judges of the Constitutional Court; gives opinion on the candidate for president of the Supreme Court of Cassation; issues Rules on Organisation and Operation of the Supreme Court of Cassation and performs other tasks set forth by law and the Rules on Organisation and Operation of the Supreme Court of Cassation.

The general session also reviews other issues under the purview of the session of all judges.

##### **Adoption of General Legal Views**

##### **Article 45**

The general session is also convened due to incoherence between panels from different departments or different department in application of regulations, if one department diverges from general legal view or when a legal view cannot be adopted by a departmental session.

General legal view adopted at the General Session is binding to all panels and departments of the Supreme Court of Cassation and may be amended only by the General Session.

### **Composition and Decision Taking**

#### **Article 46**

The General Session comprises the president and judges of the Supreme Court of Cassation.

A quorum of the majority number of all judges is required for legally valid decision taking at the General Session.

Decisions are taken by majority vote of present judges of the Supreme Court of Cassation.

#### **COMMENT:**

**In para 3, it should be provided that decisions are taken by the majority vote of all judges of the Supreme Court of Cassation, especially if the proposal regarding the Law on Judges, suggesting that the Supreme Court of cassation have 15 judges is accepted.**

### **Convening and Chairing the Session**

#### **Article 47**

The General Session is convened by the court president, as required, and/or at the motion of court department or minimum one quarter of all judges.

The General Session is chaired by the president of the Supreme Court of Cassation.

#### **COMMENT:**

**In para 1, it should be added that a court department or one third of judges may also convene a general session.**

## **4. Secretariat**

### **Purview**

#### **Article 48**

The Supreme Court of Cassation shall have a Secretariat.

The Secretariat assists the court president in court administration, carries out administrative tasks for the administrative-judicial panel and the General Session and performs other tasks allocated under its purview by the Rules on Organisation and Operation of the Supreme Court of Cassation.

## **The Secretary**

### **Article 49**

The Secretariat is managed by the Secretary of the Court who is appointed by the general Session at the proposal of the court president.

The Secretary of the Supreme Court of cassation may only be a person who meets the requirements for judge of the Appellate Court.

## **5. Rules of Procedure of the Supreme Court of Cassation**

### **Article 50**

The Supreme Court of Cassation has Rules of Procedure that more specifically prescribe internal organisation and operation of the court.

The Rules on Organisation and Operation of the Supreme Court of Cassation is published in the "Official Gazette of the Republic of Serbia".

## **IV. COURT ADMINISTRATION**

### **Tasks comprising court administration**

#### **Article 51**

Court administration comprises tasks supporting the exercising of judicial power, primarily: organising internal operation of the court; summoning and assignment of lay judges; activities related to court expert witnesses and court interpreters; review of complaints and grievance; keeping statistics and drawing up reports; enforcement of criminal and minor offences sanctions; financial and material business of the court and certification of documents for use abroad.

Court administration is regulated in more detail by the Court Rules.

### **Rights and Obligation of President of Court**

#### **Article 52**

The court president represents the court, manages court administration and is responsible for proper and timely court operation.

The court president is required to demand legality, order and accuracy in the court, eliminate irregularities and procrastination in work, ensures maintaining of independence of judges and the dignity of the court and carries out other tasks set forth by law and Court Rules.

In his absence or when prevented the court president is replaced by the judge assigned by the annual calendar of tasks.

## **V. ADMINISTRATIVE-JUDICIAL PANEL**

### **Article 53**

An administrative-judicial panel shall be established in courts to carry out certain court administration tasks defined under this Law.

The administrative-judicial panel comprises five judges, four of whom are elected by secret ballot at the session of all judges to a period of four years.

The court president is by virtue of office also the president of the administrative-judicial panel.

In courts with under five judges the tasks of the administrative-judicial panel are performed by all judges.

**COMMENT:**

**In para 1: „under this Law“ should be replaced with: „under the law“, as some affairs of court administration are entrusted to administrative-judicial panels and under other laws, as it was done in the case of the Law on Judges.**

### **Delegating Court Administration to Others**

#### **Article 54**

A court president may delegate certain court administration tasks to the administrative-judicial panel, presidents of departments or other judges.

A court president may not delegate authority to decide on employment rights of judges, labour relations of court staff and on suspension of a judge or lay judge from duty.

### **Authority of the president of a higher court**

#### **Article 55**

The president of the higher court is entitled to oversee court administration of a lower court, actions on complaints and in case of non-feasance of the president of a lower court to issue acts from his purview.

The president of a higher court may request information from the lower court regarding application of regulations, course of proceedings as well as all data on court operation.

The president of a higher court may order direct inspection of work of a lower court, and shall prepare a written report thereof.

### **Complaints Procedure**

#### **Article 56**

When a party or other participant in a proceeding files a complaint, the court president is required to take it under consideration and notify the complainant on admissibility and the measures undertaken within fifteen days from the receipt of the complaint.

If the complaint is filed through the ministry with competence for the judiciary, a higher court or the High Court Council, the minister, the president of the higher court or the High Court are notified of admissibility and undertaken measures.

### **Court Secretary**

#### **Article 57**

The Appellate Court, the High Commercial Court, the High Magistrates Court and the Administrative Court shall have a Secretary of the Court.

A court with more than twenty judges may have a Secretary.

The Court Secretary assists the court president in court administration and is autonomous in performing tasks delegated to him.

A Court Secretary is appointed by the court president from the ranks of judges' assistants.

**COMMENT:**

**A Court Secretary should be a separate job position**, instead of having a judge's assistant who is preparing to become a judge perform the tasks of the Court Secretary. This is in order to ensure, on the one hand, continuity and standard quality of the functioning of the court administration, and on the other, better quality of judges' training. **The requirement should be that the court secretary is a lawyer who has passed the bar exam.**

**SUGGESTION:**

**Article 51 provides that court administration comprises tasks of financial and material business**, and the president of the court is not qualified to do these tasks that also distance the president from managing the court and assuring efficiency and legality of work. Therefore, besides the court secretary position, **the law should provide for the position of the manager of the court, under a separate article entitled "The Court Manager"**.

**The qualification necessary for these jobs should be a university degree.**

**Courts with more than 25 judges would have a manager, while two or more courts with a smaller number of judges could jointly have one manager.**

## **Chapter Five COURT STAFF**

### **1. Categories and Number of Staff**

#### **Article 58**

Court staff comprises judges' assistants, judges' trainees and civil servants and appointed officials employed on administrative, technical, accounting, IT and other ancillary jobs of relevance for the judicial branch.

The number of court staff is determined by the court president by the act on internal organisation and job classification in the court.

Criteria for determination of the number of court staff is set by the minister with competence for judicial affairs.

**COMMENT:**

Setting of the criteria for determination of the number of court staff should be a competence of the High Court Council and not the minister in charge of the judiciary.

It is unclear why para 3 provides that the criteria be set by the minister and not the Council if that the National Judicial Reform Strategy envisages that the tasks of managing the court system will be transferred from the Ministry of Justice to the High Court Council and not the other way round, as it is provided here. It is also envisaged by the Basic Principles on Judiciary and the draft Law on the High Court Council, and is a logical consequence of having a court budget in the future.

## 2. Judge's Assistant

### **COMMENT:**

**Judge's assistant job should be a separate and permanent job** for a person with a four-year studies degree or two-year studies degree in law. The practice of having judge's trainees and judge's assistants perform these tasks as a temporary job after passing the bar exam and while waiting to be elected as judges should be ended. **Training for this job would be provided by the judicial training institution.**

This would reduce the workload of judges and allow them to dedicate much more time to purely judge's tasks, and also ensure that these duties are performed with continuity and efficiency and by staff who are adequately remunerated. **In a long-term perspective, this is a more cost-efficient solution for the state, which would increase the efficiency of the judiciary.**

### **Tasks of Judge's Assistant Article 59**

A judge's assistant assist the judge, draws up draft judicial decisions, studies legal issues, case law and legal literature, draws up drafts of legal opinions, prepares adopted legal views for publication and autonomously or under supervision and direction of a judge carries out tasks set forth by law and Court Rules.

### **Titles of Judge's Assistants Article 60**

Judge's assistants acquire the following titles: judge's assistant, senior judge's assistant and court advisor.

The title of judge's assistant may be acquired by a person with bar exam, and the title of senior judge's assistant by a person with minimum two years experience in the legal profession following the bar exam.

The title of court advisor may be acquired by a person meeting the requirements for district court judge.

### **COMMENT:**

**In addition to bar exam, a requirement for the title of court advisor should be "adequate training for judge's assistant completed at the judicial training institution".**



**It should be provided that a judge who has retired on the basis of seniority may also be appointed as judge's assistant at courts with caseloads which affect their efficiency, for a period not exceeding one year (comment to article 89).**

It should be reiterated that it is very important to realize that the judge's assistant position be a separate and permanent job, and not a temporary job for interns who have passed the bar exam and are waiting for the election of judges (current judge's assistants), who would receive training from the judicial training institution.

### **Court Advisor**

#### **Article 61**

A court advisor performs professional tasks relevant for a court department or the whole court.

The post of court advisor shall exist in Republican level courts.

### **2. Advisor to the Supreme Court of Cassation of Serbia**

#### **Article 62**

The highest court shall have the post of advisor to the Supreme Court of Cassation that is attained by decision of the General Session of the Supreme Court of Cassation.

### **3. Performance Evaluation of Judge's Assistant**

#### **Evaluation Periods**

##### **Article 63**

Performance of a judge's assistant is evaluated once a year.

Performance of a judge's assistant who during a calendar year has worked under six month is not evaluated for that year.

#### **Evaluation Authority**

##### **Article 64**

The court president evaluates the performance of a judge's assistant following the opinion obtained from the session of the department wherein the judge's assistant is assigned.

If a judge's assistant is not assigned to a department, the opinion is obtained from the judge or panel with whom the judge's assistant works.

#### **COMMENT:**

**The administrative-judicial panel should evaluate the work of judge's assistants and not the court president.**

**Para 2 of article 66 should become para 3 of this article.**

## **Evaluation Grades**

### **Article 65**

Evaluation shall rate the scope and quality of performance, diligence, initiative and published professional and research papers.

Performance evaluation of judge's assistants is done on basis of publicised, objective and single criteria set by the High Court Council.

Grades are: "fails to meet requirements", "satisfactory", "good", "exceeds requirements" and "constantly exceeds requirements".

A senior judge's assistant whose work is evaluated "constantly exceeds requirements" at least in two consecutive years may acquire the title of court advisor even if not meeting the requirements for district court judge.

## **Evaluation Grade Decision**

### **Article 66**

The court president issues the decision on the evaluation grade of a judge's assistant.

The judge's assistant may file objection to the evaluation grade decision with the High Court Council within 15 days from the day of receiving the evaluation grade decision.

#### **COMMENT:**

**Para 2 of this article should become para 3 of article 64.**

## **4. Judge's Trainee**

#### **COMMENT:**

**The recruitment, training and evaluation of judge's trainees should be regulated under the Law on Initial Training of Judges, and this Law should only define the recruitment criteria (article 67).**

## **Admission of a Judge's Trainee**

### **Article 67**

A person with law degree and who meets the requirements for employment in government service may be admitted as a judge's trainee.

A judge's trainee is admitted to a municipal, district, commercial and magistrates court.

Precedence is afforded to candidates graduating from law school with high average grade.

## **Employment of a Judge's Trainee**

### **Article 68**

A judge's trainee is employed for a three-year period.

A judge's trainee who passes the bar exam "with distinction" enters full time employment at the post of judge's associate.

**Volunteer  
Article 69**

A person with law degree may be accepted for training in the court without employment status (volunteer) in order to fulfil requirements for sitting for the bar exam.

**Training  
Article 70**

The training program for judge's trainee and judge's assistants is defined by the High Court Council.

A judge's intern and judge's assistant may be assigned for training over a certain period of time to another court, government body or body of local self-government.

**5. Other regulations on Court Staff  
Article 71**

Court staff is required to perform their duties scrupulously and impartially and preserve the dignity of the court.

Regulations governing employment relations of civil servants and appointed officials shall apply to employment and to rights, duties, professional training, evaluation and accountability of court staff unless otherwise provided under this Law.

**Chapter Six  
JUDICIAL ADMINISTRATION**

**Tasks Comprising Judicial Administration  
Article 72**

Judicial administration ensures enforcement of laws and other regulations related to court organisation and operation.

Judicial administration is discharged by the High Court Council, the ministry with competence for the judiciary and the Commission for Implementing the National Judicial Reform Strategy.

Judicial Administration tasks discharged by the High Court Council are: determination of general guidelines for internal court organisation, monitoring implementation of the National Judicial Reform Strategy in collaboration with the ministry with competence for the judiciary; maintaining personal files for judges, lay judges and court staff, allocation of the court budget, control of authorised spending of budget funds and oversight of financial and material operations of courts.

Judicial Administration tasks discharged by the ministry with competence for the judiciary are: monitoring the work of courts; issuing approval for court rules on internal organisation and job classification; developing the judicial system; oversight of action in cases within statutory timeframes and on complaints and grievances; ensuring material, spatial and other requirements for operation of courts; oversight of financial and material

operations of courts; regulation and developing judicial IT system; *regulation, development and maintenance of the data base of legal enactments*; appointing and dismissal of court experts, interpreters and public notaries; collating statistical and other data.

Judicial Administration tasks discharged by the Commission for implementing the National Judicial Reform Strategy are: monitoring the National Judicial Reform Strategy, implementing National Judicial Reform Strategy, proposing amendments to the National Judicial Reform Strategy.

**COMMENT:**

**The provisions of article 72 relating to the National Judicial Reform Strategy and the Commission for its Implementation, as well as the tasks of the High Court Council should be deleted, as these bodies do not perform tasks of judicial administration.** The competence of the High Court Council is defined under the Law on the High Court Council, and of the Judicial Reform Commission by the National Judicial Reform Strategy. Furthermore, the task of the Judicial Reform Commission is especially important and concerns the whole judiciary, and retaining the Commission as a body to manage and supervise the judicial reform activities is essential. However, the Commission will not be able to carry out its role if there is no clear division between the competence of the Commission and other state bodies, and if no mechanisms are defined for the Commission to truly supervise and carry out the reform activities.

**The High Court Council and not the minister of justice** should approve the rules on internal organisation and job classification.

**Commission for implementing the National Judicial Reform Strategy  
Article 73**

The Commission for implementing the National Judicial Reform Strategy comprises the representatives of the ministry with competence for the judiciary, the Supreme Court of Cassation, the Judicial and Administration Committee of the National Assembly, the Republic Public Prosecution, Judges' Association, Prosecutors' Association, Bar Association, judicial training institutions, the Law Faculty of the University of Belgrade and the ministry with competence for finances.

The minister with competence for the judiciary convenes and manages the work of the Commission under paragraph 1 of this Article.

The Government appoints the Commission for implementing the National Judicial Reform Strategy.

The minister with competence for the judiciary issues the act on the work of the Commission.

**COMMENT:**

**To delete article 73 considering the comment on article 72.**

## **Prohibition of Influence on the Autonomy and Independence**

### **of the Court and Judges**

#### **Article 74**

Any act of judicial administration that interferes with autonomy and independence of the court and judges is null and void.

Nullity is determined by the General Session of the Supreme Court of Cassation at the motion of the president of the competent court.

#### **COMMENT:**

**In para 2 it should be provided that nullity is determined by the High Court Council and not the General Session of the Supreme Court of Cassation.**

### **Personal Record**

#### **Article 75**

The High Court Council keeps a personal record for every judge, lay judge and court employee.

Data for the personal record are conveyed to the High Court Council by the court president who is also responsible for their accuracy, and by the person to whom the data relates if such person provides the data.

The data in the personal record are classified and may be used only for the purpose of implementing of this Law and laws governing the status of judges.

### **Content of the Personal Record**

#### **Article 76**

The personal record of a judge shall contain the first name and family name, father's name, place and date of birth, residence address, completed law faculty, achievement in studies, training period, bar exam, professional career, date of fulfilment of years of service, performance evaluations, assignment to another court, suspension from duty, disciplinary measures, conducted criminal proceedings, termination of duty, published professional and research papers, foreign languages, property status, housing situation and other data.

The personal record of a lay judge and court staff member shall contain the first name and family name, place and date of birth, residence, education, title or occupation, performance evaluation, career, foreign languages and other data.

The bodies in possession of data that is entered in the personal record are required to submit it to the High Court Council.

The content of personal records specified in paragraphs 1 and 2 of this Article is prescribed by the High Court Council.

#### **COMMENT:**

**The content of the personal record should be defined by the law, hence in para 1, the phrase “and other data” should be deleted. For the same reason, article 4 should be deleted (since the content is prescribed by the law).**

**It should be provided that the judge is allowed access to their personal record, as well as the right to file a complaint to the High Court Council regarding the content of the record (considering that certain data are collected without the knowledge of the judge).**

## **Court Rules of Procedure**

### **Article 77**

The Court Rules of Procedure prescribe court internal organisation and operation, particularly: organisation and work of departments and other organisational units of the court; work of the joint session of the departments and the session of all judges; informing the public about the work of court; conducting proceedings and providing the decisions in the languages of national minorities; extending legal aid and holding court days; extending international legal assistance; keeping records, summoning and assigning lay judges; determining the content of personal record for lay judges and court staff, and determining the obligation of the president of court regarding the submission of data necessary for keeping personal records; trainee periods; attitude of court staff to parties; keeping court registries and other official books; document management; action on complaints and grievances; keeping statistics and drafting reports on work; collection of fines, costs of criminal proceedings and seized criminal assets; procedure with court deposits; introducing joint services in places with several courts and other judicial authorities; dress code for judges, court staff, parties and other participants in the court proceedings and all others who conduct their work in court, as well as other court organisation and operation matters.

The Court Rules of Procedure are passed by the minister with competence for the judiciary, with prior opinion obtained from the president of the Supreme Court of Cassation.

#### **COMMENT:**

**The trainee period should be specified under the Law on Initial Training for Judges and not the Court Rules.**

**Adoption of the Court Rules should be within the competence of the High Court Council, upon obtaining the opinion of the minister in charge of the judiciary.**

## **Supervision over Implementation of the Court Rules of Procedure**

### **Article 78**

The ministry with competence for the judiciary exercises oversight over implementation of the Court Rules of Procedure.

Only a person meeting the requirement for election to the court whose operation he oversees may act as supervisor.

## Effects of Supervision

### Article 79

A record shall be made of conducted supervision and forwarded to the president of the court wherein supervision was conducted, the president of the directly higher court and the president of the Supreme Court of Cassation.

The president of the directly higher court is required to notify the president of the Supreme Court of Cassation and the minister with competence for the judiciary of the measures undertaken to eliminate the noted deficiencies, timeframes for eliminating the deficiencies, as well as of the reasons whereby deficiencies and omissions have occurred.

The notification timeframe is defined in the Court Rules.

## Chapter Seven COURT SECURITY

### **COMMENT:**

**There are no provisions on the protection of judges and court staff in performing official duties outside the court premises, or the protection of judges when their security is threatened in connection with performing judge's function and outside cases when they perform official duties.**

**This Law should also provide for a service (for instance, judicial police) that would be entrusted with said tasks and that would, in addition to these tasks, carry out tasks entrusted to the court guard service under this Law, as well as certain orders of the court which require exigency (e.g. forced bringing or arrest upon a detention order).**

## Court Guards

### Article 80

Court Guards are an armed and uniformed service that ensures security of persons and property, peace and order and unhindered conducting of official activities in judicial premises.

## Powers of the Court Guards

### Article 81

A court guard is authorised to determine the identity and reason for the presence of a person in the building housing judicial bodies; to, when necessary, search the person and items and prohibit entry to the building with weapons, dangerous implement, under the influence of alcohol or other intoxicating substances; to remove from the building any person disturbing peace and order, persons who are not appropriately dressed in a manner safeguarding the dignity and reputation of the court, as well as to protect persons and property in the court by other actions.

A court guard is authorised to use physical force and rubber baton, and firearms – only if otherwise unable to protect human life or repulse an attack on the building of the judicial body.

## **Organisation of the Court Guards**

### **Article 82**

The minister with competence for the judiciary prescribes the regulations of the court guards, uniforms of its members, weapons and official ID.

## **Assistance to Court Guards and Security**

### **Article 83**

At request of the head of the judicial organ, the internal affairs organ extends assistance to court guards.

The head of the judicial organ is entitled to request from the Ministry of Internal Affairs to extend special protection to a judge, lay judge, public prosecutor, deputy public prosecutor, magistrate and their families or property.

### **Article 84**

Regulations governing employment relations of civil servants and appointed officials shall apply to employment and rights, obligations, evaluation and responsibilities of the court guards, unless otherwise provided under this Law.

## **Chapter Eight**

## **FUNDS FOR THE WORK OF COURTS**

### **Basic Provision**

#### **Article 85**

Funds for the work of courts are provided in the Republic of Serbia budget.

Funds must be of such volume and timing to sustain independence of judicial power and at any given time ensure proper operation of courts.

#### **Article 86**

The High Court Council proposes to the Government the volume and structure of budgetary funds necessary for operation of the courts, with prior opinion obtained from the ministry with competence for the judiciary and the ministry with competence for finance.

The High Court Council, the ministry with competence for the judiciary and the ministry with competence for finance exercise control over budget funds allocated for operation of courts.

### **Use of funds and own incomes**

#### **Article 87**

Revenues from work of courts are separately set out in the Republic of Serbia budget and allocated for upgrading operation of the courts.

The amount and purpose of funds under paragraph 1 of this Article is determined in the Budget Law.



## Payment of Court Costs

### Article 88

The minister with competence for the judiciary prescribes more detailed requirements, amount and manner of reimbursement of amounts that parties and participants in proceedings pay in settlement of costs in court proceedings.

## Chapter Nine

### THE RIGHT TO TRIAL IN REASONABLE TIME

#### Article 89

Due to the need to close open cases in which a decision has not been passed in extent of two years the court president may engage a retired judge.

The person referred to in paragraph 1 of this Article may be engaged on tasks of drafting judicial decision and autonomous conducting of certain actions in proceedings under authorisation of the sitting judge and/or court president.

Compensation for the work of the persons referred in paragraph 1 of this Article is determined by decision of the High Court Council.

Engagement of person referred to in paragraph 1 of this Article is more specifically regulated by Court Rules.

#### **COMMENT:**

**This article should be deleted**, as the right to fair trial is not ensured by engaging retired judges as judge's assistants.

**Under the provisions on court staff, it should be stipulated that a judge who was retired due to seniority may be hired as judge's assistant** for a period up to one year and in the courts whose operation is threatened due to huge caseloads.

It should be noted that the European Commission Framework Programme for the Efficiency of Judiciary, 13 September 2005, envisages **a series of measures that states are obliged to carry out in order to ensure adjudication of cases in optimal and foreseeable time**. The Framework Programme indicates that various elements characterize a judicial system – the caseload; the resources available for the resolution of the cases, such as staff, equipment, courts (including the court budget and organization); duration of a case and quality of case resolution (reflected both in the substantive quality of judgments and compliance with the proceedings). Reducing the time of case processing requires activities that concern other three elements - the caseload, resources and quality of case resolution.

For these reasons, in finding solutions to the problems of the judiciary of each member state of the Council of Europe, it is advised that a general approach is taken which observes three basic principles: **the principle of balance and overall quality**, where each member state has to find a balance between the funds that can be allocated to the judiciary and a proper management of these funds on the one hand, and the objectives set for the judiciary, on the other; **the principle of having efficient tools for measurement**

**and analysis, which are to be defined by the consensus of all stakeholders,** and based on consistent methods for data collection and development of common indicators; and **the principle of the need to harmonise all conditions that lead to fair trial by seeking to ensure a delicate balance of procedural guarantees** that necessarily require that there are time limits that may not be shortened and a need for quick justice, based on the criteria that are applied in a clear, transparent and fair manner, and presented from the very beginning of the proceedings and if need be, with the consent of the parties.

The Programme illustrates that the judicial systems face numerous and sometimes conflicting demands, because of which the state has to find a compromise between different goals, as there are no magic formulas or a universal solution for improving the efficiency of the judiciary. The three principles and the general approach allow for a better definition of a comprehensive strategy, also taking into account the effect of envisaged measures.

## **Chapter ten V. TRANSITIONAL AND FINAL PROVISIONS**

### **TRANSITIONAL PROVISIONS**

**COMMENT:**

**If some of the suggestions of the Judges' Association are accepted, in particular those referring to gradual transfer of jurisdiction to appellate courts and retaining the second-instance jurisdiction of district courts, the Transitional and Final Provisions should be accordingly amended.**

#### **Continued Operation of Existing Courts**

##### **Article 90**

Courts established by the Law on Organisation of Courts ("Official Gazette of the RS", Nos. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 62/01, 65/01 and 55/04) that commenced work prior to coming into force of this Law shall continue operation.

The Supreme Court of Cassation, Appellate, Administrative and the High Magistrates Courts and magistrates courts shall commence to operate on 1 January 2009.

**COMMENT:**

**If it is accepted to have administrative courts and the High Administrative Court, para 2 should accordingly be amended.**

#### **Continued Operation of Current Misdemeanour Organs**

##### **Article 91**

Misdemeanour panels and municipal misdemeanour organs shall continue to operate in accordance with the Minor Offences Act ("Official Gazette of the SRS", no. 44/89 and the "Official Gazette of the RS", Nos. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 62/01, 65/01 and 55/04) and the Decision on

establishing Municipal Misdemeanour Bodies and determination of the number of judges in misdemeanour organs (“Official Gazette of the RS”, Nos. 72/93, 9/94, 30/94, 5/95, 12/95, 50/95, 27/96, 47/96, 9/97, 3/98, 6/98, 17/98, 41/98, 91/02, 37/03, 76/03, 115/03 and 97/05) until 31 December 2008.

### **Transfer of Cases**

#### **Article 92**

Cases in which a first instance decision is not taken by 31 December 2008 are transferred by the Supreme Court of Serbia, municipal, district and commercial courts to courts under that have jurisdiction for these cases under this Law.

If after 31 December 2008 a higher instance court in ruling on legal remedy refers the case for retrial, the case shall be transferred to the court with jurisdiction under this Law.

### **Taking over of Cases**

#### **Article**

Cases that under this Law transfer under the jurisdiction of magistrates courts in which a first instance decision is not passed by 31 December 2008 shall be taken over by competent magistrates courts from the misdemeanour organs with jurisdiction to that date.

Jurisdiction of magistrates courts to take over cases referred in paragraph 1 of this Article is determined in compliance with the law governing seats and territories of courts and public prosecution offices.

Cases in which proceedings are not concluded before the Misdemeanour Panels by 31 December 2008 shall be taken over by the High Magistrates Court.

If after 1 January 2009 the High Magistrates Court in ruling on legal remedy refers the case for retrial, the case shall be taken over by the magistrates court with jurisdiction under the law governing seats and territories of courts and public prosecution offices.

### **Taking over of means for work, equipment, archives and staff**

#### **Article 94**

The required means for work, equipment, archives and staff of current municipal misdemeanour organs and Misdemeanour Panels shall be taken over by magistrates courts and the High Magistrates Court in compliance with the law governing seats and territories of courts and public prosecution offices.

### **By-laws**

#### **Article 95**

Bylaws whose enactment is provided under this Law shall be enacted by 1 October 2008.

Until the enactment of bylaws referred in paragraph 1 of this Article, provisions of regulations enacted on basis of the Law on Organisation of Courts shall apply, unless incoherent with this Law.

**FINAL PROVISIONS**  
**Expiry of Validity of Statutes**

**Article 96**

On the day of commencement of application of this Law the Law on Organisation of Courts (“Official Gazette of the RS”, Nos. 63/01, 42/02, 27/03, 29/04, 101/05 and 46/06), the Minor Offences Act (“Official Gazette of the SRS”, No. 44/89 and the “Official Gazette of the RS”, Nos. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 62/01, 65/01 and 55/04) and provisions of Articles 12-20 of the Law on Courts (“Official Gazette of the Republic of Serbia”, No. 46/91, 60/91 - correction, 18/92 - correction, 71/92, 63/01, 42/02, 27/03 and 29/04).

**Coming into force and commencement of application**

**Article 97**

This Law shall come into force on the eight day of publication in the “Official Gazette of the Republic of Serbia” and shall apply as of 1 January 2009.

**DRAFT LAW ON JUDGES**  
**WITH COMMENTS MADE BY JUDGES ASSOCIATION OF SERBIA (JAS)**

**Chapter One**

**PRINCIPLES**

**Independence**

**Article 1**

A judge is independent in his actions and decision taking.

A judge shall adjudicate and render judgement on basis of the Constitution, laws and other general acts, ratified international treaties, generally accepted rules of international law and his own conscience.

**Tenure and Non-transferability**

**Article 2**

A judge discharges his function as permanent, except when elected judge for the first time.

A judge discharges his function in the court to which he is elected.

A judge may not be transferred or assigned to another court without his consent, except in cases provided under this Law.

A judge may be assigned, with his consent, to work in another government organ or institution, in accordance with this Law.

**Preserving Confidence in Independence and Impartiality**

**Article 3**

A judge is required to preserve confidence in his independence and impartiality at all times.

A judge is required to conduct proceedings impartially, in accordance with his own assessment of facts and interpretation of law, ensuring fair trial and compliance with procedural rights of parties guaranteed by the Constitution, law and international acts.

This Law shall set forth the services, engagements and actions that are incompatible with judgeship.

Judges shall adhere to the Code of Ethics issued by the High Court Council.

**Financial Independence**

**Article 4**

A judge is entitled to a salary sufficient to maintain his independence and support of his family.

The salary of a judge must be commensurate with the dignity of judgeship and the burden of responsibility.

## **Immunity**

### **Article 5**

A judge may not be held accountable for expressed opinion or voting rendered in taking of judicial decision, except in case of criminal violation of law by the judge.

A judge may not be detained in proceedings instituted for a criminal offence committed in performance of judicial function without consent of the High Court Council.

## **Liability for Damages**

### **Article 6**

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

The Republic of Serbia may demand the judge to recompense the paid amount when damages are caused wilfully or by gross negligence.

#### **COMMENT:**

In line with standards of competent bodies of the Council of Europe, the state should provide the right to restitution only in cases when the judge causes damage wilfully. The limitations period is stipulated by Article 171 on the Law on Obligations and, hence, should be also stipulated in this case.

#### **PROPOSAL:**

### **Liability for Damages**

#### **Article 6**

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

When damages are caused wilfully the Republic of Serbia may demand the judge to recompense the paid amount within six months of the day of payment.

## **Right to Association**

### **Article 7**

To protect their interests judges shall have the right to associate.  
Judges may undertake measures to protect and preserve their independence and autonomy.

## **Participation in taking decisions of significance for the work of courts**

### **Article 8**

A judge is entitled to take part in taking decisions of significance for the work of courts and for determination and allocation of funds for operation of the courts.

**COMMENT:**

The right to participate in taking decision of significance for the work of courts and for determination and allocation of funds for operation of courts should, in addition to judges, be also provided for their associations.

**PROPOSAL:**

**Participation in taking decisions of significance for the work of courts**

**Article 8**

A judge and association of judges are entitled to take part in taking decisions of significance for the work of courts and for determination and allocation of funds for operation of the courts.

**Right to Advanced Professional Education and Training**

**Article 9**

A judge has the right and duty to advanced professional education and training at the cost of the Republic of Serbia.

Training of judges is an organised acquiring and developing of theoretical and practical knowledge and skills required for independent, professional and efficient discharge of judge's function.

Training is voluntary unless when certain forms of training are mandatory under law or by decision of the High Court Council in case of change of specialisation, substantial changes in regulations, introduction of new work techniques and in order to eliminate deficiencies in the work of a judge noticed during performance evaluation.

The content of training program is defined in respect of the professional experience of a judge.

The High Court Council shall stipulate and oversee implementing of the training program that is conducted by an institution competent for judicial training in accordance with law.

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

**Article 10**

The National Assembly and the High Court Council respectively decide on election and termination of function of judge and court president, in accordance with this Law.

The Supreme Court of Cassation has fifteen judges.

The High Court Council defines the number of judges and lay judges for every court, following approval obtained from the minister responsible for the judiciary, except in case referred to in paragraph 2 of this Article.

The High Court Council reviews every five years the required number of judges and lay judges for every court.

The High Court Council may at its own initiative or at the proposal of court president, president of a directly superior court, president of the Supreme Court of Cassation and the minister responsible for the judiciary review the required number of judges and lay judges also before expiry of the five-year period.

**COMMENT:**

Paragraph 3 is changed in respect of the version forwarded to the Judges' Association of Serbia for comment, in the part stating that the number of judges and lay judges in each court is defined by the High Court Council following agreement obtained from the minister of justice.

The Judges' Association has given a brief position on the above in the Annex, and shall expound in more detail verbally at the meeting on 21 february 2008.

**Chapter Two  
STATUS OF A JUDGE**

**I. PERMANENCY OF JUDGESHIP**

**1. Concept**

**Article 11**

Judgeship is permanent.

Judgeship shall last continuously from first election as judge until retirement. Prior to the above judgeship may terminate only under conditions provided under this Law.

Exceptionally, a person elected judge for the first time is elected to a period of three years.

**2. Reduction of Number of Judges and Abolishing of Court**

**Article 12**

Judgeship shall not terminate if number of judges is reduced.

If a court is abolished a judge continues to discharge his function in a court of same type and same instance, or approximately same rank.

The High Court Council decides in which court a judge continues to discharge function.

**COMMENT:**

Since in case of abolishing of a court a judge is transferred to a court of same type and instance, or approximately same rank, a need may arise to transfer a judge to a court outside his place of residence. Therefore it would be useful to obtain his opinion prior to taking decision on the court of his transfer.

**PROPOSAL:**

**2. Reduction of Number of Judges and Abolishing of Court**

**Article 12**

Judgeship shall not terminate if number of judges is reduced.



If a court is abolished a judge continues to discharge his function in a court of same type and same instance, or approximately same rank.

The High Court Council decides in which court a judge continues to discharge function, following opinion obtained from the judge.

### **3. Suspension of Judgeship**

#### **Grounds for Suspension Article 13**

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

A judge may be suspended from office when proceedings for his dismissal or criminal proceedings for a dismissible offence have been instituted.

#### **Decision on Suspension Article 14**

The court president decides on mandatory suspension of a judge, while the mandatory suspension of a court president is decided by the president of the directly higher court.

Non-mandatory suspension is decided by the president of the Supreme Court of Cassation.

The suspension of the president of the Supreme Court of Cassation is decided by the General Session.

#### **Duration of Suspension Article 15**

A judge is suspended from office until revocation of detention, conclusion of dismissal proceedings or conclusion of criminal proceedings.

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

#### **Right to Complaint Article 16**

A judge has the right to file complaint with the High Court Council, within three days.

The High Court Council shall take decision on the complaint within eight days.

## II. NON-TRANSFERABILITY OF A JUDGE

### 1. Concept

#### Article 17

A judge shall have the right to discharge his office in the court to which he is elected.

A judge may be transferred or assigned from one to another court, another state body or institution only with his consent.

Consent shall be in writing and must precede decision-taking on transfer or assignment.

Exceptionally, a judge may be transferred to another court in case of abolishing of a court, abolishing the prevalent part of the jurisdiction of the court to which he is elected or reduction of the number of judges in the court to which he is elected, on basis of the decision of the High Court Council.

Exceptionally, a judge may be assigned without consent to another court of same type or directly lower instance up to one year, on basis of final decision pronouncing a disciplinary sanction in compliance with this Law.

#### **NOTE:**

Paragraph 5 did not exist in the version of the Draft Law submitted to the Judges' Association of Serbia.

Consequently, the Judges Association will state its position on said provision at the meeting on 21 February 2008.

#### **COMMENT:**

In paragraph 4 of this Article, in case of transfer of a judge in case of abolishing of a court or the prevalent part of the jurisdiction of the court, a limitation should be provided that a judge, without his consent, may be transferred only to the court that has taken over jurisdiction of the court wherein the judge held office, and if that is not possible due to full complement of judges, to continue office in a court of same type and instance, or approximately same rank.

The issue of salary of judge who is transferred without his consent needs regulating.

In addition, in case of abolishing the prevalent part of jurisdiction and/or the required number of judges, a need will arise to transfer a number of judges to the court taking over the competence, while the remaining number of judges will remain in the court losing a part of its competencies, hence the law should provide that in such cases transfer is done on basis of published, objective and single criteria and under one single procedure set forth by the High Court Council.

#### **PROPOSAL:**

### 1. Concept

#### Article 17

A judge shall have the right to discharge his office in the court to which he is elected.

A judge may be transferred or assigned from one to another court, another state body or institution only with his consent.

Consent shall be in writing and must precede decision-taking on transfer or assignment.

Exceptionally, a judge may be transferred without his consent to another court in case of abolishing of a court or abolishing the prevalent part of the jurisdiction or reducing the number of judges of the court to which he is elected, on basis of the decision of the High Court Council.

In case of abolishing of the court, loss of part of jurisdiction or reduction of number of judges, a judge is transferred to the court taking over jurisdiction, and if that is not possible, to a court of same type and instance or a court of approximately same rank.

In cases specified under the preceding paragraph a judge must be ensured the same salary he had at the time of transfer.

In the case referred under paragraph 5 of this Article transfer is done on basis of published, objective and single criteria and under one single procedure set forth by the High Court Council.

## **2. Transfer**

### **Article 18**

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

A judge continues to discharge his function permanently in the court to which he is transferred.

The High Court Council issues the decision on transfer.

#### **COMMENT:**

The deficiency of this Article is reflected in lack of stipulation of reasons for potential transfer of judge.

Namely, with the transfer a judge continues to discharge his function permanently in the court wherein he is transferred, which has the same effect as if he were elected to that court but bypassing the procedure stipulated for election, i.e. without the possibility of other judges to apply for that post.

Any transfer of a judge should, of course, be an exception and there would need to be, in addition to vacant post of a judge in the court of transfer and the consent of the judge, additional requirements relating to the needs of the court and the expertise of the transferred judge.

Hence it would need to be stipulated as additional requirements, for example, that lack of judges impedes or hinders the work of the court and that consequently there is a need for urgent filling of the vacant post of a judge that cannot be resolved through election or assignment, that only a judge whose performance is evaluated "very good" and "excellent" may be transferred providing both court presidents are in agreement.

**PROPOSAL:**

**2. Transfer  
Article 18**

A judge may be transferred to another court of same instance if there is a need for urgent filling of vacant post of a judge that cannot be resolved through election or assignment, if his performance is evaluated “very good” over the past three years providing both court presidents are in agreement.

A judge continues to discharge his function permanently in the court to which he is transferred.

The High Court Council issues the decision on transfer.

**3. Assignment to another court**

**Article 19**

A judge may be assigned to work only in another court of same type and same or directly lower instance for maximum one year.

Exceptionally, a judge may be assigned to a directly higher-instance court if meeting the statutory requirements for election as a judge of the court to which he is assigned and if his performance evaluation is “outstanding” over the past three years.

A judge is assigned to court in which the lack, overburdening, recusal of judges or other reasons frustrate or inhibit the work of the court.

The High Court Council issues the decision on assignment.

**4. Assignment to another state body or institution**

**Article 20**

A judge may be assigned to discharge professional tasks in the High Court Council, the ministry with competence for the judiciary and the institution competent for judicial training.

Assignment specified in paragraph 1 of this Article is carried out at the recommendation of the head of the body and/or institution to which the judge is assigned, following opinion obtained from the president of the court wherein the judge holds office, with the written consent of the judge.

Assignment may not exceed three years.

The High Court Council issues the decision on assignment.

### III. MUTUAL INDEPENDENCE OF JUDGES

#### 1. General

##### Article 21

A judge is free in holding his views, facts and law in all matters under his deliberation.

A judge is not required to justify to anyone, even other judges and the president of the court, his understanding of fact and law, except in the reasoning of the judgement or when so particularly stipulated by law.

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

##### Immutability of Annual Work Load

##### Article 22

A judge is entitled to have his workload defined by annual work schedule and not to have it changed during the year.

Exceptionally, due to election of a new judge, longer absence of a judge or vacated judge's position, the type of work of a judge may be changed during the year.

The annual work schedule and changes thereof are determined with a view to exigencies of the court and the capacity of the judge to successfully discharge allocated duties.

##### **COMMENT:**

Changing of type of work of one judge due to election of another, new judge, practically means that the type of work of the "old" judge is changed in order that his work could be taken over by the new judge, which is unfair to the "old" judge and is inappropriate as it procrastinates proceedings, increases costs and defers exercising of rights of citizens.

Change of the annual schedule, as well annual work schedule, must have as objective efficient court operation, hence reasons for its change must be the same, and the decision on changing must be reasoned in order to enable reconsideration following a judge's objection (Art. 25).

In any case, both "longer absence of a judge" or "vacated judge's position" referred to in this Article as grounds for changing judge's type of work are have as objective efficient court operation, but these are not the only reasons whereby a need may arise to change the annual work schedule. These may be, e.g. increase or decrease in scope of work in certain court departments or poor performance results of a judge on certain tasks. Only once the reasons for changing the annual work schedule are known does this Article, as well as Article 25, as a guarantee of mutual independence of judges, have sense.

##### **PROPOSAL:**

#### **2. Immutability of Type of Work and Random Allocation of Cases**

## **Immutability of Annual Work Load**

### **Article 22**

A judge is entitled to have his workload defined by annual work schedule and not to have it changed during the year.

Exceptionally, the annual work schedule may be changed during the year if circumstances on which it is based alter significantly.

The annual schedule and change thereof is determined in respect to exigencies of the court and capacity of a judge to successfully perform assigned tasks.

The decision on annual schedule and its alterations must be reasoned.

## **Random Allocation of Cases**

### **Article 23**

Cases are allocated to a judge according to schedule that is independent of personality of parties and circumstances of the legal matter.

Cases are entrusted to a judge on basis of the court schedule of tasks, in accordance with the Court Rules, exclusively on basis of designation and number of the case file.

No one has the right to establish panel of judges and allocate cases by bypassing the work schedule and order of receiving of the cases.

## **Derogation**

### **Article 24**

Derogation from the order of receiving of cases is possible only due to justified preclusion of a judge.

A case may be taken from a judge only due to extended absence or dilatoriness, in accordance with the Court Rules.

### **COMMENT:**

The concepts of “extended absence” and “dilatoriness” are insufficiently precise.

The concept “extended absence” should either be specified in more detail (e.g. define in time the length of absence) or stipulate another requirement (e.g. that extended absence of judge compromises efficient operation of the court or that cases require exigent action both by law and in order to protect the rights of parties in proceedings).

Insofar as “dilatoriness” is concerned a contentious issue arises in respect of who and how determines that a judge is being dilatory regarding the proceedings, and such a general formulation may lead to abuse. Instead of “dilatoriness” it would be better to stipulate procrastination of proceedings as a disciplinary offence, and that a case may be taken away from a judge as a disciplinary measure (as set forth in Article 86, paragraph 1 of this Law) for committed disciplinary offence.

**PROPOSAL:**

**Derrogation**

**Article 24**

Derogation from the order of receiving of cases is possible only due to overload or justified prevention of a judge.

A case may be taken from a judge only if due to extended absence it is necessary to act in a case that is urgent, by law or substance, or if due to extended absence of a judge efficient operation of the court is impaired or if a final sanction is pronounced to a judge for the disciplinary offence of dilatoriness in proceedings.

**Right to Objection**

**Article 25**

A judge is entitled to object the annual schedule of work, change of type of work, derogation from the order of received cases and taking away of cases with the administrative-judicial panel of the directly superior court, within eight days from the day becoming aware thereof.

Objection of a judge of the Supreme Court of Cassation is deliberated by the General Session.

A party or person with legal interest also have the right to object in respect of taking away of a cases, within eight days from the day of becoming aware thereof.

The administrative-judicial panel of the court conducting the proceedings decides on the objection specified in paragraph 3 of this Article.

The decision on the objection is taken within eight days from the date of submission.

**Duty to Notify the President of the Directly Higher Court**

**Article 26**

A court president is required to notify in writing the president of the directly higher court of any derogation from the order of received cases.

**3. Notification of Duration of Proceeding**

**Article 27**

A judge shall notify the court president of reasons for failing to conclude first-instance proceedings within six months and shall there from notify him monthly of the progress of proceedings.

A judge gives first notice of proceedings under legal remedy to the court president after one month, and the next every fifteen days.

The court president is required to notify the president of the directly higher court of every first-instance proceedings that has not been concluded within two years.

A court president is required to notify the president of the Supreme Court of Cassation of every proceeding on legal remedy that has not been concluded within six months.

Deadlines for notification in enforceable, non-contentious and other non-contestable matters are defined by the Court Rules.

Duty to notify under this Article runs from the day of receiving the case in the court.

**COMMENT:**

Although this provision has existed to date, having in mind the overload of judges deriving from systemic problems, we consider the proposed solution inappropriate.

If this were to be applied consistently judges would practically only engage in statements on unresolved cases at the expense of the time they could use for judicial work, court presidents would only read these reports and court services would be unnecessarily burdened with drafting and action in respect of these reports. That was the reason why this provision was applied only formally in some courts and in some it was not practically even applied over the last 6 years of its validity and why it gave no results.

The proposed solution is unrealistic, expensive and unnecessary, due to completely new systemic solutions that are introduced by the law (performance evaluation of all judges, functional cohesion of evaluation and training of judges, disciplinary accountability that provides for the disciplinary offence of unjustified procrastination of proceedings) that will necessarily lead to improvement in the action of courts and judges.

One should not neglect that the National Judicial Reform Strategy envisages disencumbering of judges from non-judicial (administrative) tasks.

**PROPOSAL:**

**3. Notification of Duration of Proceeding**

**Article 27**

A judge is required, at the request of the court president, to notify him of the reasons whereby a case was not concluded in reasonable time.

**4. Right of Judge to Complaint**

**Article 28.**

A judge may file complaint with the High Court Council for violation of any right for which this Law does not provide a particular remedy.

The High Court Council rules on the complaint within eight days and promptly notifies the court president, president of the directly higher court and the president of the Supreme Court of Cassation of the decision.

**COMMENT:**

Such formulation of the right to complaint and the decision of the High Court Council on that complaint do not represent an effective legal remedy for protection of rights of judges.

In order for this complaint to be effective it would be necessary to stipulate an



obligation of the High Court Council to not only notify the court presidents of that decision but to, in case of justified complaint, undertake measures to protect the rights of the judge.

**PROPOSAL:**

**4. Right of Judge to Complaint**

**Article 28**

A judge may file complaint with the High Court Council for violation of any right for which this Law does not provide a particular remedy.

The High Court Council rules on the complaint within eight days and promptly notifies the court president, president of the directly higher court and the president of the Supreme Court of Cassation of the decision, and if the complaint is justified, undertakes measures to protect the rights of judges.

**IV. RELATIONSHIP OF JUDGESHIP TO OTHER FUNCTIONS,  
ENGAGEMENTS AND ACTIVITIES**

**1. Relationship of other functions, engagements and actions with judgeship**

**Article 29**

A judge may not hold office in bodies enacting or enforcing legislation, may not be member of a political party, engage in any paid public or private work, nor extend legal services or advice for compensation.

Other functions, engagements and activities that are contrary to the dignity and independence of a judge or damaging to the reputation of the court are incompatible with judgeship.

The High Court Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court on basis of Court Rules and the Code of Ethics.

A judge shall not require anyone's permission to engage in compensated research and professional activity outside of working hours.

In cases set forth by law or based on decision of the High Court Council a judge may engage in teaching, research and professional activity during working hours.

A judge may be sent on a study and/or other professional visit by decision of the High Court Council, following opinion of the court president, where performance evaluation from the judge's personal file and knowledge of foreign languages shall be particularly taken into account.

A judge may give opinions and professional comments regarding application of regulations only to journals published by the court, the ministry with competence for the judiciary, the High Court Council and judicial training institutions.

**NOTE:**

Last three paragraphs of this Article did not exist in the version of the Draft Law forwarded to the Judges' Association of Serbia for comments.

Hence the Judges' Association will comment on this provision verbally at the meeting on 21 February 2008.

## **2. Incompatibility Deliberation Procedure**

### **Duty to notify and filing of charges**

#### **Article 30**

A judge is required to notify the High Court Council in writing of any engagement or work that may be deemed incompatible with judgeship.

The High Court Council notifies the court president and the judge that there is incompatibility between the engagement and work with judgeship.

The body competent for initiating proceedings shall file disciplinary charges immediately upon becoming aware that a judge is engaged in service or work or engaging in activities that may be deemed incompatible with his function.

#### **COMMENT:**

As Article 29, paragraph 3 of the Working Version of this Law provides that the High Court Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court, it should be stipulated that judges and court presidents are required to notify in writing the High Court Council and not the court president and/or the court president of the directly superior court of any engagement or job for which a possibility exists that they are incompatible with judgeship, and concurrently also set forth that a judge is committing a disciplinary offence if he fails to notify the High Court Council thereof or continues with the engagement or job even after the decision of the High Court Council pronouncing them incompatible with judgeship.

#### **PROPOSAL:**

#### **Duty to notify and filing of charges пријаве Article 30**

A judge is required to notify the High Court Council in writing of any engagement or work that may be deemed incompatible with judgeship.

The High Court Council notifies the court president and the judge that there is incompatibility between the engagement and work with judgeship-

#### **NOTE:**

The last paragraph of this Article did not exist in the version of the Draft Law forwarded to the Judges' Association of Serbia for comments.

Hence the Judges' Association will comment on this provision verbally at the meeting on 21 February 2008.

## V. PERFORMANCE EVALUATION OF JUDGES

### Article 31

Work of all judges and court presidents is subject to regular evaluation.

Performance evaluation involves all aspects of judge's work and/or work of court president and represents the basis for election, mandatory training of judges, allocation to pay grades, dismissal and instituting disciplinary proceedings.

Evaluation is conducted on basis of publicized, objective and single criteria and standards, in a single procedure ensuring participation of the judge and/or court president whose performance is being evaluated.

Criteria and procedure for performance evaluation of judges are set by the High Court council.

#### **COMMENT:**

The title of the Article should include the words "and court presidents", as it deals with evaluation of also court presidents and not only judges.

Paragraph 1 provides for evaluation of all judges and presidents of courts, while in our opinion the performance of the president and judges of the Supreme Court of Cassation with tenure of office should not be evaluated as it is unclear which body could evaluate the work of judges of the highest court.

Paragraph 2 stipulates that performance evaluation of judges represents the basis for instituting disciplinary proceedings although this does not derive from the other provisions of this law, as the reasons for conducting disciplinary proceedings are only negligent discharge of function and conduct unbecoming a judge, as stipulated in Article 84 hereof („A disciplinary offence is negligent performance of judge's function or conduct that is inappropriate for judge's function“).

#### **PROPOSAL:**

## V. PERFORMANCE EVALUATION OF JUDGES AND COURT PRESIDENTS

### Article 31

Performance of judges and court presidents, with the exception of the president and judges of the Supreme Court of Cassation with permanent judgeship, is subject to evaluation.

Performance evaluation involves all aspects of judge's work and/or work of court president and represents the basis for election, mandatory training of judges, allocation to pay grades and dismissal.

Evaluation is conducted on basis of publicized, objective and single criteria and standards, in a single procedure ensuring participation of the judge and/or court president whose performance is being evaluated.

Criteria and procedure for performance evaluation of judges are set by the High Court Council.

## **Bodies competent for evaluation in courts**

### **Article 32**

Bodies competent for performance evaluation of judges are: departmental boards and the Commission of the High Court Council for Performance Evaluation of Judges.

Performance evaluation of judges is conducted by the departmental board.

Performance evaluation of judges in lower instance courts is conducted by departmental boards established in court departments of directly higher instance courts.

Departmental boards comprise the president of the department and two judges, elected by secret ballot at the session of the department to a period of four years.

In courts with larger number of judges a departmental board is established for every 50 judges.

#### **COMMENT:**

Representation of judges from the court department whose performance is evaluated would ensure conducting of performance evaluation of judges through a prism of real work conditions of the judges whose performance is being evaluated.

Stipulating that departmental boards have only three members will cause problems in their work, as well as in the work of judges who are members of departmental boards due to the scope of work they have to perform, i.e. the number of judges whom they have to evaluate. It hardly credible that three-member departmental boards could perform their work with merit in, for example, the Belgrade municipal courts. Namely, according to the proposed solution and with the current organisation of courts, three-member departmental boards would be formed in the Belgrade District Court which would be tasked with evaluating the performance of several hundred judges. In case of establishing Appellate Courts, three-member departmental boards of that court would have to evaluate the performance of even a greater number of judges.

In addition to the above it would be necessary to set criteria for election of departmental board members in order to avoid electing judges to these boards whose performance was evaluated in the preceding period with, for example, "satisfactory". On the other hand, although ideally departmental boards would comprise judges with highest evaluation it would be unrealistic to expect that this could be ensured always, particularly in smaller courts. Otherwise, performance evaluation grades could be devalued and unrealistic.

#### **PROPOSAL:**

### **Bodies competent for evaluation in courts**

#### **Article 32**

Bodies competent for performance evaluation of judges are: departmental boards, the Commission of the High Court Council for Performance Evaluation of Judges and the Session of the Supreme Court of cassation.

Bodies competent for performance evaluation of court presidents are departmental the Commission he for Performance Evaluation of Court President and the High Court Council.

#### **Departmental Boards**

##### **Article 32-a**

Performance of a judge is evaluated by the departmental board.

Departmental boards are established in court departments of higher instance courts to evaluate the performance of judges of same departments in lower instance courts.

Departmental boards comprise judges of the department of the directly superior court and one judge from the department of the lower instance court whose work is being evaluated.

According to the number of judges one departmental board is established for every fifty judges.

A judge with highest performance evaluation grade in the court department is a member of the departmental board and if more than one judge has the same grade the departmental board member is chosen by secret ballot at the session of the court department.

The departmental board member is elected to a four year term.

### **The High Court Council Commission for Performance Evaluation of Judges Article 32-b**

The High Court Council Commission for Performance Evaluation of Judges decides on objections of judges to evaluation of their performance.

Only judges in courts of Republic rank may be members of the Commission.

The composition and manner of work of the Commission is regulated in detail by an act of the High Court Council.

### **Performance evaluation of court presidents Article 32-c**

Performance of court presidents is evaluated by the High Court Council Commission for Performance Evaluation of court presidents.

The composition and manner of work of the Commission is regulated by an act of the High Court Council.

The High Court Council decides on objections to performance evaluation of the Commission specified in paragraph 1 of this Article.

## **Evaluation by the High Court Council**

### **Article 33**

The Commission of the High Court Council evaluates performance of court presidents and judges of the Supreme Court of Cassation and decides on objections of judges to their performance evaluation.

The High Court Council decides on objections to performance evaluation of court presidents and judges of the Supreme Court of Cassation.

The composition and operation of the Commission referred to in paragraph 1 of this Article is regulated by the act of the High Court Council.

### **COMMENT**

Performance of judges of the Supreme Court of Cassation with permanent tenure should not be evaluated as it is unclear who would comprise the body that would evaluate

the performance of judges of the highest court, and the proposed Articles 32-b and 32-c set forth the competence of the High Court Council Commission for performance evaluation of judges to decide on objections of judges to their performance evaluation while a separate commission would be established to evaluate the performance of court presidents.

**PROPOSAL:**

Delete this Article.

**Performance Evaluation Period**

**Article 34**

Performance of judges with tenure of office and court presidents is evaluated annually and of judges elected for the first time once every six months.

**COMMENT:**

The stipulated timeframes are too short, both from the aspect of the scope of work that is subject of evaluation as well as the ability of departmental boards to conduct it every year, hence there is a risk of unrealistic depiction of judge's performance and transforming of performance evaluation into formalism. Furthermore, due to scope of work there is a hazard that members of departmental boards would discharge their judicial function with increased difficulty.

**PROPOSAL:**

**Performance Evaluation Period**

**Article 34**

Performance of judges with tenure of office and court presidents is evaluated after expiry of one year from taking office and after that every three years.

Performance of judges elected for the first time is evaluated after expiry of one year from taking office and after that before expiry of three years from the date of election.

**Performance Rating**

**Article 35**

Performance is rated.

Ratings are: "fails to meet requirements", "satisfactory", "good", "very good" and "excellent".

Rating is entered in the judge's and/or court president's personal file.

A judge and/or court president is entitled to object the rating with the bodies specified in Article 33 hereof, within 15 days from the day of submitting the decision on the rating, which has to be reasoned.

## **VI. FINANCIAL STATUS OF A JUDGE**

### **Base Salary**

#### **Article 36**

A judge is entitled to a salary commensurate with the position to which he is elected.

A judge's salary is determined pursuant to base salary.

The base salary is determined by multiplying the coefficient for calculation and payment of salary with the base for calculation and payment of salary.

The Government of the Republic of Serbia determines the base for calculation and payment of salaries of judges.

The coefficient for calculation and payment of salary is determined by classifying a judge into one of five pay grades.

Every pay grade for judges has two pay levels, except the fifth pay grade.

The base salary under this Law is the value that does not include the percentage for years of work.

### **Pay Grades for Judges**

#### **Article 37**

Judges are classified into five pay grades, each having salary levels expressed in coefficients.

The first pay grade includes judges in magistrates courts.

The second pay grade includes judges of municipal courts.

The third pay grade includes judges of commercial, district courts and the high magistrates court.

The fourth pay grade includes judges of the Appellate, High Commercial and the Administrative Courts.

The fifth pay grade includes judges of the Supreme Court of Cassation.

### **Salary levels of Judges**

#### **Article 38**

The first pay grade shall have salary levels of 2.00 and 2.50.

The second pay grade shall have salary levels of 3.00 and 3.50.

The third pay grade shall have salary levels of 3.50 and 4.00.

The fourth pay grade shall have salary levels of 4.00 and 4.50.

The fifth pay grade shall have salary level of 6.50.

## **Classification of Judges to Pay Grades**

### **Article 39**

The High Court Council issues the decision determining the coefficient.

The decision on the coefficient defines the pay grade to which a judge belongs, salary level and coefficient.

At election a judge is classified to a lower salary level in the pay grade to which he belongs.

A judge classified to a lower salary level of his pay grade and who is twice running rated “excellent” in performance evaluation is classified to the higher salary level of his pay grade.

A judge classified to the higher salary level of his pay grade and who twice running is rated “satisfactory” and “good” in performance evaluation is classified to the lower salary level of his pay grade.

## **Base Salary of Court President**

### **Article 40**

The base salary of court president is determined by increasing the salary of a judge of that court who is classified to the higher salary level by:

- 5%, in courts with up to ten judges;
- 10%, in courts with up to 20 judges;
- 15% in courts with up to 40 judges;
- 20% in courts with over 40 judges.

## **Base Salary of the President of the Supreme Court of Cassation**

### **Article 41**

The base salary of the president of the Supreme Court of Cassation is equal to the salary of the Speaker of the National Assembly.

#### **NOTE:**

Articles 36-41 did not exist in the version of the draft Law forwarded to the Judges Association of Serbia for comment.

Hence the Judges’ Association will comment on this provision verbally at the meeting on 21 February 2008 and presents here only the comments and proposal submitted on the previous version of the draft Law that we had received.

#### **COMMENT:**

It is necessary that salaries of judges reflect both the guarantee of their independence and their recompense pursuant to achieved work results. It is necessary to stipulate pay grades for judges and co-relate them with performance evaluation, i.e. performance evaluation grades. This would establish conditions to have pay grades



within, e.g. the same court and would represent an incentive to judges for better achievement, while salaries of court presidents would be determined in respect of the scope of their work (number of judges in the court).

**PROPOSAL** (to the version of the draft Law submitted to us):

**Salary of a Judge**  
**Article 36**

A judge is entitled to a salary corresponding to the post to which he is elected.

The salary of a judge may not be reduced except in cases set forth under this Law.

**Judges Pay Grades**  
**Article 36 a**

Judges are classified into five pay grades within which there are pay levels expressed in coefficients.

The first pay grade includes judges of magistrates courts,

The second pay grade includes judges of municipal courts.

The third pay grade includes judges of commercial, district and the High Magistrates Court.

The third pay grade includes judges of the Appellate, the High Commercial and the Administrative Court.

The fifth pay grade includes judges of the Supreme Court of cassation.

**Base Salary of a Judge**  
**Article 36 b**

The base salary in terms of this Law is the value excluding the percentage for years of service.

**Basis for calculation of base salary**  
**Article 36 c**

The basis for calculation of base salary of a judge is the amount of the average salary in the Republic over the preceding three months.

**Determination of base salary of a judge**  
**Article 36 d**

The base salary of a judge is determined by multiplying the basis for salary calculation with the pay level coefficient.

**Pay levels**  
**Article 36 e**

The first pay grade shall have following pay levels: 3,00 and 3.50.

The second pay grade shall have following pay levels: 3,90 and 4,35.

The third pay grade shall have following pay levels: 4.80 and 5.10.

The fourth pay grade shall have following pay levels: 5.50 and 5.90.  
The fifth pay grade shall have following pay level: 6.60.

### **Classification of Judges to Pay Levels**

#### **Article 36 f**

The High Court Council issues the decision on classification of judges to pay levels.

At election a judge is classified to a lower pay level of his pay grade.

A judge classified to a lower pay level whose performance is twice consecutively evaluated "excellent" is classified to the higher pay level of his pay grade.

A judge classified to a higher pay level of his pay grade and whose performance is twice consecutively evaluated "excellent" and who meets the requirements for election to a court of a higher pay grade is classified to the lower pay level of that pay grade.

A judge who is classified to a higher pay level and whose performance is twice consecutively evaluated less than "very good" is classified to a lower pay level, while a judge classified to a lower pay level of his pay grade and whose performance is twice consecutively evaluated less than "good" is classified to the highest pay level of the next lower pay grade.

### **Determination of the salary of court president**

#### **Article 36 g**

The base salary of court president is determined by increasing the salary of a judge of that court who is classified to the higher salary level by:

5%, in a court with up to ten judges,

10%, in a court with up to 20 judges,

15% in a court with up to 40 judges and

20% in a court with over 40 judges.

### **Base salary of the president of the Supreme Court of Cassation**

#### **Article 36 h**

The base salary of the president of the Supreme Court of Cassation may not be lower than the salary of the speaker of the National Assembly of the RS or the prime minister.

### **Base Salary of a Judge Transferred and/or Assigned to Another Court**

#### **Article 42**

A judge who is transferred and/or assigned to another court, state body or institution is entitled to a base salary of a judge of the court and/or state body or institution to which he is transferred and/or assigned, if more favourable.

The High Court Council stipulates emoluments and other earnings of a judge who is transferred and/or assigned to another court, state body or institution.

A judge under disciplinary sanction of transfer to another court is not entitled emoluments referred under paragraph 2 of this Article.

## **Increment to Base Salary of a Judge**

### **Article 43**

The base salary of a judge adjudicating in criminal offence cases with organised crime and war crime element may be increased up to 100% by decision of the High Court Council.

#### **COMMENT:**

Salaries of judges sitting in criminal cases with organised crime and war crime element should be regulated by separate law.

The law should regulate the issue of pensions in line with recommendations of the Council of Europe as the size of pension is one of the guarantees of independence of judges.

#### **PROPOSAL:**

## **Increment to Base Salary of a Judge**

### **Article 38**

The High Court Council may decide to increase the base salary of judges in a court department where vacancies cannot be filled (by election, assignment or transfer of judges) up to 50%.

### **Article 38a**

A judge's pension may not be lower than 85% of the salary of a judge in the court where the retired judge held office on the day of retirement or in the court that had taken over the jurisdiction of that court.

## **Chapter Three**

## **ELECTION OF A JUDGE**

### **I. ELECTION REQUIREMENTS**

#### **Article 44**

A citizen of the Republic of Serbia who meets the requirements for employment in state bodies, who is a law school graduate, who has passed the bar exam and who is deserving of judgeship may be elected judge.

#### **Prohibition of Discrimination**

#### **Article 45**

Discrimination on any grounds is prohibited in election and nominating for election of a judge.

#### **Required Experience**

#### **Article 46**

The required professional experience in the legal profession following the bar exam is:

- two years for a judge of a magistrates court;

- three years for a judge of a municipal court;
- for years for a judge of a commercial court;
- six years for a judge of a district court and the High Magistrates Court;
- eight years for a judge of the Appellate Court, the High Commercial Court and the Administrative Court;
- twelve years for a judge of the Supreme Court of Cassation.

**COMMENT:**

In respect of years of experience it is necessary to differentiate between experience in the judiciary, particularly judgeship, and in other legal profession.

**PROPOSAL:**

**Required Experience  
Article 41**

The required professional experience in the legal profession following the bar exam is:

- two years in the judiciary or three years in other legal profession;
- three years in the judiciary or five years in other legal profession;
- five years in the judiciary or seven years in other legal profession;
- four years of judgeship, nine years in the judiciary or twelve years in other legal profession;
- eight years of judgeship, fifteen years in the judiciary or twenty years in other legal profession;
- fifteen years of judgeship, twenty years in the judiciary or twenty five years in other legal profession.

**Other Requirements for Election**

**Article 47**

Other requirements for the election of a judge are qualification, competence and high moral character.

Qualification means possessing of theoretical and practical knowledge necessary for performing the judicial function.

Competence means possessing of skills that enable efficient use of specific legal knowledge in dealing with cases.

High moral character means appropriate characteristics and a conduct in accordance with such characteristics.

The moral characteristics of a judge include honesty, thoroughness, diligence, fairness, dignity, perseverance, courage and esteem, and conduct in compliance with these characteristics involves upholding of dignity of the judge on and off duty; the awareness of social responsibility; preserving of independence and impartiality; reliability and dignity on duty and off, as well as taking the responsibility for the internal organization and a positive public image of the judiciary.

The criteria for the assessment of qualification, competence and moral character are set by the High Court Council, in accordance with the law regulating the institution that is in charge of judicial training.

**COMMENT:**

Qualification, competence and high moral character to discharge the office of a judge are not requirements but criteria for election to judgeship, and should be designated as such.

Furthermore, it is necessary to specify these concepts and to define the standards for their evaluation.

**PROPOSAL:**

**Criteria for Election**

**Article 42**

The criteria for election of a judge are qualification, competence and high moral character.

**Qualification**

**Article 42a**

Qualification means possessing of theoretical and practical knowledge necessary for performing the function of a judge.

Theoretical knowledge is legal, economic, sociological, political and other understanding of overall social relations.

Practical knowledge is reasonably fast and efficient application of theoretical knowledge to specific legal issue

**Competence**

**Article 42b**

Competence means possessing of skills that enable use of specific legal knowledge in dealing with court cases, such as: ability for analytical thought, reasoning and decision taking, oral and written expression, work capacity, capacity and readiness to argumentatively advocate own views, prowess in debating, questioning and negotiating, ability to handle own conduct in critical situation, capacity for teamwork, organisational and communicative capacity

**High Moral Character**

**Article 42c**

High moral character means moral characteristics a judge should have, such as: honesty, thoroughness, diligence, fairness, dignity, perseverance, courage and esteem, and conduct in compliance with these characteristics which involves upholding of dignity of the judge and the court on and off duty; the awareness of social responsibility; preserving of independence and impartiality; reliability and dignity on duty and off, as well as taking the responsibility for the internal organization and a positive public image of the judiciary.

**Standards**  
**Article 42d**

Standards are relevant ways to evaluate characteristics contained in criteria.

Standards for evaluating qualification, competence and high moral character are set by the High Court Council.

**II. ELECTION PROCEDURE**

**Announcement of Election**

**Article 48**

The High Court Council shall publicly announce the election of judges.  
The announcement is published in the Official Gazette of Serbia and other media.

**Applications**

**Article 49**

Applications are submitted to the High Court Council within 15 days of the public announcement in the Official Gazette of Serbia.  
The application is submitted together with evidence of eligibility.

**Obtaining of Information and Opinion**

**Article 50**

The High Court Council shall obtain information and opinions about the qualification, competence and moral character of a candidate.

The information and opinions are obtained from the bodies and organisations where the candidate worked as a lawyer, and in the case of a candidate coming from a court, it is mandatory to obtain the opinion of the judges' session of that court.

**COMMENT:**

For candidates coming from courts the opinion of the session of judges of the court to which a judge is elected should be obtained as mandatory.

**PROPOSAL:**

**Obtaining of Information and Opinion**

**Article 45**

The High Court Council shall obtain information and opinions about the qualification, competence and moral character of a candidate.

The information and opinions are obtained from the bodies and organisations

where the candidate worked in the legal profession, and in the case of candidates coming from courts, it is mandatory to obtain the opinion of the judges' session of the court to which he is elected.

## **Nomination of Judges to be Elected for the First Time**

### **Article 51**

In case of candidates for judges to be elected for the first time, in addition to qualification, competence and moral character, the High Court Council shall especially take into consideration the type of jobs that the candidate performed after passing the bar exam.

With regard to candidates coming from among judge's assistants, it is mandatory to obtain their performance evaluation.

Before presenting their nominations, the High Court Council shall conduct interviews with the candidates.

The High Court Council shall propose to the National Assembly two candidates for each judge's position.

The decision on the High Court Council's nomination must be reasoned and published in the Official Gazette of Serbia.

A candidate is allowed to file an appeal to the Constitutional Court against the decision specified in para 5 of this article.

### **COMMENT:**

The solution whereby the High Court Council proposes to the National Assembly two candidates for each judge's position is not good for practical reasons and in principle.

#### Practical reasons:

- If there is an obligation for the High Court Council to propose two candidates for election to one post of judge it remains unclear – in cases when judges are elected in one court to more than one judge's post – whether the High Court Council proposes two candidates for each judge's post or proposes double the number of candidates for the total number of judge's posts.
- If the number of judge's posts is high, e.g. 10, then the number of proposed candidates would be double, in this case 20, and it is possible that such a number of candidates have not applied or that the High Court Council considers that such a number of candidates fails to meet the election requirements. This problem would be amplified in case of reelection or election of judges to all judge's posts, which would be unconstitutional in our view. Namely, a contentious issue would arise in such situations whether the candidates who to date were judges are being elected for the first time to the post of a judge, in which case they would be elected by the National Assembly and it would require nomination of double the number of candidates (meaning over 6,000) or it would be deemed that they hold judgeship, in which case they would be elected by the High Court Council.
- If only one candidate applies and the High Court Council deems that he meets election requirements, it remains unclear whether in such case the election procedure will be

repeated as it is not possible to propose two candidates as set forth under this Article of the Law,

- If the High Court Council deems that only one of the candidates that have applied meets election requirements, it remains unclear whether in such case the candidate who is deemed not to meet election requirements has to be proposed or is the election procedure repeated.

Reason of principle:

- One of the main remarks of the Venice Commission and of the prevalent part of the professional public related to the constitutional solution that judges, even when elected for the first time to this function, are elected by the National Assembly as a political body.

-

**Excerpt from the Opinion of the Venice Commission:**

*“ Article 147 maintains the principle that judges are elected by the National Assembly. The Venice Commission remains unconvinced that this is a good solution and reiterates the criticism made in its previous Opinion:*

*“16...The involvement of parliament in judicial appointments risks leading to a politicisation of the appointments and, especially for judges at the lower level courts, it is difficult to see the added value of a parliamentary procedure. In Serbia the People’s Assembly hitherto has not limited its role to confirming candidates presented by the High Judicial Council but it has rejected a considerable number of such candidates under circumstances where it seemed questionable that the decisions were based on merit. This is not surprising since elections by a parliament are discretionary acts and political considerations will always play a role.*

*17. As set forth above Recommendation (94)12 requires that judicial appointments should be based on objective criteria and merit and not on political considerations. The main role in judicial appointments should therefore be given to an objective body such as the High Judicial Council provided for in Articles 133-135 of the Constitution. It should be understood that proposals from this body may be rejected only exceptionally. From an elected parliament such self-restraint cannot be expected and it seems therefore preferable to consider such appointments as a presidential prerogative. Candidatures should be prepared by the High Judicial Council, and the President would not be allowed to appoint a candidate not included on the list submitted by the High Judicial Council. For court presidents (with the possible exception of the President of the Supreme Court) the procedure should be the same.”*

Stipulating the obligation of the High Court Council to propose two candidates for each judge’s post retains the possibility to have political reasons present in appointing of judges who are elected for the first time to that function.

- Articles 39 and 42 of this Law set forth that the requirements for election of a judge are qualification, competence and high moral character, hence it is unclear how to ensure – in cases when two candidates are proposed – that the National Assembly will evaluate which of them is more qualified and competent and to be elected as such as judge.

For the above reasons a better solution would be that the High Court Council propose a larger number of candidates than there are available judge’s posts in a particular



court, except in cases when there is no sufficient number of candidates or the applicants do not meet election requirements, in which case the National Assembly would be required to elect one of the proposed candidates.

In this way the right of the National Assembly to appoint judges who are elected for the first time to that function would be exercised, and would concurrently to greater extent ensure election on basis of qualification, competence and high moral character (as set forth under Article 39 and 42 hereof), for which the High Court Council is qualified to assess, as an expert body, and not the National Assembly as a political body.

Regarding appeal to the Constitutional Court against the proposal of the High Court Council, it is necessary to define the timeframe for its filing and stipulate publishing of the reasoned proposal in the “Official Gazette of the republic of Serbia”, that being the date wherefrom the deadline for appeal starts to run.

Another dilemma is the issue whether this law may stipulate appeal to the Constitutional Court as this appeal is not provided by the Law on the Constitutional Court, or is the case here the constitutional appeal specified in Article 56 of that law.

### **PROPOSAL:**

#### **Nomination of judges to be elected for the first time**

##### **Article 46**

In nominating candidates for judges to be elected for the first time, in addition to qualification, competence and moral character, the High Court Council shall especially take into consideration the type of jobs that the candidate performed after passing the bar exam.

For candidates coming from among judge’s assistants, it is mandatory to obtain their performance evaluation.

Prior to nomination the High Court Council conducts an interview with the candidates who have applied.

The High Court Council proposes to the National Assembly a higher number of candidates than the number of judges to be elected in a particular court, except in cases when there not enough candidates or the candidates who have applied do not meet the requirements and criteria for election.

The decision of the High Court Council must be reasoned and published in the “Official Gazette of the Republic of Serbia“.

A candidate may file an appeal to the Constitutional Court against the decision specified in para 5 of this article within 15 days from the date of publication.

#### **First Election**

##### **Article 52**

The National Assembly shall elect a first-time elected judge from among the candidates nominated by the High Court Council.

## **Election to Permanent Function**

### **Article 53**

The High Court Council elects judges to be appointed to permanent position.

Appointment of a first-time elected judge whose work during the first three-year term of office is assessed as “very good” or “excellent” to permanent function as mandatory.

A first-time elected judge whose work during the first three-year term of office is assessed as “not satisfactory” may not be appointed to permanent function.

Every decision on election must be reasoned.

The candidate may lodge an appeal to the Constitutional Court against the decision of the High Court Council referred to in para 3 of this article.

## **III. TAKING OATH AND TAKING OFFICE**

### **Taking Oath**

#### **Article 54**

Before taking office, a judge shall take an oath before the National Assembly Speaker.

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

A judge who is appointed to permanent function shall not take an oath.

### **Oath**

#### **Article 55**

The oath reads as follows: „I do solemnly swear that I will discharge my duties in compliance with the Constitution and the law, according to the best of my ability and in the service of truth and justice”.

### **Taking of Office**

#### **Article 56**

A judge shall take office at the ceremonial session of all judges of the court he/she has been appointed to.

The previous office of the judge ends with taking of office in the new court.

The judge of a higher court who has been elected as president of a lower court may go back to the function at the higher court after the end of office.

### **When it is Deemed that a Judge has not been Elected**

#### **Article 57**

It is deemed that a judge has not been elected if he/she fails to take office without justified reasons within 2 months of election.

The High Court Council issues the decision and notifies the National Assembly in the case of a first-time elected judge.

The judge is entitled to file an appeal to the Constitutional Court against the decision of the High Court Council.

## **Chapter Four TERMINATION OF OFFICE**

### **1. All Reasons**

#### **Article 58**

Judge's office ends upon the request of the judge, with retirement age, due to a permanent loss of working ability, if not elected to permanent function or in case of dismissal.

The High Court Council issues the decision on termination of function.

The decision referred to para 2 of this article is published in the Official Gazette of Serbia.

### **2. Termination of Office upon the Request of the Judge**

#### **Article 59**

A judge who wishes to resign shall submit a request to the High Court Council.

The request may be withdrawn until such time as the office of the judge is terminated under the decision of the High Court Council or until the expiry of the deadline provided by this Law.

If the decision on the request is not taken within one month, it is considered that the judge's office terminated after the expiry of the one-month period following the submission of the request.

In other cases, judge's office terminates on the date specified in the decision of the High Court Council.

If a judge submits a request for termination of office after a request for dismissal was filed, the former is not considered before the dismissal procedure is completed.

### **3. Retirement Age**

#### **Article 60**

Judge's years of service complete with 65 years of age or 40 years of pensionable years of service.

Exceptionally, upon the request of the president of the court, the High Court Council may approve an extension of two years with the consent of the judge.

A judge may have the years of service extended only if it is necessary to complete current cases or old cases that have not been adjudicated for longer than two years.

**NOTE:**

The last paragraph of this Article did not exist in the version of the Draft Law forwarded to the Judges' Association of Serbia for comments.

Hence the Judges' Association will comment on this provision verbally at the meeting on 21 February 2008.

#### **4. Permanent Loss of Working Ability**

##### **Article 61**

A judge's office ends if, based on the finding of the professional commission of the competent body, it is established that he/she is incapable of performing function due to the health condition.

The High Court Council shall issue a decision on referring a judge to a mandatory medical examination, following the proposal of the president of the court, the president of the immediately higher court or the judge concerned.

#### **5. Termination of Office of First-time Elected Judge**

##### **Article 62**

The office of a first-time elected judge who is not elected to permanent function ends with the expiry of the three-year term of office.

#### **6. Dismissal**

##### **Reasons for Dismissal**

##### **Article 63**

A judge is dismissed if convicted for an offence carrying imprisonment sentence of at least six months or for a punishable act that demonstrates that he/she is unfit for the judicial function; in case of incompetence, or due to a serious or repeated disciplinary offence.

A repeated disciplinary offence referred to in para 1 of this article shall mean responsibility for a disciplinary offence that is established for three times.

##### **NOTE:**

The last paragraph of this Article did not exist in the version of the Draft Law forwarded to the Judges' Association of Serbia for comments.

Hence the Judges' Association will comment on this provision verbally at the meeting on 21 February 2008.

#### **Specifically on Incompetent Discharge of Function**

##### **Article 64**

Incompetence shall mean inadequately successful performance of judicial function, i.e. if the judge's performance is evaluated as "unsatisfactory" based on the criteria for evaluation.

## **Power to Initiate and Initiating of Dismissal Procedure**

### **Article 65**

Anyone may launch an initiative for the dismissal of a judge.

The dismissal procedure may be instituted by the president of the court, the president of the directly higher court, the president of the Supreme Court of Cassation, the minister in charge of the judiciary, the bodies responsible for performance evaluation or the Disciplinary Commission.

The High Court Council shall determine reasons for dismissal.

#### **COMMENT:**

Powers of the minister in charge of the judiciary to institute dismissal proceedings are not in line with international standards and contrary to a previous ruling of the Constitutional Court of Serbia.

A court president, president of the directly superior court, president of the Supreme Court of Cassation, the body for performance evaluation of judges and the Disciplinary Commission, as well as the General Session of the Supreme Court of Cassation for the president of the Supreme Court of Cassation, should be granted the right to propose instituting of dismissal proceedings and not the right to institute these proceedings. The decision to institute proceedings must rest in the competence of the High Court Council.

#### **PROPOSAL:**

### **Article 59**

Any person may file an initiative for dismissal of a judge.

The High Court Council at the proposal of a court president, president of the directly superior court, president of the Supreme Court of Cassation and the minister with competence for the judiciary, the bodies for performance evaluation of judges and the Disciplinary Commission institutes proceedings and determines grounds for dismissal.

## **Proceedings before the High Court Council**

### **Article 66**

The High Court Council shall establish facts and make a decision in the proceedings closed to the public.

The High Court Council may request the necessary information from competent bodies and organizations.

The High Court Council shall carry out the proceedings and take a decision within 30 days from the date of delivering the act that initiates the proceedings.

The decision of the High Court Council must be reasoned.

#### **COMMENT:**

Paragraph 2 of this Article is redundant, as it implies that the High Court Council may request information necessary for decision taking from all who have such information. The formulation of this Article may be interpreted that the High Court Council may not request necessary information also from individuals.

The deadline of 30 days to carry out the proceedings and take decision is too short.

**PROPOSAL:**

**Proceedings before the High Court Council**

**Article 60**

The High Court Council shall establish facts and make a decision in the proceedings closed to the public.

The High Court Council is required to carry out the proceedings and take a decision within 60 days from the date of delivering the act that initiates the proceedings.

The decision of the High Court Council must be reasoned.

**The Position of the Judge in the Proceedings**

**Article 67**

The judge has the right to be immediately notified of the reasons for initiating the proceedings, to be aware of the content of the case, supporting documentation and the course of the proceedings and to provide explanation and evidence for his/her statements, in person or through a representative.

The judge has the right to present his/her statements in person before the High Court Council.

**Appeal with the Constitutional Court**

**Article 68**

The judge and persons or bodies referred to in article 59, para 2 are entitled to file an appeal against the decision of the High Court Council to the Constitutional Court, within 30 days of the delivery of the decision.

The Constitutional Court may reject the appeal or uphold the appeal and set aside the decision on dismissal.

The decision of the Constitutional Court is final.

**NOTE:**

Paragraph 1 is altered in respect of the version of the Draft Law forwarded to the Judges' Association of Serbia for comments, in the part where the right to appeal the decision of the High Court Council is granted also to persons and/or bodies specified in Article 59, paragraph 2.

Hence the Judges' Association will comment on this provision verbally at the meeting on 21 February 2008.

**Decision on Dismissal**

**Article 69**

A final decision on dismissal is published in the Official Gazette of the Republic of Serbia.

**Chapter 5**  
**PRESIDENT OF THE COURT**

**Requirements for the Election of the President of the Court**

**Article 70**

A person with at least three years in the permanent judge's function with the court of the same or higher instance and clear managerial and organizational skills, which is assessed based on the criteria set by the High Court Council, is eligible for the president of the court.

**Nomination of Candidates for the President of the Court**

**Article 71**

The High Court Council shall nominate two candidates for the president of the court.

Before presenting nominations, the High Court Council shall obtain opinion about the candidates from the session of all judges of the court whose president is being elected.

**COMMENT:**

The requirement that the High Court Council must propose two candidates for court president may create problems in practise. Namely, it is possible that only one candidate will apply or that only one of the applicants meets the requirements and criteria for election, hence the question of whether it is necessary in such cases to repeat the election procedure. A better solution is to grant the possibility to the High Court Council to, in such cases, nominate only one candidate.

**PROPOSAL:**

**Nomination of Candidates for the President of the Court**

**Article 65**

The High Court Council shall nominate two candidates for the president of the court except when it assesses that only one candidate meets the requirements and criteria for election.

Before presenting nominations, the High Court Council shall obtain opinion about the candidates from the session of all judges of the court whose president is being elected.

**Election of the President of the Court**

**Article 72**

The National Assembly shall elect one of the two candidates who are proposed by the High Court Council.

The judge who is elected as president of the court shall perform judge's function in that court.

**COMMENT:**

With regard to the comment from the preceding Article it should be stipulated that the National Assembly elects the court president on basis of the proposal of the High Court Council and not one of the two nominated candidates.

**PROPOSAL:**

**Election of the President of the Court**

**Article 66**

The National Assembly shall elect the court president on basis of the proposal of the High Court Council.

The judge who is elected as president of the court shall perform judge's function in that court.

**Term of Office**

**Article 73**

The president of the court is elected for a four-year period and may be re-elected. The term of office runs from the day of taking office.

**Acting President of the Court**

**Article 74**

When the term of office of the president of the court ends, the High Court Council shall promptly propose candidates for the election of the president.

When the term of office of the president of the court ends, the president of the directly higher court shall designate a judge who will perform the function of president until such time as the new president takes office, and not later than one year.

The General Session of the Supreme Court of Cassation shall designate a judge who will perform the function of the president of that court.

**Termination of Office of the President of Court**

**Article 75**

The office of the president of the court ends due to the end of judge's function, election as a judge of other court, upon personal request, with the end of the term of office, and dismissal from the position of the president of court.

The National Assembly decides on the termination of office of the president of court.

**Reasons for the Dismissal of the President of Court**

**Article 76**

The president of court shall be dismissed in the case of the violations of obligations set out by the provisions governing court administration; violations of the



autonomy of judges; violations of rules on allocation of cases; deviating from the rules on the annual calendar of judges; due to a serious disciplinary offence or incompetence.

The president of court is considered to be incompetent if his/her performance is evaluated as „unsatisfactory“ based on the criteria for evaluation of presidents of courts.

## **Proceedings to Establish Reasons for Dismissal of the President of Court**

### **Article 77**

Anyone may launch an initiative for the dismissal of the president of court.

The proceedings for establishing the reasons for dismissal are conducted by the High Court Council.

The proceedings are initiated by the president of the directly higher court, the session of all judges whose president is concerned, the minister in charge of the judiciary, the body responsible for performance evaluation or the Disciplinary Commission.

The president of the court and/or other persons who initiated dismissal have the right to file an appeal to the Constitutional Court against the decision on the reasons for dismissal.

#### **COMMENT:**

The minister in charge of the judiciary should not be granted the powers to initiate instituting of procedure for dismissal of court president on all grounds for dismissal, but only for violation of the duties established by court administration regulations.

#### **PROPOSAL:**

### **Proceedings to Establish Reasons for Dismissal of the President of Court**

#### **Article 71**

Anyone may launch an initiative for the dismissal of the president of court.

The proceedings for establishing the reasons for dismissal are conducted by the High Court Council.

The proceedings to establish reasons for dismissal are initiated by the president of the directly higher court, the session of all judges whose president is concerned, the minister in charge of the judiciary, the body responsible for performance evaluation of court presidents and the Disciplinary Commission.

The minister in charge of the judiciary may give a proposal to conduct proceedings specified in paragraph 2 of this Article for violation of duties established by court administration regulations.

The court president may n appeal the decision determining reasons for dismissal with the Constitutional Court.

#### **NOTE:**

The last paragraph of this Article did not exist in the version of the Draft Law forwarded to the Judges' Association of Serbia for comments.

Hence the Judges' Association will comment on this provision verbally at the meeting on 21 February 2008.

## **Decision on Dismissal of the President of Court**

### **Article 78**

The National Assembly shall issue the decision on dismissal of the president of court, following the proposal of the High Court Council, and after the completion of the proceedings for establishing the reasons for dismissal.

## **Status after Termination of Office of the President of Court**

### **Article 79**

The president of court who is not re-elected, who is dismissed or who resigns shall continue to carry out judge's function.

After the termination of office of the judge of a higher court who is elected president of a lower court, he /she has the right to continue judge's function in the higher court.

## **President of the Supreme Court of Cassation**

### **Article 80**

The National Assembly shall elect the president of the Supreme Court of Cassation from among the judges of that court, upon the recommendation of the High Court Council and following the opinion of the General Session of that court and the relevant committee of the National Assembly.

The president of the Supreme Court of Cassation is elected to a five-year term of office without the possibility of re-election.

The office of the President of the Supreme Court of Cassation shall end earlier if he/she requests so, with the end of judge's function, or dismissal based on the reasons prescribed by this Law pertaining to the president of court.

The General Session shall submit the proposal to initiate the dismissal proceedings for the president of the Supreme Court of Cassation.

The High Court Council shall conduct the proceedings to establish the reasons for dismissal and make a decision.

The president of the Supreme Court of Cassation has the right to file an appeal to the Constitutional Court against the decision establishing reasons for dismissal.

The National Assembly shall issue the decision on dismissal of the president of the Supreme Court of Cassation, following the proposal of the High Court Council.

The decision on the termination of office of the president of the Supreme Court of Cassation caused by other reasons is taken by the National Assembly.

## **Application of Provisions on Judges**

### **Article 81**

The provisions of this Law related to the election and dismissal of judges also apply to the election and dismissal of the president of court.

Other provisions of this Law concerning judges also apply to the president of court.

## **Chapter 6**

### **SPECIAL PROVISIONS ON LAY JUDGES**

#### **Requirements for Appointment and Duration of Office**

##### **Article 82**

A lay judge is required to be a national of the Republic of Serbia, who turned 26 years of age and is worthy of the function of lay judge.

The things considered when appointing a lay judge are sex, age, profession and social status, knowledge, competence, and affinities for specific type of matter.

A lay judge is appointed to a period of five years and may be re-appointed.

#### **COMMENT:**

As a lay judge has the same rights as a judge in decision taking it is consequently necessary to stipulate, as a guarantee of independence and impartiality, that a lay judge may not be a member of a political party or be active politically in public.

Skills, competence and affinities for specific types of judicial matters should not be circumstances of import for appointment of lay judges, as they are not appointed for these traits but as representatives of the general public.

#### **PROPOSAL:**

#### **Requirements for Appointment and Duration of Office**

##### **Article 76**

A lay judge is required to be a national of the Republic of Serbia, who turned 26 years of age and is worthy of the function of lay judge.

A lay judge may not be a member of a political party nor a person who has acted politically in public.

In appointment consideration shall be given to sex, age, occupation and social status of candidate.

A lay judge is appointed to a period of five years and may be re-appointed.

#### **Procedure for Appointment**

##### **Article 83**

The High Court Council appoints lay judges upon the proposal of the minister in charge of the judiciary.

Before making the proposal, the minister shall obtain the opinion from the court to which the lay judge is to be appointed.

#### **COMMENT:**

The obligation of the minister referred in paragraph 2 to obtain, prior to making the proposal, the opinion from the court to which a lay judge is to be appointed has no practical significance as these candidates are not known to the court. It would be logical that such information is obtained from the communities from which the candidates come,

while the opinion of the court would be sought only when they have already discharged the function of lay judge in that court.

**PROPOSAL:**

**Procedure for Appointment**

**Article 77**

The High Court Council appoints lay judges upon the proposal of the minister in charge of the judiciary.

Before making the proposal, the minister obtains, in an appropriate manner, the opinion on the candidates from the communities from which they come and in case of re-election the opinion of the court in which the candidate has served as a lay judge is mandatory.

**Oath**

**Article 84**

A lay judge shall take an oath before the president of the court.

The oath reads as follows: „I do solemnly swear that I will discharge my duties in compliance with the Constitution and the law, scrupulously, dedicatedly, and impartially.”

**Suspension from Function**

**Article 85**

The president of court shall suspend a lay judge from office in case that criminal proceedings have been instituted against him for an offence due to which he/she may be dismissed, or if dismissal proceedings have been instituted.

The suspension lasts until the completion of the proceedings.

**Incompatibility with other Jobs, Engagements and Activities**

**Article 86**

A lay judge may not be an attorney-at-law or extend legal services or advice for a fee.

Other jobs, engagements and activities that are contrary to the dignity and independence of a judge or harmful to the reputation of the court are also incompatible with the office of a lay judge.

**Termination of Office**

**Article 87**

The office of a lay judge terminates if the court where he/she works is abolished, in case of dismissal, or with the end of the term of office.

The proceedings to establish the reasons for termination of office of a lay judge are initiated by the president of the court, president of the directly higher court, president of the Supreme Court of Cassation, and the minister in charge of the judiciary.

The High Court Council shall conduct the proceedings and take a decision.

**COMMENT:**

Persons referred in paragraph 2 of this Article may only propose instituting of proceedings and not institute proceedings for termination of office which is under the competence of the High Court Council. The minister in charge of the judiciary should not have such powers.

**PROPOSAL:**

**Termination of Office**

**Article 81**

The office of a lay judge terminates if the court where he/she works is abolished, in case of dismissal, or with the end of the term of office.

The proposal to institute proceedings to establish the reasons for termination of office of a lay judge is made by the president of the court, president of the directly higher court, president of the Supreme Court of Cassation, and the minister in charge of the judiciary.

The High Court Council shall institute, conduct the proceedings and take a decision.

**Reimbursement and Rewards for Lay Judges**

**Article 88**

A lay judge is entitled to the reimbursement of costs incurred while performing function, compensation of lost earnings and reward.

The High Court Council shall define conditions for and the amount of the reimbursement and reward.

**Application of Provisions on Judges**

**Article 89**

Provisions on judges also apply to lay judges.

**Chapter 7**

**DISCIPLINARY ACCOUNTABILITY**

**Disciplinary Offence**

**Article 90**

A disciplinary offence is negligent performance of judge's function or conduct that is inappropriate for judge's function, which is provided by this Law.

## **Types of Disciplinary Offences**

### **Article 91**

Disciplinary offences are a violation of the principle of independence; failure of a judge to ask for disqualification in cases where there is the conflict of interest; unjustifiable delays in drafting of decisions; processing of cases in an order contrary to the order of reception; unjustifiable failure to schedule a hearing; frequent tardiness for hearings; apparently incorrect treatment of the participants to the proceedings and the court staff; incompliance with the working hours; acceptance of gifts contrary to the regulations on the conflict of interest; engaging into inappropriate relations with parties to the proceedings and their legal representatives; engaging into activities that are incompatible with the judge's function under the law; unjustified prolonging of the proceedings; unjustified non-attendance of mandatory training programmes; provision of incomplete or incorrect information relevant for the work and decision-making of the High Court Council; unjustifiable change in the annual judges' agenda, and the violation of the principle of natural order of judge in cases other than provided by the law.

A severe disciplinary offence is an offence that caused a serious disruption in the exercise of judicial power or regular duties at the court or a severe damage to the dignity of the court or public trust in the judiciary, and in particular if it results in the statute of limitations due to negligent performance of duty.

#### **COMMENT:**

Transpiring of limitation of criminal prosecution should not in itself represent a serious disciplinary offence but should be so treated if occurring due to negligent performance of duty by the judge. If qualified circumstances specified in paragraph 2 of this Article transpire, then such an offence could be qualified as serious disciplinary offence.

#### **PROPOSAL:**

## **Types of Disciplinary Offences**

### **Article 85**

Disciplinary offences are: violation of the principle of impartiality; failure of a judge to ask for disqualification in cases where there is the conflict of interest; transpiring of limitations of criminal prosecution due to negligent performance of duty by a judge, recurrent and unjustifiable delays in drafting of decisions; processing of cases in an order contrary to the order of reception; unjustifiable failure to schedule a hearing; frequent lateness for scheduled hearings; apparent incorrect treatment of the participants to the proceedings and the court staff; acceptance of gifts contrary to the regulations on the conflict of interest; engaging into inappropriate relations with parties to the proceedings and their legal representatives; engaging into activities that are incompatible with the judge's function; provision of incomplete or incorrect information relevant for the work and decision-making of the High Court Council; unjustifiable change in the annual judges' agenda, and the violation of the principle of natural order of judge in cases other than provided by the law.

A severe disciplinary offence is an offence that caused a serious disruption in the exercise of judicial power or regular duties at the court or a severe damage to the dignity of the court or public trust in the judiciary.

## **Disciplinary Sanctions**

### **Article 92**

Disciplinary sanctions are as follows: public caution, salary reduction up to 30% for a period not exceeding one year, transfer of the judge to another court of the same type and the same or lower instance that is at least 50 kilometres from the court he/she was assigned to, for a period not exceeding one year.

A public caution may be pronounced only in the case of the first disciplinary offence.

A disciplinary sanction is imposed in proportion to the gravity of the offence.

The information about the disciplinary sanction is entered in the judge's personal record.

A fine is enforced in an administrative procedure.

#### **NOTE:**

This article is significantly changed in respect of the one contained in the version of the Draft Law forwarded to the Judges' Association of Serbia for comments.

Hence the Judges' Association will comment on this provision verbally at the meeting on 21 February 2008.

## **Instituting of Dismissal Proceedings**

### **Article 93**

If the Disciplinary Commission establishes the responsibility of a judge for a serious or repeated offence referred to in article 63, para 2 hereof, it shall institute dismissal proceedings.

#### **COMMENT:**

See comment under Articles 63 and 91.

#### **PROPOSAL:**

### **Instituting of Dismissal Proceedings**

#### **Article 87**

The Disciplinary Commission institutes proceeding for dismissal of a judge upon determining liability of a judge for serious disciplinary offence.

## **Disciplinary Bodies**

### **Article 94**

Disciplinary bodies are the Disciplinary Prosecutor, deputy prosecutors and the Disciplinary Commission, which are set by the High Court Council.

The High Court Council shall appoint the members of the disciplinary bodies from among the ranks of judges.

The High Court Council shall publish an act stipulating the requirements for the appointment, duration of the term of office and manner of termination of office, the method of work and decision-making of the disciplinary bodies.

## **Disciplinary Proceedings**

### **Article 95**

The Disciplinary Commission shall conduct disciplinary proceedings following the proposal of the Disciplinary Prosecutor.

The Disciplinary Prosecutor shall file a motion to initiate disciplinary proceedings based on disciplinary charges that may be filed by anyone.

Disciplinary proceedings are urgent and closed to the public, unless the judge charged does not request that the proceedings be open to the public.

Disciplinary proceedings are subject to limitation after one year.

#### **COMMENT:**

In addition to the limitations period for conducting disciplinary proceedings it is necessary to also stipulate timeframes for instituting disciplinary proceedings.

#### **PROPOSAL:**

## **Disciplinary Proceedings**

### **Article 89**

The Disciplinary Commission shall conduct disciplinary proceedings following the proposal of the Disciplinary Prosecutor.

The Disciplinary Prosecutor shall file a motion to initiate disciplinary proceedings based on disciplinary charges that may be filed by anyone.

Disciplinary proceedings are urgent and closed to the public, unless the judge charged does not request that the proceedings be open to the public.

The Disciplinary Prosecutor institutes proceedings within 3 months from the day

of becoming aware of the committed offence and not later than 6 months from the day of commission of the offence.

Disciplinary proceedings are subject to limitation after one year from the day of commission of the disciplinary offence.

#### **COMMENT:**

There are no final or transitional provisions to the law.

It will depend on prescribing of timeframes and manner for application of certain, particularly newly established, solutions (abolishing or reducing the prevalent jurisdiction of certain courts, possible reduction of the number of judges and their transfer,



performance evaluation, criteria, procedure and forming of departmental boards and/or possible other bodies to that end, establishing a system of disciplinary accountability) whether the new Law on Judges will realise the desired strategic reform objectives.

Clearly, the transitional and final provisions could contain the recurrently announced solution on reelection of all judges. This solution would render pointless all the good solutions in the new Law on Judges. It could not be justified even by the technical interpretation of the Constitutional Law, s in any case erroneous, that is – as technical – subject to assessment of constitutionality and may not alter the essence of constitutional solutions..

### **Decisions of the Disciplinary Prosecutor**

#### **Article 96**

The Disciplinary Prosecutor may reject disciplinary charges as ill-founded or uphold the charges and file the motion for disciplinary proceedings.

### **The Rights of the Judge under Disciplinary Proceedings**

#### **Article 97**

The judge has the right to be promptly notified of the motion of the Disciplinary Prosecutor, to examine the case file and supporting documentation, and to present explanations and evidence for his/her statements, in person or through a representative.

The judge has the right to verbally present his/her statements before the Disciplinary Commission.

### **Decisions of the Disciplinary Commission**

#### **Article 98**

Having completed the disciplinary proceedings, the Disciplinary Commission may reject the motion of the disciplinary prosecutor or uphold the motion and impose a disciplinary sanction.

The Disciplinary Prosecutor and the judge who is subject to disciplinary proceedings may file an appeal to the High Court Council, within 8 days of the delivery of the decision.

### **Decisions of the High Court Council**

#### **Article 99**

The High Court Council may either uphold or reverse the first-instance decision of the Commission.

The High Court Council shall decide on the appeal within 30 days of receiving the appeal.

The decision of the High Court Council is final.

The final decision on the imposition of a disciplinary sanction is entered in the personal record of the judge.