

Pursuant to Article 82, paragraph 1, Item 2 of the Constitution of Montenegro and Amendment IV, paragraph 1 to the Constitution of Montenegro, the 25<sup>th</sup> Parliament of Montenegro, at its sitting of the first extraordinary session in 2015, held on 26 February 2015, adopted the

## **LAW ON JUDICIAL COUNCIL AND JUDGES**

### **I. BASIC PROVISIONS**

#### **Subject Matter**

##### **Article 1**

The present Law shall regulate the manner of appointment and termination of office of the members of the Judicial Council, the organization and manner of work of the Judicial Council, the procedure for the appointment of judges and lay judges, rights and duties, the manner of determining the termination of judicial office, disciplinary liability and dismissal of judges and lay judges and other issues decided upon by the Judicial Council.

#### **Independence and Autonomy**

##### **Article 2**

Judges shall adjudicate and decide independently and autonomously.

The judicial office shall not be exercised under anyone's influence.

No one shall influence judges in the exercise of judicial office.

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

#### **Members of Judicial Council**

##### **Article 3**

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

In performing their duties, members of the Judicial Council shall act independently and impartially.

In the nomination and appointment of members of the Judicial Council, **national** and gender-balanced representation shall be taken into account.

#### **Public Nature of Work**

##### **Article 4**

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

#### **Rights of Judges**

##### **Article 5**

Judges shall exercise their right to salary and other **rights arising from work and based on work in accordance with the law.**

Judges shall have the right and duty to develop professionally.

Judges shall have the right to professional association.

#### **Means for Work**

##### **Article 6**

Means for work of the Judicial Council shall be provided in the Budget of Montenegro.

The Judicial Council shall dispose of the funds referred to in paragraph 1 of this Article independently.

**Seat**  
**Article 7**

The seat of the Judicial Council shall be in Podgorica.

**Use of Gender-Sensitive Language**  
**Article 8**

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

**II. JUDICIAL COUNCIL**

**1. *The Manner of Appointment and Termination of Office of Members of the Judicial Council***

**Jurisdiction of the Conference of Judges**  
**Article 9**

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

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

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

**Decision-Making by the Conference of Judges**  
**Article 10**

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

The President of the Supreme Court of Montenegro shall convene a session of the Conference of Judges and shall manage its work.

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

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

The Conference of Judges shall adopt its Rules of Procedure, regulating the manner of work and decision-making in more details.

**Commission for Code of Ethics for Judges**  
**Article 11**

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

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

Anyone may address the Commission for Code of Ethics for Judges for an opinion whether the certain conduct of judges is in accordance with the Code of Ethics for Judges.

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

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

The Commission referred to in paragraph 1 of this Article shall adopt its Rules of Procedure, regulating the manner of work and decision-making in more details.

## **Composition of the Judicial Council from among the Judges**

### **Article 12**

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

1) Three members from among the judges of the Supreme Court of Montenegro (hereinafter: the Supreme Court), the Appellate Court of Montenegro (hereinafter: the Appellate Court), the Administrative Court of Montenegro (hereinafter: the Administrative Court), High Misdemeanour Court of Montenegro (hereinafter: the High Misdemeanour Court), Commercial Court of Montenegro (hereinafter: the Commercial Court) and High Courts, having at least ten years of work experience as judges;

2) One member from among the judges of the Basic Courts and Misdemeanour Courts, having at least five years of work experience as judges.

A judge who received a grade of not satisfactory or who was pronounced a disciplinary sanction may not be appointed as a member of the Judicial Council from among the judges.

## **Commission for Appointment**

### **Article 13**

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

The Commission for Appointment shall have a chairman and two members who are selected from among the judges by the enlarged session of the Supreme Court, at the proposal of the session of judges of all courts.

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

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

## **Proposal for Appointment of Members of the Judicial Council from among the Judges**

### **Article 14**

The Proposal of candidates for the appointment of members of the Judicial Council referred to in Article 12, paragraph 1, item 1 of the present Law shall be determined:

1) At a special session of judges of the Supreme Court, in which two candidates from that court shall be nominated;

2) At special sessions of judges of the Appellate Court, Administrative Court, High Misdemeanour Court, Commercial Court and High Courts, in which one candidate shall be nominated from these courts, respectively.

A list of eight candidates referred to in paragraph 1 of this Article shall be prepared, in alphabetical order, by the Commission for Appointment, based on the notice of nominated candidates.

In order to determine the proposal of candidates for the appointment of members of the Judicial Council referred to in Article 12, paragraph 1, item 2 of the present Law, the Commission for Appointment shall obtain from each president and judge of Misdemeanour Courts and Basic Courts an initial proposal containing the nomination of two candidates, in a manner that ensures confidentiality of the initial proposal.

A list of four candidates who received the highest number of initial proposals referred to in paragraph 3 of this Article shall be compiled by the Commission for Appointment, in alphabetical order.

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

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

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

### **Appointment of Members of the Judicial Council from among the Judges**

#### **Article 15**

Lists of candidates for the appointment of members of the Judicial Council prepared in accordance with Article 14 of the Present Law shall be submitted to all courts for posting on the bulletin board of the court, no later than two months prior to the expiry of the term of office of members of the Judicial Council.

The Conference of Judges shall be convened by the President of the Supreme Court, no later than 30 days before the expiry of the term of office of the members of the Judicial Council.

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

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

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

### **Appointment of Members from among Eminent Lawyers**

#### **Article 16**

A person, who has at least fifteen years of work experience on legal affairs and enjoys personal and professional reputation and **was not convicted of criminal offences that render judges unworthy for the exercise of judicial office in accordance with the present Law**, may be appointed as a member of the Judicial Council from among eminent lawyers.

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

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

The deadline for applications by candidates shall be 15 days from the announcement of the public call.

On the website of the Parliament, the competent working body of the Parliament shall publish a list of applicants, which shall be available to the public at least ten days from the date of publication.

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

The proposal for the appointment referred to in paragraph 6 of this Article shall contain as many candidates as members of the Judicial Council appointed.

### **Ban on Appointment to Judicial Office**

#### **Article 17**

During the mandate in the Judicial Council, a member of the Judicial Council from among the judges may not be appointed to a higher court or as the court president, and a member of the Judicial Council from among eminent lawyers may not be appointed as a judge or court president.

### **Re-Appointment Article 18**

A member of the Judicial Council from among the judges or eminent lawyers may be re-appointed as a member of the Judicial Council after the expiry of four years from the termination of the previous mandate in the Judicial Council.

### **Termination of Mandate Article 19**

The mandate of a Judicial Council member shall terminate prior to the expiration of the term for which he / she was appointed if:

- 1) The office on the basis of which he / she was appointed to the Judicial Council terminates;
- 2) He / she resigns;
- 3) He / she is convicted to an unconditional prison sentence.

In the case referred to in paragraph 1, item 1 of this Article, the mandate of a member of the Judicial Council shall terminate on the date of termination of the office on the basis of which he / she was appointed to the Judicial Council.

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

In the case referred to in paragraph 1, item 3 of this Article, the mandate of a member of the Judicial Council shall terminate on the date when the conviction becomes final and enforceable.

The Judicial Council shall acknowledge the termination of the mandate of a member of the Judicial Council and shall inform the authority that appointed him / her thereof.

### **Dismissal Article 20**

A member of the Judicial Council shall be dismissed if:

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

Unconscientious and unprofessional performance of duties referred to in paragraph 1, item 1 of this Article shall be deemed to mean an action of a member of the Judicial Council that is contrary to the statutory powers, as well as non-fulfilment of statutory duties.

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

A member of the Judicial Council from among the judges shall also be dismissed in the case when he / she is pronounced a disciplinary sanction.

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

The mandate of a member of the Judicial Council shall terminate on the date when the authority that has appointed him / her dismisses him / her.

The procedure of dismissal of a member of the Judicial Council shall be governed by the provisions of the present Law governing the procedure for establishing disciplinary liability of judges.

## **Mandate in the Case of Termination and Dismissal**

### **Article 21**

In the case of termination of mandate of a member of the Judicial Council from among the judges before the expiry of the period for which he / she was appointed, the procedure of nomination of candidates for the vacant position of the member of the Judicial Council shall be conducted in accordance with Article 14 and 15 of the present Law.

In the case of termination of mandate of a member of the Judicial Council appointed by the Parliament, before the expiry of the period for which he / she was appointed, the Parliament shall appoint a new member of the Judicial Council, in accordance with Article 16 of the present Law.

The mandate of a member of the Judicial Council who was appointed in accordance with paragraphs 1 and 2 of this Article shall terminate on the date of termination of the mandate of the Judicial Council.

## **Temporary Suspension**

### **Article 22**

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

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

A member of the Judicial Council from among judges may be temporarily removed from duty if the proceedings for establishing disciplinary liability were launched against him / her, pending the final and enforceable completion of the disciplinary proceedings.

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

## **Absence from Work and Compensation**

### **Article 23**

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

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

Members of the Judicial Council from among the judges may, for the purpose of performing the duties in the Judicial Council, on the basis of a decision of the Judicial Council, work up to 70% of their working time during a year in the Judicial Council. The decision of the Judicial Council shall determine the duties performed by members in the Judicial Council.

In the case referred to in paragraph 3 of this Article, the workload of judges in the court in which they work may be reduced to an adequate extent.

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

## **2. Organization and Manner of Work**

### **Sessions of the Judicial Council**

## **Article 24**

The Judicial Council shall work and decide in sessions.

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

## **The President of the Judicial Council**

### **Article 25**

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

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

## **Commissions**

### **Article 26**

In order to effectively perform its duties under its jurisdiction, the Judicial Council may establish commissions.

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

Members of commissions and the Commission for Code of Ethics for Judges shall be entitled to compensation for work in the amount determined by the Judicial Council, up to 40% of average gross salary in Montenegro in the previous year, **if they are not members of the Judicial Council.**

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

## **Powers of the Judicial Council**

### **Article 27**

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

- 1) Decide on disciplinary liability of judges and court presidents;
- 2) Provide for the use, functionality and uniformity of the judicial information system, in the part referring to the courts;
- 3) Take care of the training of judges and court presidents;
- 4) Keep records of data on judges and court presidents;
- 5) Consider complaints against the work of judges and court presidents;
- 6) Inspect complaints of judges and take positions regarding threats to their independence and autonomy;
- 7) Propose framework criteria on the necessary number of judges and other civil servants and state employees in courts;
- 8) Issue opinions on the incompatibility of performing certain duties with the exercise of judicial office;
- 9) Form the Commission for Appraisal of Judges;
- 10) Appoint the disciplinary prosecutor;
- 11) Adopt the Rules of Procedure of the Judicial Council;
- 12) Determine the methodology for preparation of reports on work of courts and the annual work distribution in court;
- 13) Issue official identity cards of judges and court presidents and keep records of official identity cards;
- 14) Issue opinions on draft regulations in the field of judiciary;
- 15) Perform other tasks prescribed by law.

## **Decision on the Number of Judges**

### **Article 28**

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

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

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

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

## **Rules of Procedure of Judicial Council**

### **Article 29**

The Judicial Council shall issue Rules of Procedure governing the issues prescribed by the present Law and other issues of importance for the organization of work of the Judicial Council.

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

### **Decision**

### **Article 30**

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

When making a decision on the appointment of judges and court presidents, the Judicial Council shall take into account the proportional representation of minorities and other minority communities and gender-balanced representation.

## **Annual Report**

### **Article 31**

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

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

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

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

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

## **Relation between the Judicial Council and Courts**

### **Article 32**

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

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

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

## **III. APPOINTMENT OF JUDGES AND COURT PRESIDENTS**



## ***1. Appointment of the President of the Supreme Court***

### **Conditions for Appointment of the President of the Supreme Court**

#### **Article 33**

A person may be appointed as the President of the Supreme Court if he / she:

- 1) Meets the general conditions for a judge;
- 2) Has at least 15 years of work experience as a judge or public prosecutor;
- 3) Is characterized by professional impartiality, high professional and moral qualities.

### **Public Announcement**

#### **Article 34**

Two months before the expiry of the term of office of the President of the Supreme Court or immediately after the termination of office or dismissal of the President of the Supreme Court, the Judicial Council shall announce the vacancy for the position of President of the Supreme Court in the Official Gazette of Montenegro and one of the print media based in Montenegro.

The procedure of application of candidates for the President of the Supreme Court shall be governed by the provisions of Article 46 of the present Law.

### **Proposal for Appointment of the President of the Supreme Court**

#### **Article 35**

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

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

After the interview referred to in paragraph 2 of this Article, the General Session of the Supreme Court shall, by secret ballot, determine the proposal for appointment of the President of the Supreme Court, in accordance with the law governing the organization of courts.

The proposal for the appointment of the President of the Supreme Court referred to in paragraph 3 of this Article shall contain one candidate and shall be reasoned.

### **Appointment of the President of the Supreme Court**

#### **Article 36**

The General Session of the Supreme Court shall submit the proposal for the appointment of the President of the Supreme Court referred to in Article 35, paragraph 4 of the present Law to the Judicial Council.

The Judicial Council shall conduct an interview with the proposed candidate.

On the basis of the interview conducted and the proposal referred to in paragraph 1 of this Article, the Judicial Council shall make a decision on the appointment of the President of the Supreme Court.

Upon expiration of the term for which he / she was appointed and the termination of office of the President of the Supreme Court at his / her own request, the President of the Supreme Court shall remain as a judge in the Supreme Court.

## ***2. Conditions for Appointment of Judges and Court Presidents***

### **General Conditions**

#### **Article 37**

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

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

## **Special Conditions for Judges**

### **Article 38**

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

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

A person may be appointed as a judge of the Commercial Court if he / she, after passing the bar exam, worked for at least three years as an adviser in court or public prosecution office, or at least three years as an attorney, notary or Professor of Law, or at least four years on other legal matters.

A person may be appointed as a judge of the Administrative Court if he / she worked for at least **eight years** as a judge, public prosecutor, attorney, notary, Professor of Law, or on other legal matters.

A person may be appointed as a judge of the High Misdemeanour Court if he / she works as a judge or a misdemeanour judge, or as a public prosecutor, for at least **four years**.

A person may be appointed as a judge of the High Court if he / she works as a judge or public prosecutor for at least eight years.

A person may be appointed as a judge of the Appellate Court if he / she works as a judge or public prosecutor for at least ten years.

A person may be appointed as a judge of the Supreme Court if he / she works as a judge or public prosecutor for at least fifteen years.

Notwithstanding paragraph 8 of this Article, a person may be appointed as one of the judges of the Supreme Court if he / she has at least 20 years of work experience as a judge, public prosecutor, attorney, notary, Professor of Law or on other legal matters.

## **Special Conditions for Court Presidents**

### **Article 39**

A person may be appointed as a court president if he / she, in addition to the general conditions referred to in Article 37 of the present Law, has the following total work experience:

1) Six years of work experience on legal matters, of which a minimum of three years as a judge or prosecutor – for a President of Misdemeanour Court;

2) Eight years of work experience on legal matters, of which a minimum of four years as a judge or prosecutor – for a President of Basic Court;

3) Eight years of work experience on legal matters, of which a minimum of four years as a judge, prosecutor or misdemeanour judge – for the President of the High Misdemeanour Court;

4) Ten years of work experience on legal matters, of which a minimum of five years as a judge or prosecutor – for the President of the Commercial Court;

5) Twelve years of work experience on legal matters, of which a minimum of eight years as a judge or prosecutor – for a President of High Court;

6) **Twelve years** of work experience on legal matters, of which a minimum of **five** years as a judge or prosecutor – for the President of the Administrative Court;

7) Sixteen years of work experience on legal matters, of which a minimum of twelve years as a judge or prosecutor – for the President of the Appellate Court.

A judge or court president or public prosecutor who received a good or excellent grade in the procedure of work appraisal may be appointed as a court president, in accordance with the present Law.

### ***3. Procedure of Appointing a Court President***

#### **Work Programme**

##### **Article 40**

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

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

#### **Criteria for Appointment of a Court President**

##### **Article 41**

The criteria for appointment of a court president shall be:

- 1) Assessment of the work programme;
- 2) Appraisal of work as a judge, public prosecutor or court president;
- 3) Assessment of the interview with the candidate.

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

On the basis of a good grade in the process of work appraisal, a candidate for court president may achieve 30 points, and on the basis of an excellent grade in the process of work appraisal, 40 points.

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

If two candidates have the same number of points, preference will be given to the candidate who has achieved a higher number of points based on work appraisal.

#### **Appointment of a Court President**

##### **Article 42**

The same person may be appointed as the president of the same court for a maximum of two times.

Upon expiration of the term for which he / she was appointed, the termination of office of the court president at his / her own request or due to dissolution or merger of the courts, as well as in the case of the dismissal of the court president, the court president shall remain in that court as a judge.

#### **Appropriate Implementation**

##### **Article 43**

The procedure of public announcement, application of candidates, conducting interviews, determining the list of candidates and making the decision on appointment of the court president shall be appropriately governed by the provisions of the present Law governing the procedure for the appointment of judges to the Basic Court.

### ***4. Plan of Vacant Positions for Judges***

#### **Content and Manner of Adoption**

##### **Article 44**

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

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

The Plan of Vacancies shall be made on the basis of assessment of the need for filling the positions of judges through the voluntary transfer of judges, promotion and public notices for the first appointment of judges in Misdemeanour Courts, Basic Courts, the Commercial Court and the Administrative Court, as well as for **one position** of a judge of the Supreme Court referred to in Article 38, paragraph 9 of the present Law.

The Plan of Vacancies shall be passed by the Judicial Council, no later than the end of the calendar year for the next two years.

The Plan of Vacancies may be amended if during a year circumstances change in respect of which an assessment was made for filling the vacant positions for judges referred to in paragraph 2 of this Article.

## **5. Procedure of Appointment of Basic Court Judges**

### **Public Announcement of Vacancies**

#### **Article 45**

Vacant positions for judges in Basic Courts shall be filled through an internal announcement for voluntary transfer of judges from one Basic Court to another.

If the vacant positions for judges are not filled in accordance with paragraph 1 of this Article, the judges in Basic Courts shall be appointed on the basis of a public announcement.

The Judicial Council shall publish the public announcement for filling vacant positions for judges in Basic Courts at the level of Montenegro in the Official Gazette of Montenegro and one of the print media based in Montenegro.

### **Application to Public Announcement**

#### **Article 46**

An application to public announcement shall, along with evidence of meeting the conditions for appointment of judges in the Basic Courts, be submitted to the Judicial Council within 15 days of the public announcement for filling the vacant positions for judges in the Basic Courts, using a form prescribed by the Judicial Council.

The Judicial Council shall dismiss untimely and incomplete applications.

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

### **Criteria for Appointment of Judges Appointed for the First Time**

#### **Article 47**

The criteria for appointment of judges appointed for the first time shall be:

- 1) Grade on the written test referred to in Article 48 of the present Law, or the grade on the bar exam, in accordance with the law governing the bar exam;
- 2) Evaluation of the interview with the candidate.

### **Written Testing**

#### **Article 48**

The Judicial Council shall conduct written testing of persons appointed as judges of Basic Court for the first time, who meet the statutory requirements and whose applications are timely and complete, through a commission consisting of three members of the Judicial Council, of which two from among the judges and one from among eminent lawyers.

Written testing shall not be conducted for the persons referred to in paragraph 1 of this Article who received grades at the bar examination.

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

**The written** test shall be answered under a code.

Assessment of the written test shall be performed by a certain number of points awarded for the decision form, the application of law and the rationale of the decision, in such

a manner that the maximum of 80 points may be achieved, of which up to 40 for drafting a decision in the criminal field and up to 40 for drafting a decision in the civil field.

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

The Judicial Council shall determine the grade at the written test.

Implementation of the written testing shall be governed by the Rules of Procedure of the Judicial Council.

### **Interview**

#### **Article 49**

The Judicial Council shall conduct an interview with persons who have achieved a score of more than 60 points in the written test or the bar exam.

At an interview, the following shall be evaluated:

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

Evaluation based on criteria referred to in paragraph 2 of this Article shall be exercised in such a manner that each member of the Judicial Council shall determine the number of points awarded to each person, where a person may achieve a maximum of 20 points at an interview.

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

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

**While conducting an interview, the Judicial Council may use the expert assistance of psychologists.**

### **Ranking List of Candidates for Judges**

#### **Article 50**

On the basis of grades in the written test or the bar exam and interview evaluation, the ranking list of candidates for judges shall be made (hereinafter: the ranking list), according to the number of points achieved.

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

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

### **Appointment and Assignment of Candidates for Judges**

#### **Article 51**

The Judicial Council shall make a decision on the appointment of as many candidates for judges as advertised vacancies for judges, according to the order from the ranking list, as well as on the assignment of candidates for judges to the initial training at the Basic Court in Podgorica.

### **Rights of Applicants**

#### **Article 52**

A person who applied for the public announcement for the appointment of judges in the Basic Court shall have the right to inspect the documents, written test and the grades of persons who have applied for this public announcement, within 15 days from the date of the decision on the assignment of candidates for judges.

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

## **Rights and Duties of Candidates for Judges**

### **Article 53**

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

A candidate for judge shall be entitled to a salary in the amount of 70% of the salary of the judges in Basic Court.

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

## **Initial Training**

### **Article 54**

Candidates for judge shall be required to complete the initial training consisting of theoretical and practical part and lasting 18 months.

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

Initial training shall be conducted according to the programme of initial training.

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

The grade of candidates for judge during the initial training shall be awarded by the Judicial Council, based on the reports of the legal person authorized for the training of judges and the mentor on the training conducted.

Grades referred to in paragraph 5 of this Article may be satisfactory or not satisfactory, and shall be reasoned.

Initial training programme and the method of assessing candidates for judge shall be conducted, and the conditions for the selection of mentors shall be prescribed, in accordance with the law governing the training of judges.

## **Decision on Appointment**

### **Article 55**

A candidate for judge who has received a satisfactory grade at the initial training shall be appointed as the Basic Court judge by the Judicial Council.

A candidate for judge shall exercise the right to choose the Basic Court in which he / she will be assigned according to the order in the ranking list referred to in Article 50 of the present Law.

The Judicial Council shall adopt the decision on the assignment of appointed judges to the Basic Courts on the basis of the right of choice of candidates referred to in paragraph 2 of this Article.

The employment of a candidate for judge who receives a not satisfactory grade at the initial training shall be terminated by force of law, on the date of the finality of the decision on evaluation.

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

## **6. Appointment of Misdemeanour Court Judges**

### **Public Announcement**

#### **Article 56**

Vacant positions for judges in Misdemeanour Courts shall be filled through an internal announcement for voluntary transfer of judges from one Misdemeanour Court to another.

The Judicial Council shall issue the public announcement for positions of judges in the Misdemeanour Courts in accordance with the Plan of Vacancies.

The procedure of public announcement, submitting applications and acting upon applications, as well as the rights of applicants, shall be appropriately governed by provisions of Articles 45, 46 and 52 of the present Law.

### **Written Testing**

#### **Article 57**

Written testing of persons whose applications for judges of the Misdemeanour Courts are timely and complete shall encompass drafting a decision within the jurisdiction of the Misdemeanour Courts.

The procedure of implementation of the written test, interview and evaluation of the persons referred to in paragraph 1 of this Article shall be appropriately governed by provisions of Articles 48 and 49 of the present Law.

### **Decision on Appointment of Candidates for Judges**

#### **Article 58**

Based on the evaluation of the written test or the bar exam and the interview, according to the criteria referred to in Article 47 of the present Law, a ranking list of candidates for judges of the Misdemeanour Courts shall be prepared.

A candidate for judge of the Misdemeanour Court shall have the same rights and duties as a candidate for judge of the Basic Court.

The procedure of preparing the ranking list referred to in paragraph 1 of this Article, adoption of the decision on appointment and the **assignment** of candidates for judges of the Misdemeanour Court shall be appropriately governed by provisions of Articles 50 and 55 of the present Law.

### **Initial Training**

#### **Article 59**

Candidates for judges of the Misdemeanour Court shall be required to complete the initial training consisting of theoretical and practical part and lasting for nine **months**.

The programme and implementation of initial training, as well as the evaluation of initial training, shall be appropriately governed by provisions of Article 54 of the present Law.

### **Decision on Appointment**

#### **Article 60**

A candidate for judge of the Misdemeanour Court who has received a satisfactory grade at the initial training shall be appointed as the Misdemeanour Court judge by the Judicial Council.

A candidate for judge shall exercise the right to choose the Misdemeanour Court in which he / she will be assigned according to the order in the ranking list.

The Judicial Council shall adopt the decision on the assignment of appointed judges to the Misdemeanour Courts on the basis of the right of choice of candidates referred to in paragraph 2 of this Article.

The employment of a candidate for judge who receives a not satisfactory grade at the initial training shall be terminated by force of law, on the date of the finality of the decision on evaluation.

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

## **7. Appointment of Administrative Court and Commercial Court Judges**

### **Public Announcement**

#### **Article 61**

The Judicial Council shall issue the public announcement for positions of judges in the Administrative Court and Commercial Court in accordance with the Plan of Vacancies.

The procedure of public announcement, submitting applications and acting upon applications, as well as the rights of applicants, shall be appropriately governed by provisions of Articles 45, 46 and 52 of the present Law.

### **Written Testing**

#### **Article 62**

Written testing of persons whose applications for judges of the Administrative Court and Commercial Court are timely and complete shall encompass drafting a decision within the jurisdiction of the Administrative Court and the Commercial Court.

The procedure of implementation of the written test, interview and evaluation shall be appropriately governed by provisions of Articles 48 and 49 of the present Law.

### **Decision on Appointment of Candidates for Judges**

#### **Article 63**

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

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

A candidate for judge of the Administrative Court and Commercial Court shall have the same rights and duties as a candidate for judge of the Basic Court.

The procedure of **preparing** the ranking list referred to in paragraph 1 of this Article shall be appropriately governed by provisions of Article 50 of the present Law.

### **Initial Training**

#### **Article 64**

Candidates for judges of the Administrative Court and Commercial Court shall be required to complete the **initial** training consisting of theoretical and practical part and lasting for a minimum of three months in the case of Administrative Court and for six months in the case of Commercial Court.

The programme and implementation of initial training of candidates referred to in paragraph 1 of this Article, as well as the evaluation during initial training, shall be appropriately governed by Article 54 of the present Law.

### **Decision on Appointment**

#### **Article 65**

A candidate for judge who has received a satisfactory grade at the initial training shall be appointed as the Administrative Court judge or the Commercial Court judge by the Judicial Council.



The employment of a candidate for judge of the Administrative Court or the Commercial Court who receives a not satisfactory grade at the initial training shall be terminated by force of law, on the date of the finality of the decision on evaluation.

## **8. Appointment of the Supreme Court Judges**

### **Public Announcement**

#### **Article 66**

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

The procedure of public announcement, submitting applications and acting upon applications, as well as the rights of applicants, shall be appropriately governed by provisions of Articles 45, 46 and 52 of the present Law.

### **Criteria**

#### **Article 67**

Criteria for the appointment of a judge of the Supreme Court referred to in Article 38, paragraph 9 of the present Law shall be professional knowledge and ability to exercise judicial office.

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

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

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

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

### **Evaluation of Criteria**

#### **Article 68**

Professional knowledge of candidates for judge of the Supreme Court referred to in Article 38, paragraph 9 of the present Law shall be assessed on the basis of the evidence submitted along with the application of candidates, and the ability to exercise the judicial office shall be evaluated on the basis of opinions and the interview.

### **Opinion**

#### **Article 69**

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

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

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

### **Interview Article 70**

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

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

### **Decision Article 71**

Based on the evidence submitted along with the application of the candidates, the opinion referred to in Article 69 of the present Law and the interview referred to in Article 70 of the present Law, the Judicial Council shall prepare a ranking list.

Preparation of the ranking list referred to in paragraph 1 of this Article shall be appropriately governed by the provisions of Article 50 of the present Law.

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

## ***9. Promotion of Judges***

### **Conditions for Promotion Article 72**

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

A judge or public prosecutor may be promoted to the Supreme Court if he / she received the excellent grade and if he / she meets the special requirement for appointment to the Supreme Court referred to in Article 38, paragraph 8 of the present Law.

### **Public Announcement Article 73**

In the process of promotion, vacant positions for judges shall be announced in the High Court, High Misdemeanour Court, Appellate Court and the Supreme Court, in accordance with the Plan of Vacancies.

The procedure of public announcement, submitting applications and acting upon applications, as well as the rights of applicants, shall be appropriately governed by provisions of Articles 45, 46 and 52 of the present Law.

### **Criteria for the Judge Who Is Promoted Article 74**

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

- 1) Work appraisal of the judge or public prosecutor;
- 2) Evaluation of the interview with the candidate.

Under the criterion referred to in paragraph 1, item 1 of this Article, a candidate shall be awarded 60 points for the grade of good and 80 points for the grade of excellent, whereas up to 20 points shall be awarded on the basis of an interview.

## **Decision on Appointment**

### **Article 75**

The Judicial Council shall conduct an interview with the applicants.

A ranking list shall be prepared on the basis of the work appraisal and interview evaluation referred to in Article 74 of the present Law.

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

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

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

The procedure of conducting the interview shall be governed by Article 49 of the present Law.

## **10. Appointment of Lay Judges**

### **Conditions for Lay Judges**

#### **Article 76**

A person may be appointed as a lay judge if he / she meets the general requirements for employment in state authorities, has university education, working ability and at least 30 years of age.

### **Procedure of Appointing Lay Judges**

#### **Article 77**

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

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

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

### **Publication of Decision on Appointment**

#### **Article 78**

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

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

## **11. Oath and Assuming Office**

### **Oath and Assuming the Judicial Office**

#### **Article 79**

A judge shall assume office on the day of taking the oath.

Judges shall take an oath before the Judicial Council, not later than 15 days from the day of appointment.

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

### **Text of the Oath**

#### **Article 80**

The oath shall read: "I swear that I will exercise the judicial office honorably, independently, impartially, fairly, equitably and responsibly, under the Constitution and the law."

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

If a judge or lay judge do not take oath, i.e. refuse to take an oath, they shall be deemed not appointed.

A judge who was appointed in the process of promotion to a higher court shall not pronounce the text of the oath referred to in paragraph 1 of this Article, but shall symbolically sign the oath.

### **Official Identity Card**

#### **Article 81**

Judges and court presidents shall have official identity card.

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

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

## **IV. DEPLOYMENT AND TRANSFER OF JUDGES**

### **Deployment to another Court with Consent**

#### **Article 82**

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

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

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

Reimbursement of expenses incurred as a result of deploying a judge to another court shall be borne by the court to which the judge was deployed, in accordance with the regulations governing the reimbursement of expenses to civil servants and state employees.

### **Procedure for Temporary Deployment to another Court**

#### **Article 83**

The Judicial Council shall make a decision on temporary deployment of a judge referred to in Article 82 of the present Law at the request of the president of the court to which the judge is deployed.

Before making a decision on temporary deployment of a judge referred to in Article 82 of the present Law, the Judicial Council shall consult with the president of the court who submitted the request, the judge who is temporarily deployed and the president of the court in which the judge performs a judicial office.

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

## **Deployment to another Authority**

### **Article 84**

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

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

During the work in the authority to which the judge was deployed, the judge shall not perform a judicial office.

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

## **Transfer to another Court without Consent**

### **Article 85**

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

## **Permanent Voluntary Assignment of Judges**

### **Article 86**

The Judicial Council shall publish an internal announcement for filling up vacant positions for judges on its website.

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

The Judicial Council shall make a list of candidates for the assignment referred to in paragraph 2 of this Article according to the results of work in the last three years, i.e. according to the work appraisal grade awarded to the judges in accordance with the present Law.

On the basis of the list of candidates referred to in paragraph 3 of this Article, the Judicial Council shall make a decision on the assignment of a judge to another court of the same level, taking into account the needs of the court in which the judge performs a judicial office and of the court to which the judge is assigned.

## **V. APPRAISAL OF JUDGES**

### **Goal of the Appraisal**

#### **Article 87**

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

Grades awarded to judges in the work appraisal shall be excellent, good, satisfactory and not satisfactory.

The work of judges shall be evaluated prior to the expiry of the period referred to in paragraph 1 of this Article, if:

- 1) A judge is awarded not satisfactory grade;
- 2) A judge applied to the announcement for promotion to a higher court, and does not have a grade or if more than two years have passed since the previously awarded grade.

In the case referred to in paragraph 3, item 1 of this Article, the appraisal of work of the judge shall be carried out after the expiry of one year from the date of finality of the decision establishing that grade.

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

### **Appraisal Commission**

#### **Article 88**

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

The Appraisal Commission shall be composed of the President of the Supreme Court and four members of the Judicial Council, three of which from among the judges and one from among eminent lawyers.

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

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

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

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

### **Criteria for Appraisal**

#### **Article 89**

The criteria for appraisal of work of judges shall be:

- 1) Professional knowledge;
- 2) General capabilities for performing judicial office.

### **Professional Knowledge of Judges**

#### **Article 90**

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

- 1) Quantity and quality of work;
- 2) Preparation for trials;
- 3) Ability of planning and efficient implementation of procedural actions and skills of managing hearings;
- 4) Professional development.

The quantity and quality of work shall be appraised on the basis of the number of cases processed, the number of completed cases, the number of abolished decisions, the number of open hearings and hearings by the court of second instance, the number of adopted control requests, the number of decisions made within the statutory deadline and the quality of rationale.

Based on the quantity of work, a judge shall be awarded a not satisfactory grade if his / her work results are more than 20% below the average benchmarks for quantity of work in certain types of cases, which are determined by the Judicial Council according to the size of the court, if the judge does not provide justified reasons for that.

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

The ability to plan and efficiently implement procedural actions shall be appraised based on the ability of the judge to organize and efficiently execute procedural and other

actions in accordance with the principle of efficiency and effectiveness of proceedings, and the skills of managing hearings based on the ability of a judge to manage a hearing in a clear and understandable manner, with respect for the procedural roles of the parties to the proceedings.

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

## **General Capabilities**

### **Article 91**

General capabilities for the exercise of judicial office shall be appraised on the basis of the following sub-criteria:

- 1) **Communication skills;**
- 2) Capability to adapt to changing circumstances;
- 3) Participation in various professional activities;
- 4) Ability of organization and coordination of the court staff.

**Communication skills** shall be appraised on the basis of respect shown for the parties, colleagues, and the court staff, in the exercise of judicial office.

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

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

The ability of organization and coordination of court staff shall be appraised on the basis of the ability of the judge to cooperate, organize and control the work of advisers, trainees and employees who work with him / her.

## **Appraisal Sources**

### **Article 92**

Appraisal of work of judges under the criteria referred to in Article 89 of the present Law shall be made by inspecting:

- 1) Five cases completed by a final and enforceable decision, randomly selected;
- 2) Five cases completed by a final and enforceable decision, selected by the judge himself / herself;
- 3) Five cases completed by a final and enforceable decision in which decisions were abolished, randomly selected;
- 4) A statistical report on the work of the judge, containing information on the work of the judge, data from the records on judges, information on the number of complaints and decisions on complaints against the work of the judge, information on the number of control requests in the cases of the judge and the decisions on the control requests, as well as the data on the number of cases in which a judicial decision was not made within the statutory deadline;
- 5) Records obtained through control of work of the court; and
- 6) A report of the legal person authorized for training of judges.

## **Rules on the Selection of Cases**

### **Article 93**

The cases referred to in Article 92, paragraph 1, items 1, 2 and 3 of the present Law shall be selected from among finally completed cases in the period for which the appraisal is made, in which the judge acted as a single judge, rapporteur judge or the panel president, where, in addition to the cases in which the judge acted in the court in which he / she exercises judicial office, the cases in which the judge acted in the courts to which he / she was deployed shall be taken into account, in accordance with the law.

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

The manner of selecting cases, through the method of random sampling, shall be closely regulated by the Rules of Procedure of the Judicial Council.

### **Reports by Judges**

#### **Article 94**

The judge whose work is appraised shall prepare, on a prescribed form, a report containing a description of his judicial actions against the criteria and sub-criteria prescribed by the present Law, the appraisal of own work, stating the cases that he / she chose for appraisal.

The judge shall submit the report referred to in paragraph 1 of this Article to the President of the Court in which he / she exercises judicial office, within eight days from the commencement of appraisal.

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

### **Report and Proposal of the Panel of Judges for Appraisal**

#### **Article 95**

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

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

### **Declaration to a Proposal for a Grade**

#### **Article 96**

The Appraisal Commission shall submit the proposal for a grade referred to in Article 95 of the present Law to the judge whose work is being appraised, who shall have the right to declare on the proposal within five days of the submission of the proposal for a grade.

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

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

### **Determining a Grade**

#### **Article 97**

A judge shall be graded excellent if his / her work in all sub-criteria is appraised as excellent, or as good in two sub-criteria and excellent in others.

A judge shall be graded good if his / her work in at least five sub-criteria is appraised as good.

A judge shall be graded satisfactory if his / her work in at least four sub-criteria is appraised as satisfactory.

A judge shall be graded not satisfactory if he / she is appraised as not satisfactory in at least two sub-criteria.

### **Grade**

#### **Article 98**



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

A final and enforceable decision on grade of a judge shall be entered into records of judges.

### **Grade Consequences**

#### **Article 99**

A judge who is appraised with a satisfactory and not satisfactory grade shall be referred to the mandatory programme of continuous training, in accordance with the law governing the training of judges.

A judge who is appraised with an excellent or good grade may be promoted to a higher court.

If a judge who is appraised as excellent does not get promoted to a higher court within one year from the date of awarding an excellent grade, he / she shall be entitled to a salary in the amount of the salary of the president of the court in which he / she exercises judicial office, until the appointment to a higher court or awarding a grade lower than excellent.

### **Appraisal of Court Presidents**

#### **Article 100**

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

Appraisal of the court presidents shall be conducted on the basis of proposal for grade of the Panel of Judges for Appraisal, including, in addition to judges referred to in Article 88, paragraph 3 of the present Law, the President of the High Misdemeanour Court when appraising the President of a Misdemeanour Court or the President of High Court when appraising the President of a Basic Court from the territory of that High Court, the President of the Appellate Court when appraising the President of the Commercial Court and the Presidents of High Courts, or the President of the Supreme Court when appraising the President of the Administrative Court and the Appellate Court.

The proposal for grade referred to in paragraph 2 of this Article shall contain an appraisal of the work of the court president as a president and as a judge.

As a court president, the court president shall be appraised as good or not satisfactory.

If the court president is awarded a not satisfactory grade, he / she shall be dismissed from the office of the court president.

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

### **Special Rules for Appraisal**

#### **Article 101**

The procedure of appraisal and indicators for the development of reports and proposals for grades on the basis of criteria prescribed for judges, as well as criteria for appraisal and indicators for the development of reports and proposals for grades of court presidents shall be regulated in more details by the Judicial Council, through special rules.

## **VI. INCOMPATIBILITY AND TERMINATION OF JUDICIAL OFFICE**

### **Opinion on other Activities**

#### **Article 102**

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

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

### **Approval for Detention**

#### **Article 103**

When the competent court finds that there are reasons for detention to be imposed on a judge, for the criminal offence committed in the performance of judicial office, it shall immediately request the Judicial Council to decide whether it approves the detention to be imposed.

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

Notwithstanding paragraph 2 of this Article, if the imposition of a detention is requested for a judge for the criminal offence of organized crime, high corruption or money laundering within the jurisdiction of the Special Division of the High Court in Podgorica committed in the performance of judicial office, the Judicial Council shall make the decision referred to in paragraph 1 of this Article within 6 hours from the receipt of the request.

### **Liability for Damage**

#### **Article 104**

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

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

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

### **Termination of Office**

#### **Article 105**

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

The Judicial Council shall make a decision on the termination of office of the President of the Supreme Court, the court president or a judge no later than 30 days from the date of receipt of the notification.

The office of the persons referred to in paragraph 2 of this Article shall terminate on the date of adoption of the decision of the Judicial Council, except in the case of termination of office with the expiry of mandate, when the office shall terminate upon the expiry of the mandate.

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

### **Termination of Office of Court President**

#### **Article 106**

The office of a court president shall terminate:

- 1) Upon the expiry of the time period for which he / she was appointed;
- 2) When his / her judicial office terminates;
- 3) At his / her own request; or
- 4) In the case of dissolution or merger of courts.

## **Annulment of Decision on Appointment Article 107**

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

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

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

## **VII. DISCIPLINARY LIABILITY AND DISMISSAL**

### **1. *Disciplinary Proceedings***

#### **Disciplinary Offences Article 108**

Judges and court presidents as judges shall have disciplinary liability for minor, severe and the most severe disciplinary offences.

Minor disciplinary offences of a judge shall exist if he / she:

- 1) Fails, without justified reason, to assume cases for work in the order in which they are received, in accordance with the law and the Court Rules of Procedure;
- 2) Comes late or does not come to scheduled trials, hearings or sessions of the panel without justified reason;
- 3) Does not attend mandatory training programmes without justified reason;
- 4) Does not meet the obligations of a mentor during initial training and training of trainees;
- 5) Does not take statutory measures to respect the court and the parties to the proceedings.

Severe disciplinary offences of a judge shall exist if he / she:

- 1) Fails, without justified reason, to schedule trials or hearings in cases assigned to him / her for work, or delays the proceedings in another manner;
- 2) Delays the proceedings or does not assume the case for work without justified reason, where, due to statute of limitations, such action results in barred criminal prosecution or barred enforcement of criminal sanctions for the criminal offence for which a prison sentence of at least one year is prescribed;
- 3) Exceeds, without justified reason, the triple statutory deadline for making decisions in at least three cases;
- 4) Fails to seek a recusal in at least three cases in which he / she knew there was a reason for his / her mandatory recusal in the course of one calendar year;
- 5) Fails, without justified reason, to respect the programme for resolving backlog of cases or does not act upon the decision under a control request;
- 6) Prevents supervision in accordance with the law;
- 7) In the exercise of judicial office, or in a public place, brings himself / herself into a state or behaves in a manner that is not appropriate to the exercise of judicial office;
- 8) Treats participants in court proceedings and court staff inappropriately;
- 9) Discloses confidential information that he / she learned while acting in cases or performing a judicial office;
- 10) Uses the judicial office to achieve his / her private interests and interests of his / her family or close persons;

11) Accepts gifts or does not submit data on property and income in accordance with the regulations governing the prevention of conflicts of interest;

12) Has been absent from work for five consecutive days without excuse;

13) Publicly declare an opinion on the case that has not become final and enforceable;  
The most severe disciplinary offences of a judge shall exist if he / she:

1) Has been convicted of an offence that renders him / her unworthy to perform judicial office;

2) Performs the judicial office incompetently or unconscientiously.

**The offence referred to in paragraph 4, item 1 of this Article shall be a criminal offence that is prosecuted ex-officio and for which a prison sentence is prescribed.**

Incompetent or unconscientious performance of judicial office shall exist if a judge:

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

2) Starts exercising parliamentary or other public office or professionally performing other activities;

3) Has been appraised with a not satisfactory grade twice in a row;

4) Has been imposed disciplinary sanctions for severe disciplinary offences twice.

## **Disciplinary Sanctions**

### **Article 109**

Disciplinary sanctions shall be a warning, a fine, ban on promotion and dismissal.

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

A fine in the amount of 20% to 40% of the salary of the judge, lasting for a period of three to six months and a ban on promotion shall be imposed for severe disciplinary offences.

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

Dismissal shall be imposed for the most serious disciplinary offences.

A ban on promotion shall imply that a judge may not be appointed to a higher court before the expiration of two years from the date of finality of the decision imposing a disciplinary sanction.

## **Motion for Establishing Disciplinary Liability**

### **Article 110**

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

The motion for establishing disciplinary liability of the President of the Supreme Court may be filed by a General Session of the Supreme Court.

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

The motion for establishing disciplinary liability of a judge shall be filed without delay, immediately after becoming aware of the disciplinary offence.

## **Content of the Motion**

### **Article 111**

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

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

### **Disciplinary Prosecutor**

#### **Article 112**

The investigation on the submitted motion for establishing disciplinary liability shall be conducted by the disciplinary prosecutor, who shall also represent the indictment in the procedure of establishing disciplinary liability of the judge.

Disciplinary prosecutor shall have a deputy.

Disciplinary prosecutor and his /her deputies shall be appointed by the Judicial Council from among the judges with at least 15 years of work experience as a judge, upon the proposal of the General Session of the Supreme Court.

### **Completion of Investigation by Disciplinary Prosecutor**

#### **Article 113**

The disciplinary prosecutor shall complete the investigation referred to in Article 112 of the present Law within **45 days** of the day of submission of the motion for establishing disciplinary liability.

The disciplinary prosecutor shall be bound by the factual description of the disciplinary offence from the motion for establishing disciplinary **liability**.

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

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

If it disagrees with the proposal of the disciplinary prosecutor referred to in paragraph 3, items 1 and 2 of this Article, the disciplinary panel or the Judicial Council may obligate the disciplinary prosecutor to conduct an investigation and submit the indictment.

### **Competent Authorities for Establishing Disciplinary Liability**

#### **Article 114**

The procedure of establishing disciplinary liability for minor and severe disciplinary offences shall be conducted by the disciplinary panel, under the bill of indictment of the disciplinary prosecutor.

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

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

The procedure of establishing disciplinary liability for the most severe disciplinary offences shall be conducted by the Judicial Council, under the bill of indictment of the disciplinary prosecutor.

### **Defence**

### **Article 115**

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

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

### **Hearing Article 116**

In the procedure of establishing disciplinary liability, the disciplinary panel or the Judicial Council shall hold a hearing.

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

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

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

### **Decision Article 117**

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

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

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

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

### **Deadline for Drafting a Decision**

#### **Article 118**

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

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

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

### **Statute of Limitations**

#### **Article 119**

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

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

The enforcement of disciplinary sanctions shall become barred by the statute of limitations one year from the date when the disciplinary sanction became final and enforceable.

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

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

### **Recusal Article 120**

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

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

### **Temporary Removal Article 121**

A judge shall be temporarily removed from duty if:

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

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

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

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

### **Effects of Decision Article 122**

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

### **Costs of Proceedings Article 123**

If the proposal for establishing disciplinary liability was rejected, the costs of disciplinary proceedings shall be borne by the Judicial Council.

### **Disciplinary Liability of Lay Judges Article 124**

Disciplinary liability and procedure of establishing disciplinary liability of lay judges shall be appropriately governed by the provisions of the present Law governing the disciplinary liability of judges.

### **Appropriate Application of Law Article 125**

Unless otherwise provided by the present Law, the disciplinary proceedings shall be appropriately governed by provisions of the Criminal Procedure Code.

## ***2. Dismissal of Court President***

## **Reasons for Dismissal**

### **Article 126**

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

- 1) Amends the annual work distribution of the court contrary to the law;
- 2) Prevents supervision in the court in accordance with the law;
- 3) Treats the parties and the court staff inappropriately;
- 4) Fails to submit or submits incomplete or inaccurate reports on work and other information in accordance with the law;
- 5) Does not act on complaints against the work of judges in accordance with the regulations, as well as under control requests;
- 6) Does not respect the principle of random allocation of cases;
- 7) Deprives judges of assigned cases contrary to the law;
- 8) In the process of supervision over the conduct of judicial administration, illegalities and irregularities are found in the performance of judicial administration that damage orderly and timely performance of the duties and functions of the court;
- 9) Fails to submit a motion for establishing disciplinary liability of a judge in the cases prescribed by the present Law, where he / she knows or should have known that there are grounds for disciplinary liability in accordance with Article 110, paragraph 4 of the present Law.
- 10) Has been temporarily removed from judicial duty; or
- 11) Has been appraised with a not satisfactory grade.

## **Motion for Dismissal**

### **Article 127**

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

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

## **Appropriate Application**

### **Article 128**

The procedure of dismissal of the court president shall be appropriately governed by the provisions of the present Law governing the procedure of establishing disciplinary liability of judges.

## ***3. Dismissal due to Permanent Incapacity to Exercise Judicial Office***

### **Procedure and Decision-Making**

#### **Article 129**

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

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

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



In the procedure of dismissal due to permanent incapacity to perform judicial office, the judge shall have the right to declare on the motion for dismissal.

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

## **VIII. RECORDS**

### **Content of Records**

#### **Article 130**

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

- 1) Personal name, nationality if the judge declares, address, date and place of birth and sex;
- 2) The date of appointment to the office;
- 3) Work experience;
- 4) Scientific title (master, M.Sc, PhD);
- 5) Professional development;
- 6) Knowledge of a foreign language;
- 7) Published scientific and professional papers and other professional activities;
- 8) Disciplinary liability and dismissal;
- 9) Report on work (the number of cases, quantity and quality of work, exceeding statutory deadlines);
- 10) Work appraisal;
- 11) Termination of office;
- 12) Permit for accessing secret data.

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

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

## **IX. FUNDS**

### **Funds for Work of the Judicial Council**

#### **Article 131**

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

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

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

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

### **Financial Principal**

#### **Article 132**

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

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

## **X. SECRETARIAT OF THE JUDICIAL COUNCIL**

### **Secretariat**

#### **Article 133**

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

### **Secretary of the Secretariat**

#### **Article 134**

The Secretariat shall be managed by the Secretary.

Secretary of the Secretariat shall be appointed and dismissed by the Judicial Council, on a proposal from the President of the Judicial Council, on the basis of a public announcement.

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

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

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

- 1) Completed law faculty – level VII1 of education qualifications;
- 2) Bar exam passed;
- 3) Having at least ten years of work experience;
- 4) Having organizational skills.

### **Responsibility**

#### **Article 135**

The Secretary of the Secretariat shall be responsible for his / her work to the Judicial Council.

The office of the Secretary of the Secretariat shall terminate before the expiry of the time for which he / she was appointed through a resignation or dismissal.

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

### **Appropriate Application**

#### **Article 136**

Employment, rights, obligations and responsibilities of the Secretary of the Secretariat shall be appropriately governed by the provisions of the law regulating the rights, obligations and responsibilities of civil servants and state employees relating to senior managerial staff.

Employment, rights, obligations and responsibilities of other staff in the Secretariat shall be appropriately governed by regulations governing employment, rights, obligations and responsibilities of civil servants and state employees.

### **Act on Internal Organization and Jobs Classification of the Secretariat**

#### **Article 137**

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

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

## **XI. TRANSITIONAL AND FINAL PROVISIONS**

### **Deadline for Adoption of By-Laws**

#### **Article 138**

By-laws for the implementation of the present Law shall be passed no later than six months from the date of entry into force of the present Law.

### **Mandate of the Judicial Council**

#### **Article 139**

The Judicial Council appointed in accordance with the Law on the Judicial Council (Official Gazette of Montenegro 13/08, 39/11, 31/12, 46/13 and 51/13) shall continue to function until the expiry of its mandate.

### **Continuation of Work**

#### **Article 140**

Director of the Secretariat who was appointed in accordance with the Law on the Judicial Council (Official Gazette of Montenegro 13/08, 39/11, 31/12, 46/13 and 51/13) shall continue to work as the Secretary of the Secretariat until the expiry of the time for which he / she was appointed.

### **Deferred Application**

#### **Article 141**

Provisions of Articles 37 to 75 and 87 to 101 of the present Law shall apply as of 1 January 2016.

Until the commencement of application of provisions referred to in paragraph 1 of this Article, Articles 1 to 27 and 42 to 87 of the Law on Judicial Council shall apply (**Official Gazette of Montenegro 13/08, 39/11, 31/12, 46/13 and 51/13**).

### **Application of Regulations**

#### **Article 142**

Provision of Article 79, paragraph 1 of the Law on Judicial Council (**Official Gazette of Montenegro 13/08, 39/11, 31/12, 46/13 and 51/13**) shall apply until the commencement of application of the law governing salaries in the public sector.

### **Termination of Validity**

#### **Article 143**

On the day of entry into force of the present Law, the Law on Judicial Council (Official Gazette of Montenegro 13/08, 39/11, 31/12, 46/13 and 51/13) shall be repealed, with the exception of provisions of Articles 1 to 27 and 42 to 87, which shall be repealed on 1 January 2016.

### **Entry into Force**

#### **Article 144**

The present Law shall enter into force on the eighth day of its publication in the Official Gazette of Montenegro.

No: 23-1/14-19/17

EPA 697 XXV

Podgorica, 26 February 2015

SPEAKER

Ranko Krivokapić