

# **LAW ON THE JUDICIAL COUNCIL**

## **I. GENERAL PROVISIONS**

### **Subject of the Law**

#### **Article 1**

This Law regulates the procedure for the election and the termination of the mandate of members of the Judicial Council, the organization and method of operation of the Judicial Council, the procedure for the election of judges and lay judges, the procedure for determining the termination of judicial office, the disciplinary liability and dismissal of judges and lay judges, and all other matters pertaining to the operation of the Judicial Council.

### **Independence and Autonomy**

#### **Article 2**

The Judicial Council shall have the task of ensuring the maintenance of an independent, autonomous, accountable and professional judiciary, in accordance with the Constitution and law.

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

#### **Article 3**

(1) Members of the Judicial Council must be persons of high moral character and possess professional qualities.

(2) Members of the Judicial Council must perform their duties independently and impartially.

(3) When nominating and electing members of the Judicial Council an effort must be made to achieve a balanced gender representation.

### **Prevention of Political Interference**

#### **Article 4**

The Judicial Council shall protect the courts and judges from any political interference.

### **Public Transparency of Activities**

#### **Article 5**

The activities of the Judicial Council shall be public and transparent, unless otherwise specified by this Law.

## **Means of Operation**

### **Article 6**

The means and conditions for the operation of the Judicial Council shall be provided for by the State.

### **Headquarters**

#### **Article 7**

The headquarters of the Judicial Council shall be in Podgorica.

## **II. THE PROCEDURES FOR THE ELECTION AND TERMINATION OF THE MANDATE OF MEMBERS OF THE JUDICIAL COUNCIL**

### **Judges' Conference**

#### **Article 8**

(1) The judge members of the Judicial Council shall be elected to and dismissed from office by the Judges' Conference by way of secret ballot.

(2) The Judges' Conference is made up of all the judges and court presidents.

#### **The Judges' Conference Decision Making Process**

#### **Article 9**

(1) The Judges' Conference shall operate and make decisions at sessions.

(2) The President of the Supreme Court of Montenegro shall convoke the sessions of the Judges' Conference and manage its work.

(3) A session may be held providing at least two thirds of the members of the Judges' Conference are present.

(4) Decisions shall be passed by majority vote of the members of the Judges' Conference present at the session.

(5) The method of operation and the decision making process of the Judges' Conference shall be regulated more specifically by the Judges' Conference Rules of Procedure.

#### **The Composition of the Judge Members of the Judicial Council**

#### **Article 10**

The judge members of the Judicial Council shall be as follows:

1) Two judge members shall be elected from amongst the judges of the Supreme Court, the Appellate Court of Montenegro, the Administrative Court of Montenegro and the higher courts;

2) Two judge members shall be elected from amongst the judges of all of the courts.

## **Nomination of Judge Members of the Judicial Council**

### **Article 11**

(1) The nomination of judge members to the Judicial Council, as provided for by Article 10, paragraph (1), subparagraph 1 of this Law, is conducted at:

1) Special sessions of the judges of the Supreme Court, the Appellate Court of Montenegro and the Administrative Court of Montenegro, at which one candidate from each of those courts shall be nominated, and

2) Joint sessions of the higher courts, at which one candidate from those courts shall be nominated.

(2) A list of the four nominated candidates, provided for in paragraph (1) of this article, shall be drafted by the President of the Supreme Court and submitted to the Judges' Conference.

(3) In order to determine the candidates nominated for the election of members of the Judicial Council, as provided for by Article 10, paragraph (1), subparagraph 2 of this Law, the President of the Supreme Court shall collect the initial nominations put forward by every judge and court president, and shall take care to ensure the secrecy of the initial nominations. The initial nomination shall consist of the nomination of two candidates.

(4) The President of the Supreme Court shall compose a list of the eight nominated candidates that received the largest number of initial nominations, provided for in paragraph (3) of this Article, and shall submit this list to the Judges' Conference.

(5) The list of nominated candidates provided for in paragraph (4) of this Article may not include any of the candidates referred to in paragraph (2) of this Article, regardless of the number of initial nominations.

## **Appointment of Judge Members of the Judicial Council**

### **Article 12**

(1) The lists of candidates nominated for election to the Judicial Council as members, established pursuant to Article 11 of this Law, shall be submitted to the Judges' Conference no later than three months before the expiry of the mandate of the members of the Judicial Council.

(2) The President of the Supreme Court shall convoke the Judges' Conference no later than two months before expiry of the mandate of the members of the Judicial Council.

(3) Judge members of the Judicial Council shall be elected from amongst the candidates on the lists of nominated candidates, provided for in paragraph (1) of this Article, at the Judges' Conference.

(4) Voting for the candidates nominated on the lists shall be conducted separately for each list. Voting for candidates from the list of nominated candidates provided for in Article 11, paragraph (1) of this Law, shall be conducted first.

(5) In the event that none of the candidates receive the required majority of votes, a new vote shall be held to decide between the three candidates that received the most number of votes.

(6) The two candidates from the list that receive the most number of votes at the Judges' Conference shall be elected as members of the Judicial Council.

## **Reelection of Judge Members**

### **Article 13**

Judge members of the Judicial Council may be re-elected as members of the Judicial Council four years after the expiry of his/her previous mandate in the Judicial Council.

## **Termination of Mandate**

### **Article 14**

(1) The mandate of a member of the Judicial Council shall be terminated before expiry of the period he/she was elected to:

- 1) Upon cessation of the function by virtue of which he/she was elected to the Judicial Council;
- 2) In the event he/she is a judge member of the Judicial Council and is elected as judge to a higher instance court or court president;
- 3) In the event he/she is a non-judge member of the Judicial Council and is elected to hold a judicial office (as a judge or court president);
- 4) By resignation;
- 5) Upon his/her final conviction for any criminal offense punishable by a prison sentence.

(2) The mandate of a member of the Judicial Council whose mandate is being terminated for the reasons specified in paragraph (1), subparagraph 1 of this Article, shall expire on the day of the cessation of the function by virtue of which he/she was elected to the Judicial Council.

(3) The mandate of a member of the Judicial Council whose mandate is being terminated for the reasons specified in paragraph (1), subparagraphs 2, 3 and 4 of this Article, shall terminate on the day the decision of his/her appointment as a judge of a higher instance court or as court president is adopted or when he/she submits his/her written statement of resignation to the Judicial Council.

(4) The mandate of a member of the Judicial Council whose mandate is being terminated for the reasons specified in paragraph (1), subparagraph 5 of this Article, shall be automatically terminated on the day of his/her conviction.

(5) The Judicial Council shall acknowledge the termination of the mandate of a member of the Judicial Council and shall duly notify his/her appointing body of the termination.

## **Dismissal**

### **Article 15**

- (1) A member of the Judicial Council shall be dismissed if he/she:
- 1) fails to perform his/her duties in a conscientious and professional manner;
  - 2) is convicted of committing an act that renders him/her unworthy to perform his/her duties in the Judicial Council.

(2) In the case specified in paragraph (1) of this Article, a proposal for the dismissal of a member of the Judicial Council is submitted by the Judicial Council to their appointing body.

(3) The mandate of a member of the Judicial Council shall be terminated on the day his/her appointing body relieves him/her from duty.

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

#### **Article 16**

(1) In the event the mandate of a judge member of the Judicial Council is terminated prior to the expiration of the term he/she was elected to, the procedure for nominating candidates shall be repeated in accordance with articles 11 and 12 of this Law.

(2) In the event the mandate of a member of the Judicial Council appointed by the Parliament of Montenegro (*hereinafter referred to as* the Parliament) or the President of Montenegro is terminated before the expiration of the term he/she was elected to, accordingly the Parliament or the President of Montenegro shall immediately appoint a new member.

(3) The mandate of a member of the Judicial Council appointed in accordance with paragraphs (1) and (2) of this Article shall expire on the day of the termination of the mandate of the Judicial Council.

### **Suspension**

#### **Article 17**

(1) Members of the Judicial Council shall be suspended from duty:

1) If he/she is confined to pretrial detention. The suspension shall be in effect for the entire duration of the detention;

2) If he/she is suspended from the function by virtue of which he or she was elected or appointed to the Judicial Council.

(2) The Judicial Council shall adopt a decision on the suspension of a member of the Judicial Council and shall deliver the decision to both the suspended member of the Judicial Council and his/her appointing body.

### **Leave of Absence and Compensation**

#### **Article 18**

(1) Members of the Judicial Council employed in public institutions shall be entitled to a leave of absence in order to perform official duties on behalf of the Judicial Council.

(2) Members of the Judicial Council whose salary is paid from public funds, during the leave of absence provided for in paragraph (1) of this Article, shall be entitled to continue receiving a salary and other emoluments on the basis of their working status at the organ in which they are employed.

(3) Judge members of the Judicial Council may, on the basis of a decision of the Judicial Council, work up to 70% of their annual working hours at the Judicial Council, due to which the work load at their regular work place shall be reduced accordingly. The decision of the Judicial Council shall stipulate the activities that shall be performed by members in the Judicial Council.

(4) All members of the Judicial Council shall be entitled to compensation for performing their duties in the Judicial Council in the amount as determined by the Judicial Council.

### **III. ORGANIZATION AND METHOD OF OPERATION**

#### **Sessions and Voting**

##### **Article 19**

- (1) The Judicial Council shall act and make decisions at sessions.
- (2) A session may be held providing the majority of the total number of members of the Judicial Council are present.
- (3) Decisions of the Judicial Council shall be adopted by the majority vote of all of the members of the Judicial Council.

#### **The President and the Vice President**

##### **Article 20**

- (1) The President of the Judicial Council convokes and presides over sessions, and is responsible for ensuring the efficient and effective operation of the Judicial Council.
- (2) The President of the Judicial Council shall have a Vice President. The Vice President, upon the proposal put forward by the President of the Judicial Council, shall be elected by the Judicial Council from amongst its judge members.
- (3) The Vice President of the Judicial Council shall stand in for the President of the Judicial Council in the event of his/her absence or inability to perform his/her duty, and shall perform all other activities stipulated by the Rules of Procedure of the Judicial Council, in order to ensure the efficient and effective operation of the Judicial Council.

#### **Commissions and Expert Teams**

##### **Article 21**

- (1) The Judicial Council may form special commissions and expert teams, which shall be composed of members of the Judicial Council and other persons that possess the necessary specialized expertise, in order to provide for the more effective and efficient operation of the Judicial Council.
- (2) The method of operation of the commissions and expert teams shall be regulated by the Rules of Procedure of the Judicial Council.
- (3) Members of the commissions and expert teams are entitled to compensation for their work in an amount that will be determined by the Judicial Council.

## **Action Plan**

### **Article 22**

(1) The Judicial Council shall draw up an Action Plan, which shall include aims, measures and the holders of specific activities, for the purpose of improving the efficiency and effectiveness of the work of the Judicial Council and the courts.

(2) The Action Plan must be in accordance with the relevant strategies in the domain of the judiciary and financial capabilities.

(3) The Action Plan shall be submitted to all courts, the Parliament and the Government of Montenegro (*hereinafter referred to as the Government*).

(4) Every three months the Secretariat of the Judicial Council (*hereinafter referred to as the Secretariat*) shall prepare a detailed report on the implementation of the Action Plan, which it shall then submit to the Judicial Council.

## **Competences of the Judicial Council**

### **Article 23**

The Judicial Council, apart from the competences specified in the Constitution, shall:

- 1) Control the work of the courts and judges;
- 2) Decide on the disciplinary liability of judges;
- 3) Provide opinions on draft laws and secondary legislation that are relevant to the judiciary and initiate the adoption of legislation and other regulations pertaining to the judiciary;
- 4) Ensure the application, maintenance and uniformity of the Judicial Information System as pertaining to the courts;
- 5) Provide for the training of holders of judicial office in cooperation with the Prosecutors' Council;
- 6) Keep and maintain records on judges;
- 7) Rule on complaints filed by judges who consider that their independence and autonomy are threatened;
- 8) Propose guiding measures for determining the necessary number of judges and other court officials and employees;
- 9) Establish the methodology for preparing a report on the work of the courts and annual work schedules;
- 10) Draft a Code of Ethics, which shall be adopted at the Judges' Conference;
- 11) Exercise all other competencies as stipulated by law.

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

### **Article 24**

(1) The number of judicial positions and the number of lay judges in each court shall be determined by the Judicial Council on the basis of the proposal put forward by the Minister of Justice which is based on the initiative of the President of the court.

(2) In the event the Minister of Justice does not act upon the court president's initiative within 30 days, the court president shall submit the initiative to the Judicial Council.

(3) The decision on the number of judges and lay judges shall be published in the „Official Gazette of the Republic of Montenegro “.

### **The Rules of Procedure and Other Regulations of the Judicial Council**

#### **Article 25**

(1) The Judicial Council shall adopt Rules of Procedure of the Judicial Council, which shall regulate all matters as specified by this Law and any other matters relevant and significant to the organization of the work of the Judicial Council, as well as other regulations pertaining to the operation of the Judicial Council.

(2) The Rules of Procedure of the Judicial Council shall be published in the „Official Gazette of the Republic of Montenegro “.

### **Annual Report**

#### **Article 26**

(1) The Judicial Council shall prepare an Annual Report documenting the activities of the Judicial Council, including a description and analysis of the state of the judiciary, detailed records for each court concerning the number of cases received and resolved during the reporting year, problems and deficiencies in their activities, as well as measures that need to be taken in order to remove the noted deficiencies.

(2) The Judicial Council shall submit a Draft Annual Report to all of the courts seeking their opinion.

(3) The Annual Report for the previous year shall be submitted to the Parliament, the Government and the President of Montenegro by the 31<sup>st</sup> of March of the current year at the latest.

(4) The Report shall be published on the web site of the Judicial Council.

(5) The President of the Judicial Council shall present the Annual Report before the Parliament.

### **The Courts' Obligation to Comply with the Requests of the Judicial Council**

#### **Article 27**

(1) The courts are obligated to comply with any requests of the Judicial Council for complete access to all information, documentation and notifications related to the realization of the competencies of the Judicial Council.

(2) In the event a court does not comply with the request of the Judicial Council within the set deadline, it is obligated to, without delay, put forward the reasons due to which it did not comply with the request.

(3) Upon request, the court is obligated to allow the Judicial Council complete and direct access to all of the court's acts, documentation and information. The court is also obligated to deliver copies of the requested records and documents to the Judicial Council.

(4) Court presidents, judges and other court employees are obligated to, in accordance with requests made by the Judicial Council, attend the sessions of the Judicial Council.



(5) The refusal or failure to comply with a decision or request made by the Judicial Council shall be deemed as unconscientious conduct.

#### **IV. ELECTION OF JUDGES**

##### **Public Announcement of Vacant Positions**

###### **Article 28**

(1) A judge and court president shall be elected on the basis of a public announcement.

(2) The Judicial Council shall notify the court president when a vacancy for the position of a judge is open. In the event a vacancy for court president is open the Judicial Council shall notify the president of the court that is of the next higher instance.

(3) The Judicial Council shall publish announcements of vacant positions of judge and court president in the „Official Gazette of the Republic of Montenegro “and in one of the print media.

(4) The provisions of this Law that pertain to the procedure for electing a judge shall be accordingly applied to the procedure for electing all court presidents, with the exception of the President of the Supreme Court.

##### **Application Procedures**

###### **Article 29**

(1) Candidate applications shall be submitted to the Judicial Council no later than 15 days after the day the vacancy was announced and published.

(2) The Judicial Council shall not consider any untimely and incomplete applications.

(3) The applicant is entitled to appeal the Judicial Council’s decision to reject his/her application as untimely or incomplete no later than three days after receiving the decision of the Judicial Council.

(4) The decision of the Judicial Council on the appeal is final and binding, and an administrative proceeding may not be instituted against the decision.

##### **Standardized Application Form**

###### **Article 30**

The application provided for in Article 29, paragraph (1) of this Law shall be submitted on a form specified by the Judicial Council.

## **Opinions on the Applicants**

### **Article 31**

The Judicial Council shall seek the opinions on the expertise and professional qualities of each applicant with regards to holding judicial office from the following:

- 1) The bodies, businesses or other legal entities in which the candidate is currently or was previously employed;
- 2) Sessions of the judges of the court the candidate is being considered for;
- 3) Sessions of the judges of the court that is of the next higher instance.

### **Criteria**

#### **Article 32**

(1) The criteria for the election of a judge are as follows:

- 1) Professional knowledge, work experience and performance;
- 2) Published academic works and other professional activities;
- 3) Continuous professional development;
- 4) Ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office for which he/she is being considered;
- 5) Communication skills;
- 6) Relations with colleagues, conduct out of office, professionalism, impartiality and reputation.

(2) Apart from the criteria specified in paragraph (1) of this Article, the organizational abilities of the candidate for court president shall also be taken into account.

(3) More specific criteria for the election of a judge shall be set out in the Rules of Procedure of the Judicial Council.

## **Candidate Interview**

### **Article 33**

(1) A Judicial Council Commission, which shall be made up of at least three members of the Judicial Council, shall conduct an interview with the candidates that fulfill the criteria for the position for which they have applied.

(2) It is not necessary to interview a candidate in the event of any of the following:

- 1) The candidate was interviewed for a position in a court of the same or higher instance within the past twelve months and received an unsatisfactory (“*negativno*”) score at the interview;
- 2) The candidate was interviewed for a position in a court of the same or higher instance on several occasions and on more than one occasion received an unsatisfactory (“*negativno*”) score at the interview, regardless as to when he/she was last interviewed.

(3) On the basis of the interview and the applicant’s documentation, the Commission, provided for in paragraph (1) of this Article, shall assess and score each candidate, taking into account the criteria set out in Article 32 of this Law.

(4) The Commission shall decide on the candidate's score by a majority vote.

(5) Immediately after the interview the Commission, provided for in paragraph (1) of this Article, shall fill out standardized candidate assessment forms, which will include the candidate's score and an explanation justifying the reasons a certain score was awarded.

(6) The scoring method and the contents of the candidate assessment form shall be regulated by the Rules of Procedure of the Judicial Council.

### **Written examination**

#### **Article 34**

(1) The Judicial Council may hold a written examination for the candidates prior to the interview.

(2) In the event that a written examination is held, as provided for in paragraph (1) of this Article, the Commission, provided for in Article 33 of this Law, shall draw up a list ranking the candidates on the basis of the results of the written test. The list shall be subject to change, as it may later be altered on the basis of the candidate's performance at the interview.

(3) More specific conditions and the procedure for conducting the written examination and determining the results of the examination shall be regulated by the Rules of Procedure of the Judicial Council.

### **Recommendation on Appointment**

#### **Article 35**

(1) On the basis of the interview and the applicant's documentation the Commission, provided for in Article 33, paragraph (1) of this Law, shall form a list of candidates that have achieved satisfactory results.

(2) The list of candidates shall include the scores of all of the candidates that were interviewed and tested, as well as a brief summary of the candidate assessment results.

(3) The list of candidates shall be submitted to the Judicial Council.

(4) The Judicial Council shall make a decision on the appointment of a candidate at a closed session.

(5) The decision on the appointment of a candidate must include a written explanation.

### **The Procedure for the Election of Lay Judges**

#### **Article 36**

(1) The court president shall announce a vacancy is open in his/her court for the position of lay judge in one of the print media.

(2) The court president shall interview the applicants that fulfill all of the conditions and on the basis of the conducted interviews shall draw up a list of candidates that shall include the opinions of the judges' session on each candidate, which he/she shall then submit to the Judicial Council.

(3) The Judicial Council elects lay judges on the basis of the list and the opinions provided for in paragraph (2) of this Article.

### **Announcement of the Appointment Decision**

#### **Article 37**

(1) The Judicial Council shall notify the successful applicant, the relevant court and the Ministry of Justice of its appointment decision.

(2) The decision on the appointment of a judge or lay judge shall be published in the “Official Gazette of the Republic of Montenegro”.

### **Rights of Applicants**

#### **Article 38**

The applicants are entitled to review their application and documentation, as well as the applications and documentation of other candidates that applied for the vacancy, the results of the written examination, the candidate assessment and the opinions on the candidates, and to submit a written comment to the Judicial Council, no later than three days following the day the review was performed.

### **The Right to Judicial Protection**

#### **Article 39**

The Judicial Council’s decision on the appointment of a judge is final and an administrative proceeding may not be instituted against the decision.

### **Declaration of Office and Commencement of Term of Office**

#### **Article 40**

(1) The term of office of a judge shall commence on the day he/she takes the oath of office.

(2) Judges shall take the oath before the Judicial Council, at the latest 15 days after the day he/she was appointed.

(3) Lay judges shall take the oath before the President of the Judicial Council or other persons designated by the Judicial Council.

### **The Wording of the Declaration of Office**

#### **Article 41**

(1) The Declaration of Office reads as follows: «I do solemnly swear that I will perform my judicial duties in accordance with the Constitution and the law».

(2) The oath is taken by reciting the oath and attesting his or her signature to the declaration.

(3) In the event a judge or lay judge does not take the oath or refuses to take the oath his/her appointment shall be declared void.

## **Transfers with Consent**

### **Article 42**

(1) A judge shall hold judicial office in the court to which he/she has been appointed.

(2) The Judicial Council may either permanently or temporarily reassign a judge, with his/her consent, to another court of the same or a lower instance, in the event the judge of that court is disqualified or unable to perform his/her judicial duties or if the day-to-day activities of that court are no longer being performed efficiently and effectively for other justifiable reasons.

(3) The Judicial Council may temporarily transfer a judge, with his/her consent, to a higher instance court in the event the workload of that court has been temporarily increased or in the event of a large accumulation of unsolved cases, which cannot be efficiently handled by the existing number of judges in that court. The judge that is being reassigned must fulfill all of the criteria specified for the position in the court to which he/she is being transferred.

(4) Remuneration and other costs incurred due to the transfer of a judge, with his/her consent, to another court shall be borne by the court to which the judge has been reassigned.

## **Procedures for Temporary Transfers**

### **Article 43**

(1) The Judicial Council shall adopt a decision on the temporary transfer of a judge to another court upon the request of the president of the court the judge is to be transferred to or it may be decided *ex-officio*.

(2) Before taking a decision on the temporary transfer of a judge to another court the Judicial Council shall first consult with the president of the court who filed the request, the judge who is being considered for the temporary reassignment and the president of the court in which the judge ordinarily performs his/her judicial duties.

## **Transfers without Consent**

### **Article 44**

(1) In the event of a reorganization of the courts due to which judicial positions are reduced or abolished, the Judicial Council may reassign or transfer a judge to another court without his/her consent.

(2) Remuneration and other costs incurred due to the reassignment or transfer of a judge to another court, without his/her consent, shall be borne by the court to which the judge has been reassigned.

## **V. INCOMPATIBILITY, IMMUNITY AND TERMINATION OF JUDICIAL OFFICE**

### **Opinion on Extrajudicial Activities**

#### **Article 45**

A judge may seek the opinion of the Judicial Council on whether certain activities are incompatible with his/her judicial office and the Judicial Council shall take a decision regarding the matter.

### **Referral to the Judicial Council**

#### **Article 46**

In the event a court president believes a judge is performing activities that are incompatible with his/her judicial office or that are prohibited, he/she shall refer the matter to the Judicial Council, which shall issue a binding decision.

### **Immunity**

#### **Article 47**

(1) In the event a competent court finds that reasons exist to confine a judge to pretrial detention, it is obligated to immediately request the Judicial Council to issue a decision on whether it agrees with the findings of the court.

(2) The Judicial Council is obligated to issue the decision provided for in paragraph (1) of this Article no later than 24 hours upon receipt of the request.

### **Termination of Office**

#### **Article 48**

(1) A judicial office shall be terminated in accordance with the relevant provisions set forth in the Constitution.

(2) The court president shall immediately notify the Judicial Council in the event any reason for termination of office of a judge exists. In the event a reason for the termination of office of a court president exists, the court president of the court of the next higher instance shall immediately notify the Judicial Council.

(3) The Judicial Council shall adopt a decision on the termination of office no later than 30 days after receiving the notification.

(4) The judicial office shall end on the day the decision on the termination of office is adopted by the Judicial Council.

(5) The Judicial Council shall send the decision on termination of office to the judge whose office has been terminated and the court in which the judge held his/her judicial office.

## **Annulment of Appointment Decision**

### **Article 49**

(1) The Judicial Council shall annul the decision on the appointment of a judge in the event proof exists that at the time of the appointment the judge did not satisfy all of the selection criteria or if the Judicial Council receives information that would, had it been known at the time of appointment, have given the Judicial Council reason not to appoint the judge in question.

(2) The Judicial Council may delay the commencement of the judge's term of office in order to verify the information provided for in paragraph (1) of this Article.

(3) In the event the Judicial Council annuls an appointment decision, the candidate ranked in second place shall be appointed to the judicial office or the election procedure shall be repeated.

## **VI. THE DISCIPLINARY LIABILITY OF JUDGES AND THE DISMISSAL AND REMOVAL FROM OFFICE**

### **1. Disciplinary proceedings**

#### **Disciplinary liability**

### **Article 50**

In accordance with the relevant laws a judge shall be liable for disciplinary action in the event he/she negligently performs his/her judicial duties or harms the reputation of the judicial office he/she holds.

#### **Disciplinary Committee**

### **Article 51**

(1) The procedure for establishing disciplinary liability of a judge shall be conducted by the Disciplinary Committee, which shall be appointed by the Judicial Council for a one year term.

(2) The Disciplinary Committee shall consist of a president and two members, as well as their deputies.

(3) The President of the Disciplinary Committee and his/her deputy shall be appointed from amongst the members of the Judicial Council, whilst the members and their deputies shall be appointed from amongst the judges that are not members of the Judicial Council.

#### **Disciplinary measures**

### **Article 52**

(1) Disciplinary measures that may be imposed are a reprimand and a salary decrease.

(2) A salary decrease may not exceed 20% and may not be imposed for a period longer than six months.

### **Defense**

#### **Article 53**

The judge whose disciplinary liability is being determined shall be entitled to legal representation during the proceedings.

### **Initiating Disciplinary Proceedings**

#### **Article 54**

(1) A proposal to determine the disciplinary liability of a judge shall be submitted to the Disciplinary Committee.

(2) A proposal for determining the disciplinary liability of a judge may be submitted by a court president, the president of a court of the next higher instance and the President of the Supreme Court.

(3) The Disciplinary Committee shall reject all untimely proposals for determining disciplinary liability, as well as proposals submitted by unauthorized persons.

(4) The Disciplinary Committee shall send any valid, timely and authorized proposals to the judges in respect of whom a proposal has been submitted, along with a notice informing them of their right to legal representation.

### **The Hearing and Failure to Appear before the Disciplinary Committee**

#### **Article 55**

(1) The request for initiating disciplinary proceedings against a judge shall be presented by the person who submitted the proposal.

(2) During the proceedings for determining disciplinary liability, the Disciplinary Committee shall hear the judge against whom the proceedings were initiated.

(3) The Disciplinary Committee shall consider and hear the evidence it deems necessary to correctly establish all of the facts of the case.

(4) The proceedings shall be dismissed in the event that the person who submitted the proposal fails to appear before the Disciplinary Committee. In the event the judge against whom the proposal was submitted fails to appear before the Disciplinary Committee, the proceedings shall take place in his absence.

### **Decisions of the Disciplinary Committee**

#### **Article 56**

(1) At the proceedings for establishing the disciplinary liability of a judge, the Disciplinary Committee may render the following decisions:

- 1) Reject the proposal as unfounded;
- 2) Accept the proposal and impose a disciplinary sanction;



3) In the event it determines that elements for the dismissal and removal of the judge exist, the Disciplinary Committee shall terminate the proceedings and forward the case to the Judicial Council.

(2) The decision of the Disciplinary Committee shall be delivered to the person who submitted the proposal, the judge against whom the proposal was submitted and the Judicial Council.

## **Second Instance Procedure**

### **Article 57**

(1) An appeal against the decision of the Disciplinary Committee may be submitted to the Judicial Council no later than eight days following the receipt of the decision.

(2) An appeal may be filed by the person who submitted the proposal, the judge against whom the proposal was submitted and the judge's defence counsel.

(3) On receipt of an appeal the Judicial Council may render one of the following decisions:

- 1) Dismiss the appeal as untimely or unauthorized;
- 2) Dismiss the appeal as unfounded;
- 3) Vacate the decision of the Disciplinary Committee and remand the case for reconsideration to the Disciplinary Committee;
- 4) Revise the decision of the Disciplinary Committee.

(4) The President of the Disciplinary Committee is prohibited from participating in the activities of the Judicial Council concerning the taking of a decision on the appeal.

## **Statute of Limitations for Initiating and Conducting Disciplinary Proceedings**

### **Article 58**

(1) Proceedings to determine disciplinary liability of a judge must be initiated no later than three months after the day it was established that reasons for initiating proceedings exist.

(2) Proceedings to determine disciplinary liability of a judge must be completed within three years of the date it was established that reasons for initiating proceedings exist.

## **Disqualification**

### **Article 59**

(1) The person who submitted the proposal and Disciplinary Committee members and members of the Judicial Council in respect of whom justifiable reasons exist for calling into question their impartiality, shall be disqualified from participating in the activities of the Disciplinary Committee and the Judicial Council related to determining the liability of a judge.

(2) The President of the Judicial Council shall rule on the disqualification provided for in paragraph (1) of this Article, and the Judicial Council shall rule on the disqualification of the President of the Judicial Council.

## **Judicial Protection**

### **Article 60**

The decision issued by the Judicial Council on the disciplinary liability of a judge is final and binding and administrative proceedings may not be initiated to contest the decision.

## **2. Dismissal and Removal from Office**

### **Initiative for the Dismissal of a Judge**

#### **Article 61**

(1) A judge shall be dismissed and removed from office for reasons and due to events specified in the Constitution.

(2) An initiative for the dismissal of a judge may be submitted by the president of the court in which the judge performs his/her judicial duties, the president of the court of the next higher instance, the President of the Supreme Court and other members of the Judicial Council.

#### **Deadlines**

#### **Article 62**

(1) An initiative for the dismissal of a judge shall be submitted to the Judicial Council.

(2) The Judicial Council, no later than 30 days after receiving the initiative, must take a decision on whether there is just cause for conducting the dismissal proceedings.

(3) The Judicial Council shall send a copy of the initiative to the judge in respect of whom the initiative was submitted, along with a notice informing him/her of his/her right to legal representation.

(4) The judge is entitled to put forward a plea in answer to the initiative for his/her dismissal no later than eight days upon receipt of the initiative.

### **Rejection of proposal**

#### **Article 63**

(1) The Judicial Council shall reject and dismiss an initiative for the dismissal of a judge in the event it concludes that no just cause exists for conducting the proceedings or if it ascertains that the initiative was submitted by an unauthorized person or if the initiative was not submitted on time.

(2) Should the Judicial Council establish that just cause for conducting the proceedings indeed exists, it shall then forward the initiative to the Disciplinary Committee, provided for in Article 51 of this Law, which shall review and verify the reasons for dismissal.

## **Determining Just Cause**

### **Article 64**

(1) The Disciplinary Committee shall gather the information and evidence necessary to determine whether or not just cause for the filing of the initiative exists.

(2) The judge against whom the initiative was brought is entitled to attend the sessions of the Disciplinary Committee and observe its work.

(3) Upon reviewing the collected information and evidence, the Disciplinary Committee shall submit a report to the Judicial Council within the deadline set by the Judicial Council.

(4) A copy of the report prepared by the Disciplinary Committee shall be delivered to the judge against whom the initiative was brought.

## **Opinions**

### **Article 65**

(1) In the event an initiative is submitted for the dismissal of a Supreme Court judge, alleging unprofessional or unconscientious performance of judicial duties, the Judicial Council shall seek the opinion of the General Session of the Supreme Court.

(2) In the event an initiative for the dismissal of a judge is submitted alleging permanent loss of ability to hold judicial office, the Judicial Council shall seek the opinion of the competent body.

## **Attendance of Session**

### **Article 66**

(1) The submitter of the initiative shall attend the session of the Judicial Council.

(2) The judge against whom the initiative was brought is entitled to attend the session of the Judicial Council.

(3) The Judicial Council shall take a decision at a closed session.

## **Decisions**

### **Article 67**

The Judicial Council may render the following decisions with regards to the initiative:

- 1) Reject the initiative as unfounded;
- 2) Issue a decision dismissing and removing the judge from office.

## **Dismissal**

### **Article 68**

A judge shall be removed from office the same day the decision on his dismissal is issued.

## **Suspension**

### **Article 69**

(1) A judge shall be suspended from duty, should any of the following occur:

1) If he/she is being held in pretrial confinement. The suspension shall be in effect for the entire duration of the detention.

2) If an investigation is initiated against him/her for the commission of an act that renders him/her unworthy of holding a judicial office.

(2) A judge shall be suspended from duty if the Judicial Council accepts the proposal to initiate the procedure for his/her dismissal.

(3) The decision on the suspension of a judge shall be issued by the Judicial Council.

## **The Appropriate Applicability of the Disciplinary Proceedings**

### **Article 70**

The provisions of this Law pertaining to the statute of limitations, disqualification, judicial protection and the right to engaging defense counsel during a disciplinary proceeding shall be appropriately applied to the dismissal proceedings.

## **The Effects of the Termination of Mandate and Annulment of Decision on Appointment**

### **Article 71**

(1) Any activities undertaken by a judge in relation to ruling on legal matters, as well as any decisions taken by the judge shall have no legal effect at all if they were undertaken or issued after the day he/she was, pursuant to the law, suspended, dismissed or his/her mandate expired.

(2) All activities undertaken and all decisions issued by a judge whose appointment has been annulled, shall be declared void.

## **The Appropriate Applicability to Lay Judges and Court Presidents**

### **Article 72**

The provisions of this Law pertaining to the termination of mandate, the establishing of disciplinary liability and the dismissal and removal from office shall apply accordingly to all lay judges and all court presidents, except the President of the Supreme Court.

## **VII. FINANCIAL RESOURCES**

### **Financing of the Judicial Council**

#### **Article 73**

(1) The operation of the Judicial Council shall be financed from a separate portion of the budget of Montenegro.

(2) The Judicial Council shall put forward a proposal for the portion of the annual budget necessary for the operation of the Judicial Council.

(3) The Judicial Council shall submit a proposal for its annual budget to the Government.

(4) The President of the Judicial Council is entitled to attend and participate in the sessions of the Parliament during which the proposed budget of the Judicial Council shall be considered.

### **Financial Decision-Making Authority**

#### **Article 74**

The President of the Judicial Council is the financial decision-making authority in the Judicial Council. The financial decision-making authority may be transferred to the Director of the Secretariat of the Judicial Council.

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

### **The Secretariat**

#### **Article 75**

The Secretariat of the Judicial Council (*hereinafter referred to as the Secretariat*) shall be formed in order to perform the professional, financial, administrative, IT, analytical and other tasks of the Judicial Council, as well as activities of mutual interest to the courts.

### **The Director of the Secretariat**

#### **Article 76**

(1) The Secretariat shall be managed by a Director.

(2) The Director of the Secretariat shall be appointed and dismissed by the Judicial Council, upon the proposal put forward by the President of the Judicial Council.

(3) The Director of the Secretariat shall be appointed to a five-year term.

(4) The nominations for the position of Director of the Secretariat shall include: the first and last name of the candidate, a brief biography and a written justification.

(5) A person may be nominated for the position of Director of the Secretariat provided he/she not only satisfies the general criteria set for employees of state institutions, but also fulfills the following special criteria:

1) holds a degree in law,

- 2) has passed the bar examination,
- 3) possesses at least ten years of professional experience,
- 4) possesses good organizational skills.

### **Deputy Director**

#### **Article 77**

(1) The Director of the Secretariat shall have a deputy. The Deputy Director shall assist the Director in his/her work and stand in for the Director of the Secretariat in the event of his/her absence.

(2) The Deputy Director shall be appointed and dismissed by the Judicial Council, upon the proposal put forward by the Director of the Secretariat.

(3) The Deputy Director shall be appointed to a five-year term.

### **Accountability**

#### **Article 78**

(1) The Director of the Secretariat and the Deputy Director are accountable to the Judicial Council.

(2) The mandates of the Director of the Secretariat and the Deputy Director may be terminated before expiry either by resignation or removal from office.

(3) The Director of the Secretariat and the Deputy Director may be removed from office in the event a justified initiative for their dismissal is put forward by the President or a member of the Judicial Council.

### **Rights and Obligations**

#### **Article 79**

(1) The Director of the Secretariat and the Deputy Director shall be entitled to a salary equal to the salary of the Secretary General of the Parliament and his deputy.

(2) The other employment rights and benefits of the Director of the Secretariat and the Deputy Director shall be stipulated in accordance with the legislation governing the employment rights and benefits of the persons referred to in paragraph (1) of this Article.

(3) Regulations regarding civil servants and state employees shall apply, accordingly, to all other employees of the Secretariat.

### **Rules on the Internal Organization of the Secretariat**

#### **Article 80**

(1) The performance of the work and tasks of the Secretariat, its internal organization, the number of officials and employees, as well as other relevant matters shall be regulated by the Rules on the Internal Organization and Systemization of the Secretariat, in accordance with this Law and the Law on Public Administration.

(2) The Rules stipulated in paragraph (1) of this Article shall be adopted by the Judicial Council, upon the proposal put forward by the Director of the Secretariat.

## **IX. TRANSITIONAL AND GENERAL PROVISIONS**

### **Article 81**

(1) A session of the judges of the Supreme Court, the Appellate Court of Montenegro, the Administrative Court of Montenegro and a joint session of the higher courts shall be held at which candidates shall be nominated for election as members of the Judicial Council, no later than 15 days after the day this Law enters into force.

(2) The President of the Supreme Court shall, within the deadline specified in paragraph (1) of this Article, collect the initial nominations of candidates put forward by each judge and court president for the election of members of the Judicial Council.

(3) The Judges' Conference shall elect the judge members of the Judicial Council, no later than 30 days after the day this Law enters into force.

### **Article 82**

The President of Montenegro and the Parliament of Montenegro shall appoint the members of the Judicial Council in accordance with their competencies, no later than 30 days after this Law enters into force.

### **Article 83**

The constituting meeting of the Judicial Council shall be held no later than 45 days after the day this Law enters into force.

### **Article 84**

The Judicial Council shall elect the Director of the Secretariat no later than 30 days after the Judicial Council has been constituted.

### **Article 85**

The Rules on the Internal Organization and Systemization of the Secretariat and all other rules and regulations pertaining to the operation of the Secretariat shall be adopted no later than 15 days after the appointment of the Director of the Secretariat.

### **Article 86**

The Rules of Procedure of the Judicial Council and all other rules and regulations provided for by this Law shall be adopted no later than 60 days after the Judicial Council has been constituted.

### **Article 87**

This Law shall enter into force on the eighth day as of the day of its publication in the "Official Gazette of the Republic of Montenegro".

SU-SK No. 01-18/9  
Podgorica, February 13<sup>th</sup>, 2008

THE PARLIAMENT OF MONTENEGRO

PRESIDENT

Ranko Krivokapić