**OFFICE FOR HUMAN AND MINORITY RIGHTS**

**Sector for Human Rights Improvement and Protection**

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**Answers to the Questionnaire of the**

**UN Special Rapporteur on the independence of judges and lawyers**

1. The Constitution of the Republic of Serbia and the Law on High Judicial Council in the Republic of Serbia regulate the position, competence, organisation and manner of operation of the High Judicial Council, as well as conditions, procedure for the selection of electoral members of the Council, duration of the term of office, termination of their function as well as provision of conditions and funds for the operation of the Council.

The Council is an autonomous and independent body that ensures and guarantees autonomy and independence of courts and judges.[[1]](#footnote-1)

1. The High Judicial Council is an independent and autonomous body that ensures and guarantees independence and autonomy of courts and judges. The High Judicial Council has 11 members.

The High Judicial Council consists of the President of the Supreme Court of Cassation, the minister competent for judiciary and the Chairman of the competent committee of the National Assembly, as members because of their position, and eight electoral members selected by the National Assembly, in accordance with the law.

Electoral members consists of six judges with a permanent judicial office, one of whom is from the territory of autonomous provinces, and two are prominent and distinguished lawyers with at least 15 years of experience in the profession, one of whom is a lawyer, and the other one is a professor at the law faculty.

Presidents of courts cannot be electoral members of the High Judicial Court.

The term of office of the members of the High Judicial Council is five years, except for members because of their position.

A member of the High Judicial Council enjoys immunity as a judge.

1. The High Judicial Council shall select and dismiss judges in accordance with the Constitution and the law, propose to the National Assembly selection of judges during the first selection for the judicial office, propose to the National Assembly selection of the President of the Supreme Court of Cassation and presidents of courts, in accordance with the Constitution and the law, participate in the procedure for the termination of the function of the President of the Supreme Court of Cassation and presidents of courts, in the manner prescribed by the Constitution and the law, and perform other tasks determined by the law.[[2]](#footnote-2)

Funds for the operation of the High Judicial Council shall be provided in the budget of the Republic of Serbia, at the proposal of the Council. The Council shall independently dispose with these funds, in accordance with the law.

The Administrative Office of the High Judicial Council has been established to perform professional, administrative and other tasks within the Council.

A total number of classified jobs in the Administrative Office of the High Judicial Council is 46, i.e. 44 civil servants (out of this, 2 civil servants at their position) and 4 hired employees.

* At a meeting held on 15 November 2016, the High Judicial Council passed the Rulebook on criteria and measures for the assessment of expertise, competence and eligibility of candidates for a judge selected for the first time (“Official Gazette of the RS”, No. 94/16) and the Rulebook on criteria and measures for the assessment of expertise, competence and eligibility for the selection of a judge for a permanent judicial office in another or higher court and on criteria for proposing candidates for the president of the court (“Official gazette of the RS”, No. 94/16).
* At a meeting held on 14 February 2017, the High Judicial Council established a single database for a written exam used for the assessment of expertise and competence of a candidate for a judge selected for the first time for the judicial office, in accordance with the Rulebook on criteria and measures of the assessment of expertise, competence and eligibility of candidates for a judge selected for the first time. A single database of questions shall be published on the High Judicial Council website [www.vss.sud.rs](http://www.vss.sud.rs).
* A judge may, with his consent, be transferred to another court of the same type and same instance, if there is a need for an urgent occupation of a vacant judicial position, which cannot be solved with the selection or referral of a judge, with an obtained consent of presidents of both courts.

A judge shall hold a permanent tenure in the court to which he was transferred.

A decision on transfer shall be adopted by the High Judicial Court.[[3]](#footnote-3)

* The work of all judges and presidents of courts shall be subject to regular evaluation.

Evaluation shall include all aspects of judicial work, i.e. tasks of presidents of courts, and represent a basis for the selection, mandatory training of judges and dismissal.

Evaluation shall be conducted on the basis of publicly announced, objective and uniform criteria and measures, in a uniform procedure in which participation of a judge, i.e. president of a court whose work is being evaluated, shall be ensured.

Criteria, measures and procedure for the evaluation of the work of judges, i.e. presidents of courts, shall be regulated by the Higher Judicial Council.[[4]](#footnote-4)

* Disciplinary responsibility of judges, types of disciplinary offences, disciplinary sanctions, disciplinary authorities and disciplinary proceedings shall be regulated by the Law on Judges.

The Rulebook on the procedure for determining disciplinary accountability of judges and presidents of courts was adopted at a session of the High Judicial Council held on May 8, 2015. The Rulebook more specifically defines obligations of the Disciplinary Prosecutor and his deputies, as well as of the members of the Disciplinary Panel. The Rulebook also determines the disciplinary responsibility of the president of a court.

Disciplinary sanctions are: public warning, salary reduction max. 50% up to one year, and prohibition of promotion for up to three years. A disciplinary sanction shall be pronounced in proportion to the severity of a disciplinary offense committed. Public warning may be pronounced only after it has been determined for the first time that a judge is responsible for a disciplinary offense. When it is determined that a judge is responsible for a heavy disciplinary offense, the Disciplinary Panel shall initiate a procedure for the dismissal of the judge. Disciplinary authorities are: Disciplinary Prosecutor and his deputies and Disciplinary Panel, established by the High Judicial Council. Members of disciplinary authorities shall be appointed by the High Judicial Council from the line of judges. A composition, terms of appointment, duration of the term of office and manner of termination of a duty, manner of operation and decision-making in disciplinary authorities, shall be regulated by the High Judicial Court, with its act, which the Court shall publish. Disciplinary proceedings shall be conducted by the Disciplinary Panel at the proposal of the Disciplinary Prosecutor. The Disciplinary Prosecutor shall submit a proposal for conducting disciplinary proceedings on the basis of a discipline application. Disciplinary proceedings shall be urgent and closed for public, unless the judge, with respect to whom the proceedings are conducted, requires the proceedings to be public. Conducting disciplinary proceedings shall become obsolete in one year from the date when the offense was committed.

1. Law on High Judicial Council („Official Gazette of the RS“ No. 116/2008,101/2010,88/2011,106/2015) [↑](#footnote-ref-1)
2. Constitution of the Republic of Serbia [↑](#footnote-ref-2)
3. Law on Judges “*Official gazette of the RS ", No. 116/2008, 58/2009 (Decision of the Constitutional Court), 104/2009, 101/2010, 8/2012 (Decision of the Constitutional Court), 121/2012, 124/2012(Decision of the Constitutional Court), 101/2013, 111/2014 (Decision of the Constitutional Court), 117/2014, 40/2015, 63/2015 (Decision of the Constitutional Court), 106/2015, 63/2016 (Decision of the Constitutional Court), 47/2017*  [↑](#footnote-ref-3)
4. Law on Judges [↑](#footnote-ref-4)