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Please note that this version does not include the latest changes and amendments to the Law on the State Judiciary Council which were published in Official Gazette no 49/1999, 129/2000 and 150/2005 .

Law on the State Judiciary Council

(Official Gazette no. 58/1993)

I GENERAL DECLARATIONS

Article 1

In this law, we hereby stipulate the conditions for election of the President and Members of the Judiciary Council and for termination of their duties; the procedure for nomination and impeachment of the Justices and State Attorneys; procedure for establishing the duties and responsibilities of their offices and the violation thereof; and other issues relating to the work of the State Judiciary Council.

Article 2

The symbol of the State Judiciary Council is its seal, containing within the name of the said Council, as well as the name and the emblem of the Republic of Croatia.

II PROCEDURE FOR THE ELECTION OF THE PRESIDENT AND THE MEMBERS OF THE STATE JUDICIARY COUNCIL AND THE MEMBERS OF THE STATE JUDICIARY COUNCIL AND FOR THE TERMINATION OF THEIR DUTIES

1. Election procedure

Article 3

The nomination of the candidates for the presidency and membership of the Council is the responsibility of the upper Legislative House of the Republic of Croatia.

In consideration of the candidates up for nomination, the members of the Upper House of the Republic of Croatia shall ask the Supreme Court of Croatia, the Minister of Justice, Attorney General of Croatia, the Chamber of Law of Croatia, and noted scholars of jurisprudence for recommendation of individuals deemed worthy of the office of presidency and the membership in the council. References on these individuals can also be obtained from other sources.

Article 4

The President and the Members of the Council are elected by the Lower Legislative House for an eight year term. The elected individuals will be those with an outstanding legal career as Judges, State Attorneys, attorneys, and Professors of Law, with no less than fifteen years working experience.

The President and seven Members will have served as Judges, prior to the election; four Members will have served as State Attorneys or their Deputies, prior to the election; one Member will have served as an attorney, prior to the election; and two Members will have served as Professors of Law, prior to the election.

The President and the Members of the Council cannot at the time be Members of Congress of the Republic of Croatia.

Article 5

The President or a Member elect must assume office within the time period given by the Lower Legislative House.

Should the President or a Member elect fail to assume the office within the time period aforementioned in the clause 1. of this Article, and without a valid reason, his/her election shall be considered invalidated.

Article 6

The term of office of the President and of Members of the Council starts on the day of the election.

It is the duty of the President of the Council to inform the Upper Legislative House of the expiration of the term of office of any one of the Council's Members, six months before such term is due to expire. The Upper Legislative House shall be informed of the expiration of the term of office of the President by at least five Members of the Council, or by the Minister of Justice.

2. Oath of Office

Article 7

Before assuming the Office, the President or a Member shall give an Oath of Office before the President of the Congress of the Republic of Croatia, as follows:

«I hereby do solemnly swear that as a President/Member of the State Judiciary Council, I will execute my duties in conformity with the Constitution and the laws of the Republic of Croatia, and will conscientiously serve the said office to the best of my abilities.»

3. Immunity

Article 8

The President and the Members of the Council have immunity.

The President or a Member of the Council shall not be held accountable for the views expressed, or for his/her voting record, during the term of office in the Council.

The President or a Member of the Council shall not be detained nor shall ne/she be charged with any unlawful activity without the permission of the Council.

The President or a Member of the Council may be detained only in such condition where he/she is caught perpetrating an unlawful act punishable by a minimum sentence of a five year incarceration. In such event, the entity that has detained the President or a Member of the Council is liable to immediately notify the Council.

The Council may decide that the office duties of the President or a Member of the Council under investigation shall be suspended for the duration of the legal procedures against him/her.

4. Termination of duties

Article 9

The duties of the President or a Member of the Council shall be terminated, as enforced by the law, on the day when his/her duties, performed at the time when he/she was elected for the Council, are terminated.

It shall not be considered a termination of duty if the President is nominated for a President or a Judge of another court, or if a Member of the Council is nominated for a State Attorney of another state office, or as a Professor of Law in another scholl of law.

The President or a Member shall be relieved of his duties before the expiration of the term of office if:

- he /she so wishes;
- he/she is sentenced to incarceration;
- he /she remains permanently disabled to perform his duties;
- he /she accepts a citizenship of another sovereign state.

Establishment of the preponderance of evidence for termination of duty of the President or a Member of the Council before the expiration of the term of office is the responsibility of the Upper Legislative House, pending final decision by the Lower Legislative House.

Article 10

If the President or a Member of the Council requests to be relieved from his/her duties, and the Lower Legislative House of the Congress of the Republic of Croatia has not made a decision within three month period after the day that such request was submitted, the Council shall consider that term of office terminated on the day concluding the three month period.

The court that sentenced the President or a Member to incarceration is liable to immediately deliver the promulgated sentence to the Couzncil, who shall without delay notify the Upper Legislative House thereof.

The President of the Council shall make a motion before the Upper Legislative House to initiate a procedure for determining a case of permanent disability of a Member of the Council, and for the President such motion shall be made by at least five Member.

The decision on the termination of duty of the President or a Member of the Council is made by a majority vote of the Lower Legislative House.

Article 11

If the procedure aforementioned in the Article 9, clause 3, lines 2 and 3 of this law is initiated, or there exist legal procedures against the President or a Member of the Council for an unlawful act punishable by incarceration, the President or a Member may be suspended from his/her office duty.

The Council shall make the decision on suspension

- of a Member, upon a motion by the President
- of the President, upon a motion by the five Members of the Council

The decision on suspension of the President or a Member is passed by a majority vote.

III THE FUNCTIONS AND THE MODE OF OPERATION OF THE STATE JUDICIARY COUNCIL

1. Functions

Article 12

The functions of the State Judiciary Council are following:

- Nomination of the Presidents of courts, Justices, state attorneys, and their deputies;
- Conduction of procedures for impeachment of the Chief Justice of a Justice; decision on impeachment of a Chief Justice, a Justice, state attorneys, and their deputies;
- Conduction of disciplinary procedures and determination of existence of disciplinary responsibility on the part of Justices, state attorneys, and their deputies.

2. Mode of operation

Article 13

All decisions by the Council are to be made during Council assembly.

The President convenes the assembly, and in his absence the Member serving as his deputy.

Special assembly may be convened upon motions of at least five Members of the Council.

Article 14

The mode of operation of the Council is determined by the operation guidelines.

The guidelines are established by the Council by two thirds majority vote of all its members.

Article 15

The administrative, technical, and accounting tasks for the Council are performed by the Ministry of Justice.

IV. PROCEDURE FOR NOMINATION OF JUSTICES

Article 16

The Ministry of Justice shall announce vacant offices of the Chief Justice and Justice, upon request of the Chief Justice of the court with the vacant office or the Chief Justice of an immediately superior court. The announcement shall be published no later than thirty days from the date that the request was issued in the Congressional Newspaper, and shall summon prospective candidates to apply for the positions in question, within a period no shorter than fifteen days. The candidates shall supply their credentials and a proof of fulfillment of the requirements for their respective positions, as well as information about their work.

Should there exist a vacancy in the position of the Chief Justice of the Supreme Court of the Republic of Croatia, the Council shall nominate the candidate directly, upon a motion by the Government of the Republic of Croatia, and without the aforementioned requisite announcement nor in accordance with the Article 17 of this law.

Article 17

After the expiration of the period aforementioned in the Article 16 of this Law, the Minister of Justice shall seek counsel and information about the candidates from the Chief Justice of the court with the vacant office of a Justice, and of the immediately superior court.

The Minister of Justice, on the basis of the information gathered in accordance with the Clause 1 of this Article and on the basis of the information that the Ministry of Justice may already possess, shall determine which candidates fulfill the requirements for the vacant office and comprise a list of their names in an alphabetical order.

The Minister of Justice shall, no later than thirty days after the application deadline, submit to the Council the list of candidates fulfilling the requirements, the information on the candidates that were rejected, and the opinions of the aforementioned courts on the prospective candidates.

The Minister of Justice shall inform the rejected candidates of his decision, specify the reasons why they were rejected, and inform them of the right to an appeal. The appeal shall be submitted to the Council within a period of eight days after the candidate was informed of the rejection.

Article 18

Once the Council has made a decision on the nominations, it shall thereof inform the candidates, the court for which the nominations are made, the court that is immediately superior, and the Ministry of Justice.

The decision on nominations shall furthermore be published in the Congressional Newspaper.

The nominated Chief of Justice or a Justice shall assume office within a period decided by the Council, or at the latest within six months after the nomination.

Should the Chief Justice or a Justice fail to assume his/her office within the time period aforementioned in the clause 3 of this Article, and without a valid reason, his/her nomination shall be considered invalidated.

Article 19

Before assuming the office, the Chief Justice or a Justice shall give an Oath of Office before the President of the Council or a Member that he/she designates.

The Oath of Office is as follows:

«I hereby do solemnly swear that in the capacity of my office I shall uphold the Constitution and the laws, I shall judge to the best of my abilities, conscientiously and impartially, protecting the integrity, sovereignty, and the constitutional order of the Republic of Croatia, and in conformity with the fundamental legal principles of freedom and rights of the man and the citizen.»

The Chief Justice or a Justice shall thereafter sign the said Oath of Office.

V. DISCIPLINARY PROCEDURES

Article 20

The Chief Justice or a Justice shall be submitted to disciplinary procedures, should he/she commit a grave disciplinary act.

The following are considered such acts:

1. betraying a professional secret, relating to the performance of judicial duties,
2. abuse of his/her position or professional authority,
3. failure to perform, without a valid reason, judicial duties, or performing them negligently through an extended period,
4. any other conduct that would result in a failure of professional rapport, significantly impeding the performance and execution of tasks of the court,
5. involvement in any capacity, task, or operation of an interest conflicting with the performance of judicial duties, unless with a prior written consent of the Chief Justice,
6. otherwise damaging the reputation of the judicial office or of the court.

Article 21

The state attorneys shall, furthermore, be submitted to disciplinary procedures for a failure to act upon a directive of a superior state attorney.

Article 22

The procedures shall be conducted by a Disciplinary Committee, comprising of three Members of the Council, unless it is decided that the entire Council should conduct the procedures.

The President shall appoint the Members to the Committee.

The decision on the disciplinary liability shall be made by a majority vote, on the basis of the information gathered by the Disciplinary Committee.

Article 23

The disciplinary procedures may be initiated upon request of the following entities:

- against a Justice – the Chief Justice of the court, the Chief Justice of the immediately superior court, the Chief Justice of the Supreme Court, and the Minister of Justice,
- against a Chief Justice – the Chief Justice of the immediately superior court, the Chief Justice of the Supreme Court, and the Minister of Justice,
- against the Chief Justice of the Supreme Court – a general assembly of the Supreme Court, or the Government of the Republic of Croatia.

Article 24

The statute of limitation for initiation of a disciplinary procedure is six months following the discovery of the act and its perpetrator, or, at the latest, two years following the perpetration.

In the event that the act is punishable by law, the disciplinary procedures may be initiated within the otherwise legally prescribed statute of limitation for the said act, under the condition that the legal investigation / procedures against the perpetrator are initiated.

The statute of limitation for passing a sentence of disciplinary measure is one year following the initiation of disciplinary procedures.

Article 25

A grave disciplinary act may be punishable by one of the following measures:

1. a reprimand,
2. a financial liability, not to exceed a third of a monthly salary, during a period no longer than six months.
3. a suspension.

When a reprimand is issued, the court where the reprimanded Justice served his office, the immediately superior court, and the Ministry of Justice shall be notified.

When passing a sentence of a disciplinary measure, the following shall be taken into consideration: the extent of damage and consequences, the level of liability, the circumstances under which the act was perpetrated, the prior record of conduct and work, and any other issue relevant to formulation of the sentence. The sentence formulation shall otherwise be made in accordance with the penal code.

The Ministry of Justice shall make a record of the conviction.

The evidence of a reprimand shall be erased from the record after two years.

The evidence of a financial liability shall be erased from the record in three years.

Article 26

The Justice or the Chief Justice found liable by the Council for a disciplinary misconduct may request protection from the Upper Legislative House of the Congress of the Republic of Croatia, within fifteen days following the passing of a sentence of a disciplinary measure.

The Upper Legislative House may concur with the decision of the Council, or reject it and request reinitiation of the procedures or reconsideration of the sentence.

In the event that the Upper Legislative House rejects the decision of the Council, the periods stipulated in the statutes of limitation are thereby renewed.

An appeal may not be requested from a court, against the decision of the Upper Legislative House.

Article 27

The request for protection submitted to the Upper Legislative House cannot postpone the enforcement of the penalty on disciplinary liability, if the said penalty is suspension and/or termination of duty.

Article 28

The procedures shall be conducted in accordance with the code of law on criminal procedures, unless otherwise stipulated in this Law.

For the duration of the disciplinary procedures, taxes are not paid.

The Council may decide that the disciplinary procedures be public.

Article 29

The motion for initiation of disciplinary procedures must be submitted to the Chief Justice or a Justice at fault.

The Justice or a Justice at fault shall be provided with a defense counsel.

Disciplinary procedures may not be initiated *ex post facto*, hence retroactively for an act that at the time of perpetration was not considered a grave disciplinary act.

Article 30

The conduct of hearings, the presentation of evidence in the original procedure, the litigation, and the voting record of the Council shall be duly noted.

The expenses incurred for the purpose of establishing liability of a Justice shall be charged to the court where the said Justice served his office.

VI. SUSPENSION OF DUTIES

Article 31

The Chief Justice or a Justice shall be suspended from duties if there are criminal procedures initiated against him, for an act punishable by a minimum sentence of five year incarceration, or while detained in custody.

The Chief Justice or a Justice shall be suspended for the following reasons:

1. an initiation of criminal proceedings against him/her, for a criminal act punishable by a five year incarceration,
2. an involvement in any capacity, task, or operation of an interest conflicting with the performance of judicial duties, without a prior written consent of the Chief Justice,
3. a motion has been made for initiation of procedures for termination of judicial duties, on the basis of one of the following reasons:
 - conviction of a criminal act, rendering the Justice unworthy of his/her office,
 - perpetration of a grave disciplinary act.

The final decision on suspension of duties for a reason stipulated in the clause 1 of this Article is made: for a Justice – by the Chief Justice of that court; for a Chief Justice – by the Chief Justice of the immediately superior court; and for the Chief Justice of the Supreme Court, or for the Attorney General of Croatia – the Disciplinary Committee of the Council; and for all other State Attorneys and their deputies – the Attorney General of Croatia.

The final decision on suspension for a reason stipulated in the clause 2 of this Article is made by the Disciplinary Committee of the Council, including five Members of the Council, and upon a motion made by the persons empowered to do so.

The Chief Justice or a Justice has a right to an appeal to the Council within a period of three days. The Council shall then reconsider its decision, and make another decision within a period no longer than fifteen days. Should the Council fail to make a decision within that period, the original decision on suspension shall be considered invalidated.

VII PROCEDURE FOR TERMINATION OF DUTIES

Article 32

The Chief Justice or a Justice may himself/herself request to be relieved of his/her duties.

The motion for initiation of a procedure for termination of duties of a Chief Justice or a Justice may be made by the following persons:

- for a Justice, by a Chief Justice
- for a Chief Justice, by the Chief Justice of an immediately superior court.

The duty of a Chief Justice or a Justice may be terminated for one of the following reasons:

- should he/she wish so,
- if he/she remains permanently disabled to perform judicial duties,
- if he/she is convicted of a criminal act, thus rendering him/her unworthy of the performance of judicial duties.

The Minister of Justice or the Chief Justice of the Supreme Court of Croatia may motion for initiation of a procedure for termination of duties of any Chief Justice or a Justice.

Article 33

The motion for termination of duties in a case of permanent disability to perform judicial duties is submitted on the basis of promulgated decision:

- of the court that terminated official duties or
- of the entity authorized to determine a case of bodily and mental state, preventing further performance of judicial duties.

Article 34

The Council, or the court which it designates, shall conduct the procedure, provide, and process the evidence.

The performance of certain tasks of the procedure may be entrusted to the Chief Justice of the court, or to the Chief Justice or a Justice of the immediately superior court.

The Council shall allow the Chief Justice or a Justice, whose termination of duty is under consideration, to justify and/or state his position on the issue of termination of duties.

The decision on termination of duty shall be passed by a majority vote.

The decision must be justified, and the bases for the decision specified.

The Chief Justice or a Justice whose duty was officially terminated has rights, established in the Article 26 of this Law.

Article 35

If a Chief Justice or a Justice requested to be relieved from his duties, and the Council has not made a decision on termination within three months following the submission of the request, the Chief Justice of the court may make an injunction, ruling that the duties of a Justice are thereby terminated on the day of expiration of the three month period. The Chief Justice of the immediately superior court will make an injunction in the event that the duties of a Chief Justice are being terminated.

VIII. NOMINATION AND TERMINATION OF DUTIES OF STATE ATTORNEYS

Article 36

The codes of this Law, stipulating the procedures for nomination and termination of duties of Justices, their suspension and establishment of disciplinary liability, shall also be applied in the procedures concerning state attorneys and their deputies, unless otherwise stipulated by the Law.

The State Attorney Office of the Republic of Croatia shall announce vacant offices for the positions of state attorneys and their deputies, and determine which candidates fulfill the requirements of the vacant office.

The codes of law, stipulating the procedure for nomination of Justices in the Article 17 of this Law, shall not apply in the nomination procedure for state attorneys and their deputies.

Article 37

The recommendation for nomination of candidates for offices of state attorneys or deputies shall be submitted to the Council, by the Attorney General of Croatia, within a thirty day period following the deadline for application for the offices in question. The State Attorney of Croatia shall, along with his/her recommendation, provide the Council with the relevant information on the candidates that he/she recommended.

The Council may concur with or reject the recommendations of the Attorney General of Croatia.

The Council shall nominate the Attorney General of Croatia, upon the recommendation of the Government of the Republic of Croatia, and without the requisite announcement, aforementioned in Article 17 of this Law.

Article 38

Before assuming the office, the state attorney or his deputy shall give an Oath of Office before the President of the Council or a Member that he designates.

The Oath of Office is as follows:

« I hereby do solemnly swear that in the capacity of my office I shall uphold the Constitution and the laws, and protect the integrity sovereignty, and the legal system of the Republic of Croatia.»

Article 39

The motion for termination of duties of state attorneys is made by the Attorney General of Croatia. The said motion for the Attorney General of Croatia is made by the Government of the Republic of Croatia.

IX. THE WAYS AND MEANS OF OPERATION

Article 40

Special means for the operation of the State Judiciary Council shall be provided from the federal budget of the Republic of Croatia.

The executor of the financial plans for the means of operation, aforementioned in the clause 1 of this Article, is the President of the Council.

Article 41

The President and the Members of the Council shall receive a salary, comprising of: reimbursement for the incurred working expenses, the opportunity cost of wages/rewards lost while working in the Council, and a reward for working in the Council.

X. CONCLUDING PROVISIONS

Article 42

This Law comes to pass eight days following its publication in the Congressional Newspaper, under the condition that the Articles covered in the Chapter III. and Chapter VIII. of this Law are enacted on the day that the Law on Courts, and the Law on the Office of State Attorney for the Republic of Croatia, come to pass.

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Zagreb, June 2nd, 1993

HOUSE OF REPRESENTATIVES OF THE CONGRESS OF REPUBLIC OF CROATIA

President of the House of Representatives

Stjepan Mesic, rep.