

THE CONSTITUTIONAL POSITION OF JUDICIARY

Belgrade
january 2005



USAID
FROM THE AMERICAN PEOPLE



This publication was made possible through support provided by
the U.S. Agency for International Development.

The opinions expressed herein are those of the authors and do not necessarily
reflect the views of the U.S. Agency for International Development.

Published by:

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Print:

Interklima-grafika
Vrnjačka Banja

Circulations:

???? copies

INTRODUCTION

Bearing in mind the upcoming changes to the constitution, and their significance for the establishment of an independent, efficient and accountable judiciary, the Judges' Association of Serbia (JAS) has decided to take part in the reassessment and creation of constitutional solutions that would provide guarantees of judicial independence and methods of their implementation.

Aware of the importance of this issue, at the beginning of the year 2004 the entire membership of the JAS (1,650 members) reviewed, within their own Branch, *Starting Points of the Constitutional Foundation of the Independence of the Judiciary*, a document adopted by the Managing Board of the JAS, as well as comparative solutions existing in European countries, the United States of America, and countries with similar traditions and legal systems (Slovenia, Croatia, Bosnia and Herzegovina, Macedonia). The process was conducted keeping in mind, at all times, international guidelines relating to the independence of the judiciary for democratic countries and countries that are striving toward democracy.

The conclusions from the meetings were summarized and presented at two round tables held in Nis and Belgrade, on April 15 and 17, 2004. Representatives of the international and national legal profession participated in these roundtables.

This Brochure is a result of a wide and in-depth reassessment process, and represents optimum constitutional solutions that could be applied in Serbia. The Brochure contains:

- the proposal of the JAS for the Constitutional Foundation of the Independence of the Judiciary, with comments for each of the proposed solutions,
- the current constitutional provisions regarding the judiciary,
- a comparative overview of constitutional provisions regarding the independence of the judiciary in European countries,

- international acts containing standards of judicial independence: United Nations Basic Principles on Independence of the Judiciary from 1985, Council of Europe Rec. No. R (1994) 12 on the Independence, Efficiency and Role of Judges, and the European Charter on the Statute of Judges from 1998.

All undertaken activities represent an attempt by the JAS to contribute to the adoption of the optimum constitutional solutions that would guarantee the independence of the judiciary and the efficiency of the court system.

For this reason, the JAS plans to send its Proposal to the Parliament of the Republic of Serbia, and to the members of its Constitutional Issues Committee, hoping that the JAS will have the chance to actively participate in the work of the Committee.

The JAS wishes to thank the OSCE and ABA/CEELI for their support in this project.

PROPOSAL

Constitutional Foundation of the Independence of Judiciary

JUDICIAL POWER

Judicial power belongs to the courts as independent state bodies.

Organization of courts, their establishment, termination, jurisdiction, procedure, structure, and the status of judges shall be determined by law, adopted by the vote of more than a half of members of Parliament.

Extraordinary courts shall not be established.

The Supreme court of Serbia is the court of highest instance in the Republic of Serbia.

Commentary:

The existing Constitution adopts the principle of division of state power into legislative, executive and judicial powers, and prescribes that the judicial power belongs to the courts, that the courts' organization, establishment, jurisdiction and structure, as well as court procedures, are determined by law, and that the Supreme Court of Serbia is the court of highest instance in the Republic of Serbia.

Considering the legislative practice during the last three years, when judicial laws were changed on numerous occasions and with an unclear concept, and the fact that the Constitutional Court had declared some of these amendments unconstitutional and clearly not in accordance with the international standards, it is necessary to ensure the stability of the legal framework of the status and the work of courts and judges, by requesting votes of more than a half of the members of the Parliament for adoption and changes of these laws.

It is also necessary to introduce a constitutional prohibition on establishment of extraordinary courts.

INDEPENDENCE OF A JUDGE

A judge is independent and impartial in his/her work and decision-making, and it is his/her duty only to uphold the Constitution and law.

A judge is not obligated to explain his/her understanding of facts and law, to anyone, except in the written explanation of a decision.

Any use of public office, media, or any public appearance that may influence the course and outcome of the court proceedings, or any other form of influence on the court shall be punishable.

A judge is entitled to a salary which is appropriate to the dignity of his profession and the burden of his responsibility, that will protect him/her from any influences and conducts that may undermine his/her independence and impartiality.

Commentary:

The existing Constitution proclaims independence of courts in their work and in decision-making.

Even though only independence of courts, as bodies of judicial power, is explicitly mentioned, it is clear that it includes also judges, as carriers of judicial power within the courts.

The independence of judges should still be explicitly mentioned in the Constitution. Apart from their independence from the executive and legislative powers, it is necessary to constitutionally guarantee their mutual independence and to ban any prohibited influence on them.

Judicial salaries must correspond to the dignity of their profession and to the burden of their responsibility and must be sufficient to protect them from any influences and conduct that could endanger their independence and impartiality. Judicial salaries shall be the foundation of judicial independence. Judges' salaries shall be determined only by law.

IMMUNITY

A judge shall not be held responsible for an opinion given in the process of rendering a decision.

A judge shall not be detained, nor shall the proceedings for a criminal act committed during performance of judicial function be conducted against him/her without the consent of the Judicial Council.

Commentary:

The existing Constitution guarantees that persons who are involved in the judicial decision-making (judges and lay judges) can not be held responsible for their opinions, nor can they be detained without the

consent of the Parliament in the proceedings initiated on the basis of a criminal act committed during the performance of a judicial function.

Thus regulated judicial immunity has two shortcomings:

First, their immunity is being decided upon by a non-judicial body, the Parliament, as a body of the legislative power. Contrary to that, the Parliament decides on the immunity of the Parliament's members (Article 77), and the Government decides on the immunity of the Government's members (Article 91). Judges are, thus, put in a position different from that of the representatives of the other two powers, therefore violating the principle of division and equality of legislative, executive and judicial powers.

Second, a judge's immunity is of the lesser "capacity" than that of a member of Parliament, or a member of the Government. If they decide to use their immunity, proceedings against them can not be carried out without the consent of the Parliament or the Government. A judge's immunity does not include such a benefit.

JUDICIAL COUNCIL

The Judicial Council is an independent and autonomous body which performs tasks determined by the Constitution and law, in order to realize the independence of judges.

The Judicial Council has eleven members, five of which are elected by the Parliament, upon a proposal made by the President of the Republic, among the esteemed legal professionals; the rest are elected by judges, among themselves, in a manner which ensures the widest representation of courts.

The mandate of members is five years and they can not be re-elected to two consecutive terms.

Commentary:

The Judicial Council represents an independent body of judicial power, whose task is to decrease or prevent the influence of legislative and executive power on the judiciary, since that would put its independence at risk. This body is to provide the implementation of the principle of independence of judges, that is, to ensure that legal guarantees of judicial independence be truly respected in practice.

This type of body exists in most European countries. The Council of Europe issued several recommendations that set forth the standards

regarding the structure of such a body, the appointment of its members, as well as regarding its authority and functioning.

The existence of this type of body is not provided in the current Constitution, but in the Law on High Judicial Council. This body, nevertheless, is not established fully in accordance with international standards.

One of the shortcomings is the fact that judges-members are not elected by their peers, in a manner which would ensure the widest court representation.

Primarily because of current constitutional limitations, the body's authority is reduced only to the procedure of judicial appointment. Changes to the set of judiciary laws consistently aimed at further narrowing down its already limited authority. It was possible to do so because there were no constitutional provisions for existence of such a body with clearly defined authority.

The future Constitution should provide for the existence of such an independent and autonomous body.

Independence of that body would be ensured by a guarantee that the majority of its members would be judges, and that they themselves would be able to determine the rules of procedure.

Further authority of this body over all activities that serve to guarantee the independence of courts as bodies of judicial power, as well as the independence of judges as carriers of judicial functions, should be determined by law.

PERMANENCY OF JUDICIAL TENURE

Judges shall have a life tenure.

Commentary:

Tenure of office represents a strong guarantee of judicial independence.

The existing Constitution provides for life tenure, and the future Constitution should contain the same formulation.

NON-TRANSFERABILITY OF JUDGES

A judge shall not be transferred to another court without his/her consent, except in case of termination of the court or predominant part of its jurisdiction.

Commentary:

According to the current Constitution, a judge may not be transferred to another court without his/her consent.

This principle is well formulated, but it is necessary to foresee exceptions, in case of a termination of the court or predominant part of its jurisdiction.

If the Constitution would not allow for the exceptions to this principle, an unsurmountable obstacles in resolving the status of judges would appear as a result of changes of the court system, termination of certain courts, or as a result of partial or complete change of the courts' jurisdictions. If provisions on the new organization and jurisdiction of courts from the Law on Organization of Courts come into effect, we will soon encounter this problem in practice.

INCOMPATIBILITY OF A JUDICIAL FUNCTION WITH OTHER EMPLOYMENT OR WORK

Judicial function is not compatible with a function in other state bodies, membership in political organizations and other functions and activities determined by law.

Exceptionally, a judge can perform functions, in other state bodies, related to interest of the judiciary, on the basis of a decision made by the Judicial Council, for a period of not more than four years, during which time his/her judicial function will rest.

Commentary:

The existing Constitution requires the law to determine which functions and types of work are incompatible with the judicial function.

The new Constitution should explicitly state that the membership in political organizations is incompatible with the judicial function.

The only exception to non-compatibility of the judicial function with a function in other state bodies should be to allow the judges to be

seconded to other state bodies, on the basis of a decision made by the HJC, to work on issues relevant to the judiciary, for the period of not more than four years, during which their judicial function will rest.

ELECTION AND DISMISSAL OF JUDGES AND COURT PRESIDENTS

The Judicial Council shall elect and dismiss judges and Court Presidents.

The selection shall be performed through public announcement.

Judges shall be elected on the grounds of objective criteria based on their professional ability, competence and worthiness to perform judicial function, and pursuant to the conditions set forth by the law.

A judge shall be dismissed:

- **at his/her own request,**
- **when he/she reaches the maximum age determined by law,**
- **when he/she permanently loses working capacity,**
- **when he/she is convicted, by a final court decision, to prison sentence of more than six months,**
- **when he/she performs her judicial duty unprofessionally, and**
- **when he/she commits a serious disciplinary offense, as determined by law.**

Against the decision to dismiss, a judge may appeal to the Constitutional Court within 15 days from the day of the receipt of the decision.

Commentary:

According to the existing Constitution, judges are elected by the Parliament.

Such an insufficiently explained constitutional provision on the elections of judges has several shortcomings.

First, the Constitution does not determine, not even vaguely, the criteria for the election of judges.

Second, it does not guarantee in any way the participation of an independent body, in which judges are a majority, in the procedure of the appointment of judges.

This type of solution allows for procedures and criteria for the election of judges to be set up in a way that does not make the judges'

professional ability or worthiness the issue of utmost importance in the process of appointment. According to the Law on Courts (in effect until January 1, 2002) Parliamentary Committee for the Judiciary was in charge of the appointment of judges, while the Minister of Justice was in charge of the procedure preceding the election, which made it possible not to elect judges according to their professional ability and worthiness of the candidates, but on the basis of interests of political parties.

In accordance with the mentioned constitutional provision, the Law on Judges (Articles 42-46) states that judges are elected by the Parliament upon the explained proposal of the High Judicial Council. Only a candidate proposed by the High Judicial Council may be elected. If the proposed candidate is not elected, the High Judicial Council makes a new proposal.

A Yugoslav citizen who fulfills all the conditions needed for employment in a state body, who has a university degree in law, who passed the Bar exam, is worthy of a judicial position and has the necessary professional experience may be elected for a judge.

The High Judicial Council is in charge of the procedure and selection, and while nominating the candidates it only considers professional qualities and worthiness. Only a candidate proposed by the High Judicial Council may be elected judge.

Even though this solution is better than the one from the Law on Courts, and, at first glance, it seems to follow international standards, it has many shortcomings.

First, the High Judicial Council, even though the majority of its members are judges, does not guarantee the widest possible representation of all types of judges and all court instances, chosen by colleagues. Its members, from the judges, are now chosen by the General Session of the Supreme Court of Serbia.

Second, the criteria for the election of a judge and the criteria for the proposal of a candidate are not the same. While electing a candidate, the Parliament does not have the obligation to consider his/her professional ability, while the High Judicial Council, when proposing a candidate, considers only that, and the candidate's worthiness.

Third, the Parliament does not have the obligation to explain why it did not accept the proposal of the High Judicial Council.

If the solution where the Parliament elects judges remains, it would be necessary to prescribe the same criteria for the proposal of candidates by the High Judicial Council, and for the election of candidates by the Parliament (based on expertise, ability, and worthiness to perform the

judicial function, and in accordance with conditions determined by law – citizenship, education, professional experience). The Parliament should have the obligation to give reasons for rejection of the High Judicial Council’s proposal, while the Council’s right to propose the same candidate should be limited to one more time. It is also necessary to regulate the structure of the High Judicial Council, as well as the method of appointment of its members so that the majority of the members are judges selected by their colleagues, and to provide representatives of all court types and instances.

Regarding the termination of the judicial function, the Constitution states that:

Judges and Court Presidents are elected and dismissed by the Parliament (Article 73, Paragraph 10).

Judicial function is permanent.

Judge’s tenure of office shall terminate:

- at his/her own request,
- when he/she reaches the maximum age as determined by law,
- when he/she is convicted of a criminal offence to an unconditioned penalty for no less than six months,
- when he/she is convicted of a criminal offense which renders him/her unsuitable to perform judicial function,
- when he/she performs judicial function unprofessionally and unconscientiously,
- when he/she has permanently lost the working capacity for performing judicial function.

The Supreme Court determines the existence of reasons for termination of a judicial function, in accordance with the law, and informs the Parliament about its decision.

This is not the best solution.

Namely, all the above mentioned remarks regarding the Parliament and the election of judges also apply to the termination of judicial functions. Regarding the termination of judicial duty a protective “shield” against political influence lies in the fact that judicial function may not be terminated unless the Supreme Court determines the existence of reasons for termination. Nevertheless, this guarantee proved insufficient because it was not always respected in practice (before and after October 5, 2000, there were cases when judicial functions were terminated through decisions of the Parliament regardless of the fact that the Supreme Court did not determine the existence of reasons for termination).

The best solution would be to give the High Judicial Council the authority to elect as well as dismiss judges.

This solution would represent a strong guarantee of judicial independence, since their election and dismissal would be best protected from the influence of interests of political parties. This is especially important because our country is in a period of transition, with an extremely unstable political scene, low level of political and legal culture; and experience teaches us that the influence of politics on the appointment and dismissal of judges was very strong, and that the same tendency persists (for example, changes and amendments to the Law on Judges, declared unconstitutional by the Constitutional Court, which rendered the role of the High Judicial Council meaningless by stating that the Parliament is not bound by the Council's proposal for election of judges; or the above mentioned example of judges who were dismissed without the decision of the Supreme Court).

This would make the election and dismissal of judges more efficient since they would not be tied to the work of the Parliament (problems with determining the daily agenda, lack of quorum needed for voting, pauses between sessions, etc.).

On the other hand, the Parliament would not be completely stripped of its influence in this area, since it would still select a certain number of High Judicial Council's members.

According to the existing Constitution, Court Presidents are elected and dismissed by the Parliament.

Such a constitutional provision allows for a great freedom in legal regulation of this matter.

Current and recent legal provisions regulated the status and authority of Court Presidents in a way that allowed a significant political influence on judicial independence through Court Presidents.

According to the Law on Courts (in effect until January 1, 2002), Court Presidents were appointed and dismissed by the Parliamentary Committee for the Judiciary. That made it possible to appoint politically fit and obedient judges as Court Presidents, and through them realize political influence on the work of courts and judges, which happened quite often in practice.

What made this possible was the fact that a Court President had wide and uncontrolled authority, vagueness or complete absence of statutory provisions regarding certain important issues.

The Court President made an annual schedule of jobs at the court and could change it at will. That was used as a method of punishment of

disobedient judges. He/she could also allocate cases without clear, predetermined criteria, or take cases away from certain judges and give them to others. That way, certain cases ended up in the hands of “suitable” judges. He/she was authorized to initiate dismissal of judges, and could significantly influence employment policy by independently, without predetermined criteria, deciding on the acceptance of judges’ intern-assistants (future judges). Thanks to his/her “connections” with political structures, he/she had significant influence on the appointment and advancement of judges, as well as on who would be granted an apartment and who would not.

Adoption of the set of judiciary laws put some of the authority of Court Presidents under control. It solved, in a satisfactory way, the issue of scheduling and rescheduling of the annual workload of the court, as well as allocation and removal of cases (Articles 20-23 of the Law on Judges).

Nevertheless, the problem lies in the fact that in practice these provisions are not consistently implemented, without any resulting sanctions.

According to the Law on Judges, Court Presidents were elected and dismissed using the same procedure as for judges. The High Judicial Council had the authority to propose their election to the Parliament. Through later amendments of the law, there were constant attempts to regulate the election of Court Presidents in a way that would open up a string of mechanisms for political influence, but the Constitutional Court declared this amendment unconstitutional.

Since it is clear that political structures have a strong interest in having “their own” Court Presidents, constitutional provisions on procedure and method of their appointment should be regulated in a way significantly different from the existing ones.

The authority to elect and dismiss Court Presidents should be in the hands of the High Judicial Council.

That would protect, in the best possible way, the procedure of election and dismissal of judges, ensure independent work of Court Presidents, and prevent the ability to gain influence on judicial independence through Court Presidents.

DISCIPLINARY RESPONSIBILITY

It shall be determined by law when unprofessional performance of judicial duties and improper judicial conduct represent a disciplinary offense, as well as the appropriate sanctions after the disciplinary procedure has been conducted.

The Judicial Council is in charge of conducting disciplinary procedure and determining a disciplinary sanction.

A judge has the right of appeal against the disciplinary decision to the Supreme Court of Serbia within 15 days from the day of the receipt of the decision.

Commentary:

Apart from the termination of judicial function, the existing Constitution does not recognize any other measure that can be imposed for unprofessional or improper judicial conduct.

Nevertheless, between the proper judicial conduct and professional performance of judicial duty, and improper conduct and unprofessional work, there is a wide array of acts which are not in accordance with what is expected of a judge, and which merit some form of sanction. In most countries, that is achieved through judges' disciplinary responsibility.

The Law on Judges does not contain special provisions on disciplinary responsibility of judges, but this Law regulates situations in which it is possible to impose some measures that, by their character, represent disciplinary sanction.

Article 29 states that the High Personnel Council, while deciding on incompatibility of other employment, or work, with a judicial function, can issue a reprimand that goes on judge's record. The High Personnel Council's decision may be appealed before the High Judicial Council.

The High Personnel Council, in the course of dismissal proceedings due to negligent or unprofessional conduct of a judge, can issue a reprimand or a measure of removal from the court, for the period of one month to one year (Article 58). The decision may be appealed before the General Session of the Supreme Court.

The shortcomings of these provisions lie in the fact that judicial conduct that merits certain sanctions is too vague, making it unclear which type of conduct results in what sanction.

It is necessary to clearly foresee which conducts represent disciplinary offence, to clearly define the appropriate sanction for each

conduct, and to make sure that each sanction is adequate to the gravity of the offence.

The Constitution has to clearly envisage the disciplinary responsibility of judges, its definition, and its bases.

The basis for disciplinary responsibility is unprofessional performance of a judicial duty, and improper judicial conduct.

Only the law can determine which types of unprofessional performance and improper conduct represent a disciplinary offense, and which disciplinary measures can be imposed on a judge, after a disciplinary procedure.

As every type of “punishment” or “disciplining” of judges carries with itself the ability to influence them, the authority to conduct disciplinary procedures and to impose sanctions should be placed in the hands of the High Judicial Council, as an independent body that “hovers over” the independence of judges.

The decision to impose a disciplinary measure must be subject of judicial control, and it should be possible for a judge to submit a complaint to the Supreme Court, which would then review the legality of the decision.

The gravest types of judges’ unprofessional performance of duty and improper conduct, determined by law as serious disciplinary offenses, should be the basis for dismissal (that is why they are listed as some of the basis for dismissal in the chapter on dismissal of judges).

TRANSPARENCY (PUBLICITY) OF THE PROCEEDINGS

Proceedings shall be open to the public.

It shall be prescribed by law in which cases the public shall be excluded from the proceedings for reasons of protection of a secret, morality, interests of juveniles or protection of other public interests.

Commentary:

The existing constitutional provision which states that court hearings are public, and determines in which cases the public can be legally excluded, should be retained in the new Constitution.

COURT BUDGET

Financial means for the independent and efficient work of courts, the Judicial Council, salaries, and professional advancement of judges and other court employees, shall be provided by the separate court budget, proposed to the Parliament by the Court Budget Committee.

Members of the Court Budget Committee are: The President of the Supreme Court of Serbia, the Minister of Justice, the Minister of Finance, and two members elected by court presidents among themselves.

Commentary:

The Constitution provides that the means for the work of the courts come from the budget, adopted by the Parliament upon a proposal of the Government.

No participation of the judicial power was foreseen in the procedure for determination of the amount of money needed for the functioning of courts, nor in the process of monitoring of how the money is spent. That is why there were situations where, due to a lack of finances, the efficient functioning of certain courts was problematic (unpaid phone bills, unpaid postal bills, unpaid fees of expert witnesses and public defenders).

Apart from that, the fact that other two branches of power independently decide on the finances needed for the functioning of the judicial power opens up the possibility to influence its independence. It is hard to speak of a status, and functional independence of courts and judges, if there are no guarantees for their financial security, and if they depend exclusively on the other two branches of power.

That is why the future Constitution should state that the financial means needed for the functioning of the judiciary should come from a separate court budget. A special body, with representatives of the judiciary as the majority of the members, needs to be established. The body would propose this budget to the Parliament, and monitor its realization.

„This manual has been produced with the financial assistance of U.S. Agency for International Development (USAID) under the terms of its Co-operative Agreement with the American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI). The contents of this manual are the responsibility of the author(s) and do not necessarily reflect the views of ABA/CEELI, USAID or the United States Government“.



COMPARATIVE OVERVIEW OF CONSTITUTIONAL PROVISIONS REGARDING THE INDEPENDENCE OF THE JUDICIARY

**Proposal made by the Judges' Association of Serbia, provisions of 24
European Constitutions and provisions of the 1990 Constitution of
the Republic of Serbia**



ABA CEELI is a USAID funded project.

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INTRODUCTION

ABA/CEELI (American Bar Association/Central European and Eurasian Law Initiative) is a project of the American Bar Association aimed at supporting judicial reform and the rule of law in Central Europe and Eurasia. In its activities in Serbia since 1997, ABA/CEELI has responded to the needs of the host country, provided comparative legal approaches and impartial advice, and strictly respected rules relating to conflict of interest.

Considering these fundamental principles, as well as the current status of legal reform in Serbia, the efforts to develop an independent and efficient judiciary, and with the intent to provide a meaningful contribution to the debate and adoption of the most appropriate constitutional provisions regulating the position of the Serbian judiciary, ABA/CEELI has prepared this comparative overview of constitutional provisions.

In preparing this analysis, ABA/CEELI considered the Judges' Association of Serbia's (JAS) proposal for constitutional provisions relating to the judiciary, as presented in the document "Constitutional Foundation of the Independence of the Judiciary."

Using this proposal as a starting point, we compared the JAS proposal to provisions contained in the current Constitution of the Republic of Serbia, adopted in 1990 as well as the judiciary provisions contained in 24 European constitutions: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, Greece, Germany, Netherlands, Croatia, Italy, Latvia, Lithuania, Macedonia, Hungary, Moldova, Germany, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain and Ukraine.

The goal of this analysis is to provide comparative information on various constitutional provisions relating to the judiciary in Europe, as well as key provisions of the Constitution of Serbia. The analysis does not assess the appropriateness, foundations or legal-technical grounds of the JAS proposal; rather, it is intended as a tool that will enable the reader to compare the JAS proposal to other proposals, as well as to existing constitutional provisions.

In performing this analysis, ABA/CEELI relied on sources available through the embassies of relevant countries, the ABA/CEELI Washington DC database, and internet legal research tools. Although every effort was made to ensure accuracy and authenticity of the provided data, ABA/CEELI welcomes suggestions, comments and criticisms in order to further improve this document.

Belgrade,
Robert Lochary
January 18, 2005

Country Director
ABA/CEELI Serbia

**Proposal made by the Judges' Association of Serbia,
provisions of 24 European Constitutions and
provisions of the 1990 Constitution of the
Republic of Serbia**

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	JUDICIAL POWER
	<p>Judicial power belongs to the courts as independent state bodies.</p> <p>Organization of courts, their establishment, termination, jurisdiction, procedure, structure, and the status of judges shall be determined by law, adopted by the vote of more than a half of members of Parliament.</p> <p>Extraordinary courts shall not be established.</p> <p>The Supreme court of Serbia is the court of highest instance in the Republic of Serbia.</p>
Constitution of Serbia	<p>Article 96. The courts of law are autonomous and independent in their work and shall adjudicate on the ground of the Constitution, law, and other general enactments.</p> <p>Article 102. The organisation, establishment, jurisdiction, and composition of courts, and the procedure at the courts, shall be specified by law.</p> <p>The Supreme Court of Serbia shall be the highest court in the Republic of Serbia.</p>
Austria	<p>Article 83 (1) The constitution and competence of the courts is laid down by federal law.</p> <p>Article 92 (1) The Supreme Court is the court of final instance in civil and criminal suits.</p> <p>Article 94 Judicial and administrative powers shall be separate at all levels of proceedings.</p>
Belgium	<p>Article 146 [No Extraordinary Courts or Tribunals] Under no circumstance may a court or contentious jurisdiction be established, other than on the sole basis of a law. Under no denomination may a commission or an extraordinary tribunal be created.</p> <p>Article 147 [Court of Cassation]</p>

	<p>(1) There is a Court of Cassation for the whole of Belgium.</p> <p>(2) This court lacks competency regarding matters of substance save for the judgment of ministers and of members of Regional and Community Governments.</p>
Bulgaria	<p>Article 117</p> <p>(2) The judicial branch is independent.</p> <p>Article 124</p> <p>The Supreme Court of Cassation shall exercise supreme judicial oversight as to the precise and equal application of the law by all courts.</p> <p>Article 133</p> <p>The organization and the activity of the Supreme Judicial Council, of the courts, the prosecution and the investigation, the status of the justices, prosecutors and investigating magistrates, the conditions and the procedure for the appointment and dismissal of justices, court assessors, prosecutors, and investigating magistrates, and the materialization of their liability shall be established by law.</p>
Czech Republic	<p>Article 81</p> <p>Judicial power is exercised by independent courts on behalf of the Republic.</p> <p>Article 91</p> <p>(1) The judiciary consists of the Supreme Court, the Supreme Administrative Court, high, regional, and district courts. Legislation may determine other terms for them.</p> <p>(2) The jurisdiction and organization of courts is stipulated by law.</p> <p>Article 92</p> <p>The Supreme Court is the highest judicial body in matters falling under the jurisdiction of courts with the exception of matters decided by the Constitutional Court or the Supreme Administrative Court.</p>
Denmark	<p>Section 61</p> <p>The exercise of the judiciary power shall be governed only by Statute. Extraordinary courts of justice with judicial power shall not be established.</p> <p>Section 62</p> <p>The administration of justice shall always remain independent of the executive power.</p>

<p>Finland</p>	<p>Section 3 (2) ...The judicial powers are exercised by independent courts of law, with the Supreme Court and the Supreme Administrative Court as the highest instances. Section 99 Duties of the Supreme Court and the Supreme Administrative Court (1) Justice in civil, commercial and criminal matters is in the final instance administered by the Supreme Court. Justice in administrative matters is in the final instance administered by the Supreme Administrative Court. (2) The highest courts supervise the administration of justice in their own fields of competence. They may submit proposals to the Government for the initiation of legislative action. Section 100 Composition of the Supreme Court and the Supreme Administrative Court (1) The Supreme Court and the Supreme Administrative Court are composed of the President of the Court and the requisite number of Justices. (2) The Supreme Court and the Supreme Administrative Court have a competent quorum when five members are present, unless a different quorum has been laid down by an Act.</p>
<p>Greece</p>	<p>Article 26: (3) The judicial powers shall be exercised by courts of law, the decisions of which shall be executed in the name of the Greek People. Article 93 (1) Courts are distinguished into administrative, civil and criminal courts, and they are organized by special statutes.</p>
<p>Germany</p>	<p><i>Article 92 [Court Organization]</i> Judicial power is vested in the judges; it is exercised by the Federal Constitutional Court, by the federal courts provided for in this Constitution, and by the courts of the States [Länder]. <i>Article 95 [Highest Courts of Justice, Joint Panel]</i> (1) For the purposes of ordinary, administrative, fiscal, labor, and social jurisdiction, the Federation establishes as highest courts of justice the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labor Court, and the Federal Social Court. (2) The judges of each of these courts are selected jointly by the competent Minister and a committee for</p>

	<p>the selection of judges consisting of the competent State [Land] ministers and an equal number of members elected by the House of Representatives [Bundestag].</p> <p>(3) In order to preserve uniformity of decisions, a Joint Panel of the courts specified in Paragraph I is set up. Details are regulated by a federal statute.</p> <p><i>Article 101 [Ban on Extraordinary Courts]</i></p> <p>(1) Extraordinary courts are inadmissible. No one may be removed from the jurisdiction of his lawful judge.</p> <p>(2) Courts for special fields of law may be established only by Legislation.</p>
Croatia	<p>Article 117</p> <p>Judicial power shall be exercised by courts. Judicial power shall be autonomous and independent. Courts shall administer justice according to the Constitution and law.</p> <p>Article 118</p> <p>The Supreme Court of the Republic of Croatia, as a highest court, shall secure uniform application of laws and equal justice to all.</p> <p>The President of the Supreme Court of the Republic of Croatia shall be appointed and relieved from duty by the Croatian Parliament at the proposal of the President of the Republic, with a prior opinion of the general session of the Supreme Court of the Republic of Croatia and of the authorized committee of the Croatian Parliament. The President of the Supreme Court of the Republic of Croatia shall be appointed for a four-year term of office.</p> <p>The establishment, jurisdiction, composition and organization of courts and court proceedings shall be regulated by law.</p>
Netherlands	<p>Article 116</p> <p>(1) The courts which form part of the judiciary shall be specified by Act of Parliament.</p> <p>(2) The organization, composition and powers of the judiciary shall be regulated by Act of Parliament.</p>
Italy	<p>Article 102 [Judges]</p> <p>(2) There may not exist extraordinary or special judges. Only specialized sections for specific matters may be established within the ordinary courts; qualified citizens who are not members of the judiciary may take part.</p> <p>Article 104</p>

	<p>(1) The judiciary constitutes an autonomous and independent branch of government not subject to any other.</p> <p>Article 108</p> <p>(1) The organization of the judiciary and every judicial authority are defined by law.</p>
Latvia	<p>Article 86</p> <p>Decisions in court proceedings may be made only by bodies upon whom jurisdiction regarding such has been conferred by law, and only in accordance with procedures provided for by law. Military courts shall act on the basis of a specific law.</p>
Lithuania	<p>Article 109</p> <p>(1) In the Republic of Lithuania, the courts shall have the exclusive right to administer justice.</p> <p>(2) While administering justice, judges, and courts shall be independent.</p> <p>Article 111</p> <p>(1) The court system of the Republic of Lithuania shall consist of the Supreme Court, the Court of Appeal, district courts, and local courts.</p> <p>(2) For the investigation of administrative, labor, family and other litigations, specialized courts may be established pursuant to law.</p> <p>(3) Courts with special powers may not be established in the Republic of Lithuania in times of peace.</p> <p>(4) The formation and competence of courts shall be determined by the Law on Courts of the Republic of Lithuania.</p>
Macedonia	<p>Article 98</p> <p>(1) Judiciary power is exercised by courts.</p> <p>(2) Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution.</p> <p>(3) There is one form of organization for the judiciary.</p> <p>(4) Emergency courts are prohibited.</p> <p>(5) The types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law adopted by a majority vote of two-thirds of the total number of Representatives.</p>
Hungary	<p>Article 45</p> <p>(1) In the Republic of Hungary justice is administered</p>

	<p>by the Supreme Court of the Republic of Hungary, the appeals courts, the Municipal Court of Budapest, the county courts and the local and labor courts. (2) Special courts for specific groups of cases may be established by law. Article 47 (1) The Supreme Court is the supreme court authority for justice of the Republic of Hungary. (2) The Supreme Court shall assure the uniformity of the administration of justice by the courts and its resolutions concerning uniformity shall be binding for all courts. Article 50 (5) A majority of two-thirds of the votes of the Members of Parliament present shall be required for the Parliament to pass the laws on the structure and supervision of courts and on the legal status and remuneration of judges.</p>
Moldova	<p>Article 115 (1) Justice shall be administered by the Supreme Court of Justice, the Court of Appeal, by tribunals and the courts of law. (2) To hear certain categories of cases special courts may be set up under the law. (3) It is forbidden to set up courts of exception. (4) The structure of the courts of law, their areas of competence and the corresponding judicial procedures shall be established by organic law.</p>
Poland	<p>Article 173 The courts and tribunals shall constitute a separate power and shall be independent of other branches of power. Article 175 [] (1) The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts. (2) Extraordinary courts or summary procedures may be established only during a time of war. Article 176 [] (1) Court proceedings shall have at least two stages. (2) The organizational structure and jurisdiction as well as procedure of the courts shall be specified by statute. Article 183 []</p>

	<p>(1) The Supreme Court shall exercise supervision over common and military courts regarding judgments.</p> <p>(2) The Supreme Court shall also perform other activities specified in the Constitution and statutes.</p>
Portugal	<p>Article 203 The courts are independent and subject only to the law.</p> <p>Article 210 1. The Supreme Court of Justice is the highest court of law, without prejudice to the jurisdiction of the Constitutional Court.</p>
Romania	<p>Article 125 (1) Justice shall be administered by the Supreme Court of Justice and other courts established by law. (2) The setting up of courts of exception is prohibited. (3) Competence and procedure of courts shall be regulated by law.</p>
Russia	<p>Article 118. (1) Justice in the Russian Federation shall be administered only by law courts. (3) The judiciary system of the Russian Federation shall be established by the Constitution of the Russian Federation and the federal constitutional law. The creation of extraordinary courts shall be forbidden.</p>
Slovakia	<p>Article 141 (1) Justice in the Slovak Republic is administered by independent and impartial courts. (2) Justice at all levels is administered independently of other state bodies.</p> <p>Article 143 (1) The system of courts consists of the Supreme Court of the Slovak Republic and other courts. (2) The detailed arrangement of the court system, the courts' sphere of competence and organization, and the manner of court proceedings will be set out in a law.</p>
Slovenia	<p>Article 126 (Organisation and Jurisdiction of Courts) (1) The organisation and jurisdiction of courts are determined by law. (2) Extraordinary courts may not be established, nor may military courts be established in peacetime.</p> <p>Article 127 (Supreme Court) (1) The Supreme Court is the highest court in the state. (2) It decides on ordinary and extraordinary legal remedies and performs other functions provided by law.</p>

Spain	<p>Article 117 (1) Justice emanates from the people and is administered in the name of the King by Judges and Magistrates who are members of the judicial power and are independent, irremovable, responsible, and subject only to the rule of the law.</p> <p>Article 122 (1) The organic law on judicial power shall determine the structure, operation, and administration of the Courts and Tribunals, as well as the legal status of Judges and Magistrates, who form a single body, and of the personnel at the service of the Administration of Justice.</p> <p>Article 123 (1) The Supreme Court, with jurisdiction all over Spain, is the highest jurisdictional organ in all orders, except in matters concerning constitutional guarantees.</p>
Ukraine	<p>Article 124 Justice in Ukraine is administered exclusively by the courts... Judicial proceedings are performed by the Constitutional Court of Ukraine and courts of general jurisdiction.</p> <p>Article 125 The Supreme Court of Ukraine is highest judicial body in the system of courts of general jurisdiction. The respective high courts are the highest judicial bodies of specialized courts. Courts of appeal and local courts operate in accordance with the law. The creation of extraordinary and special courts shall not be permitted.</p>

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	INDEPENDENCE OF A JUDGE A judge is independent and impartial in his/her work and decision-making, and it is his/her duty only to uphold the Constitution and law. A judge is not obligated to explain his/her understanding of facts and law, to anyone, except in the written explanation of a decision. Any use of public office, media, or any public appearance that may influence the course and outcome of the court proceedings, or any other form of influence on the court shall be punishable. A judge is entitled to a salary which is appropriate to the dignity of his profession and the burden of his responsibility, that will protect him/her from any influences and conducts that may undermine his/her independence and impartiality.
Constitution of Serbia	Does not contain provisions
Austria	Article 87 (1) Judges are independent in the exercise of their judicial office.
Belgium	Does not contain provisions.
Bulgaria	Article 117 (2) The judicial branch is independent. In the performance of their functions, all judges, court assessors, prosecutors, and investigating magistrates shall be subservient only to the law.
Czech Republic	Article 82 (1) Judges are independent in the execution of their function. Their impartiality must not be threatened by anyone.
Denmark	Section 64 (1) In the performance of their duties the judges shall be directed solely by the law.
Finland	Does not contain provisions.
Greece	Article 87 1. Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence. 2. In the discharge of their duties, judges shall be subject only to the Constitution and the laws; in no case

	whatsoever shall they be obliged to comply with provisions enacted in violation of the Constitution.
Germany	<i>Article 97 [Independence of Judges]</i> (1) The judges are independent and subject only to the law.
Croatia	Does not contain provisions.
Holland	Does not contain provisions.
Italy	Article 101 (1) The justice is administered in the name of the people. (2) Judges are only subject to the law.
Latvia	Article 83 Judges shall be independent and subject only to the law.
Lithuania	Article 109 (2) While administering justice, judges, and courts shall be independent. (3) While investigating cases, judges shall obey only the law.
Macedonia	Article 98 (2) Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution.
Hungary	Article 50 (3) Judges are independent and answer only to the law. Judges may not be members of political parties and may not engage in political activities.
Moldavia	Article 116. (1) Judges sitting in the courts of law are independent, impartial, and irremovable under the law.
Poland	Article 178 [] (1) Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.
Portugal	Does not contain provisions
Romania	Article 123 (2) Judges shall be independent and subject only to the law.
Russia	Article 120. (1) Judges shall be independent and shall obey only the Constitution of the Russian Federation and the federal law.
Slovakia	Article 144 (1) Judges are independent in making decisions and

	bound solely by the law. (2) In cases specified by the Constitution or the law, judges are bound also by international treaties.
Slovenia	Article 125 (Independence of Judges) Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws.
Spain	Article 117 (1) Justice emanates from the people and is administered in the name of the King by Judges and Magistrates who are members of the judicial power and are independent, irremovable, responsible, and subject only to the rule of the law.
Ukraine	Article 129 In the administration of justice, judges are independent and subject only to the law. Article 126 - Influencing judges in any manner is prohibited.

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	IMMUNITY
	A judge shall not be held responsible for an opinion given in the process of rendering a decision. A judge shall not be detained, nor shall the proceedings for a criminal act committed during performance of judicial function be conducted against him/her without the consent of the Judicial Council.
Constitution of Serbia	Article 96. No one participating in adjudication shall be held responsible for an opinion expressed in the passing of a judgment, nor can anyone be detained in proceedings instituted due to a criminal offence committed in performing judicial function without the approval of the National Assembly.
Austria	Does not contain provision.
Belgium	Does not contain provision

Bulgaria	<p>Article 132 [Immunity]</p> <p>(1) Justices, prosecutors, and investigating magistrates shall enjoy the same immunity as the Members of the National Assembly.</p> <p>(2) The immunity of a justice, prosecutor, or investigating magistrate shall be lifted by the Supreme Judicial Council only in the circumstances established by the law.</p> <p>Article 133 [Legal Procedures]</p> <p>The organization and the activity of the Supreme Judicial Council, of the courts, the prosecution and the investigation, the status of the justices, prosecutors and investigating magistrates, the conditions and the procedure for the appointment and dismissal of justices, court assessors, prosecutors, and investigating magistrates, and the materialization of their liability shall be established by law.</p>
Czech	<p>Art. 86: (1) A judge of the Constitutional Court cannot be criminally prosecuted without the consent of the Senate. If the Senate declines to give its consent, criminal prosecution is rendered impossible forever. (2) A judge of the Constitutional Court may be detained only if caught while committing a criminal act or immediately thereafter. The respective authority is obliged to immediately notify the Chairman of the Senate of the detention. If the Chairman or the Senate fails to give his consent to passing the detainee to court within 24 hours, the respective authority is obliged to release him. The Senate shall make a definitive decision about whether or not criminal prosecution is admissible at its first following session. (3) A judge of the Constitutional Court has the right to deny testimony on matters about which he or she learnt while discharging his or her function, and, as well, after he or she ceased to be a judge of the Constitutional Court.</p>
Denmark	Does not contain provision
Finland	Does not contain provision
Greece	Does not contain provision
Germany	Does not contain provision
Croatia	<p>Art. 121: (1) Judges and lay-assessors who take part in the administration of justice cannot be called to account for an opinion given in the process of judicial decision-making. (2) Judges, in conformity with law, enjoy the same immunity as representatives in the Croatian Parliament.</p>

Holland	Does not contain provision
Italy	Does not contain provision
Latvia	Does not contain provision
Lithuania	Article 114 The judge may not be held criminally liable, arrested, or otherwise restricted of his freedom without the consent of the Seimas, or between sessions of the Seimas, of the President of the Republic.
Macedonia	Art. 100,: (1) Judges are granted immunity. (2) The Assembly decides on the immunity of judges.
Hungary	Does not contain provision
Moldova	Does not contain provision
Poland	Article 181 [] A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible nor deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order an immediate release of the person detained.
Portugal	Does not contain provision
Romania	Does not contain provision
Russia	Article 122. Judges shall possess immunity. Criminal proceedings may not be brought against a judge except as provided for by federal law.
Slovak	Does not contain provision
Slovenia	Art 134: 1) No one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court. (2) If a judge is suspected of a criminal offence in the performance of judicial office, he may not be detained nor may criminal proceedings be initiated against him without the consent of the National Assembly.
Spain	Does not contain provision
Ukraine	Article 126 The independence and immunity of judges are guaranteed by the Constitution and the laws of Ukraine.

<p>PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA</p>	<p>JUDICIAL COUNCIL</p> <p>The Judicial Council is an independent and autonomous body which performs tasks determined by the Constitution and law, in order to realize the independence of judges.</p> <p>The Judicial Council has eleven members, five of which are elected by the Parliament, upon a proposal made by the President of the Republic, among the esteemed legal professionals; the rest are elected by judges, among themselves, in a manner which ensures the widest representation of courts. The mandate of members is five years and they can not be re-elected to two consecutive terms.</p>
<p>Constitution of Serbia</p>	<p>Does not contain provisions.</p>
<p>Austria</p>	<p>Does not contain provisions.</p>
<p>Belgium</p>	<p>Does not contain provisions.</p>
<p>Bulgaria</p>	<p>Article 130</p> <p>(1) The Supreme Judicial Council shall consist of 25 members. Sitting on it ex officio shall be the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court, and the Chief Prosecutor.</p> <p>(2) Eligible for election to the Supreme Judicial Council besides its ex officio members shall be practicing lawyers of high professional and moral integrity with at least 15 years of professional experience.</p> <p>(3) Eleven of the members of the Supreme Judicial Council shall be elected by the National Assembly, and eleven shall be elected by the bodies of the judicial branch.</p> <p>(4) The elected members of the Supreme Judicial Council shall serve terms of five years. They shall not be eligible for immediate re-election.</p> <p>(5) The meetings of the Supreme Judicial Council shall be chaired by the Minister of Justice, who shall not be entitled to a vote.</p> <p>Article 131 [Secret Ballot]</p> <p>Any resolution of the Supreme Judicial Council to appoint, promote, demote, reassign, or dismiss a</p>

	justice, a prosecutor or an investigating magistrate, or a resolution pursuant to Article 129 (2), shall be passed by a secret ballot.
Czech Republic	Does not contain provisions.
Denmark	Does not contain provisions.
Finland	Does not contain provisions.
Greece	<p>Article 90</p> <p>** 1. Promotions, assignments to posts, transfers, detachments, and transfers to another branch of judicial functionaries shall be effected by presidential decree, issued after prior decision by the supreme judicial council. This council shall be composed of the president of the respective highest court and of members of the same court chosen by lot from among those having served in it for at least two years, as specified by law. In the supreme judicial council on civil and criminal justice shall participate the Prosecutor of the Supreme Court as well as two Deputy Prosecutors of the Supreme Court who are appointed by lot from among those having served for at least two years in the Public Prosecutor's Office of the Supreme Court, as specified by law. In the supreme judicial council of the Supreme Administrative Court and of administrative justice shall also participate the General Commissioner of State who serves in them, on issues relating to judicial functionaries of ordinary administrative courts and of the General Commission. In the supreme judicial council of the Court of Auditors shall also participate the General Commissioner of State who serves in it.</p> <p>In the supreme judicial council shall also participate, without right to vote, two judicial functionaries of the branch to which the changes in service status refer, who must hold the rank of Judge of Appeals or an equivalent rank, and are chosen by lot, as specified by law.</p> <p>** 2. In the case of judgments concerning promotions to the posts of Councillors of State, Supreme Court Judges, Deputy Prosecutors of the Supreme Court, Councillors of the Court of Auditors, President Judges of Appeals and Prosecutors of Appeals, as well as concerning the selection of the members of the General Commissions of administrative courts and of the Court of Auditors, the council prescribed in paragraph 1 shall be supplemented by additional members, as specified</p>

	<p>by law. As for the rest, the provisions of paragraph 1 shall also apply in this case.</p> <p>** 3. Should the Minister of Justice disagree with the judgment of a supreme judicial council, he may refer the matter to the plenum of the respective highest court, as specified by law. A judicial functionary whom the judgment concerns has also the right of recourse, under the conditions specified by the law. For the session of the plenum of the respective highest court as a supreme judicial council of second instance, the provisions of sections three to six of paragraph 1 apply. In the plenum of the Supreme Court, for the cases of the preceding section, the members of the Public Prosecutor's office of the Supreme Court also participate with right to vote.</p> <p>** 4. The decisions of the plenum, as a supreme judiciary council of second instance, on a matter referred to it and the decisions of the supreme judicial council with which the Minister has not disagreed, shall be binding upon him.</p>
Germany	<p><i>Article 95 [Highest Courts of Justice, Joint Panel]</i> (2) The judges of each of these courts are selected jointly by the competent Minister and a committee for the selection of judges consisting of the competent State [Land] ministers and an equal number of members elected by the House of Representatives [Bundestag].</p> <p><i>Article 98 [Legal Status of Judges]</i> (4) The States [Länder] may provide that the State [Land] minister of Justice together with a committee for the selection of judges decides on the appointment of judges in the States [Länder].</p>
Croatia	<p>Article 123 Judges shall, according to the Constitution and law, be appointed and relieved of duty by the National Judicial Council, which will also decide on all matters concerning their disciplinary responsibilities. In the process of appointment and relief of judges the National Judicial Council shall obtain the opinion of the authorized committee of the Croatian Parliament. The National Judicial Council shall consist of eleven members elected by the Croatian Parliament in conformity with law, from among notable judges,</p>

	<p>attorneys-at-law and university professors of law. The majority of members of the National Judicial Council shall be from the ranks of judges.</p> <p>Presidents of courts may not be elected as members of the National Judicial Council.</p> <p>Members of the National Judicial Council shall be elected for a four-year term and no one may be a member of the National Judicial Council for more than two subsequent terms.</p> <p>The President of the National Judicial Council shall be elected by secret ballot by a majority of the members of the National Judicial Council for a two-year term of office.</p> <p>The jurisdiction and the proceedings of the National Judicial Council shall be regulated by law.</p>
Holland	Does not contain provisions.
Italy	<p>Article 104 (2) The superior council of the judiciary is chaired by the president.</p> <p>(3) The first president and the general public prosecutor of the court of cassation are members by law.</p> <p>(4) Other members are elected with two-thirds majority by all ordinary judges belonging to the different categories, and one-third by parliament in joint session, from among full professors of law and lawyers with at least fifteen years of practice.</p> <p>(5) The council elects a vice-chairman from among the members designated by parliament.</p> <p>(6) The elected members have a term of for four years and may not be immediately re-elected.</p> <p>(7) They are not allowed, while in office, to be registered as members of the legal profession, nor become members of parliament or of a regional council.</p> <p>Article 105</p> <p>The superior council of the judiciary, as defined by organizational law, has the exclusive competence to appoint, assign, move, promote, and discipline members of the judiciary.</p>
Latvia	Does not contain provisions.
Lithuania	<p>Article 112</p> <p>(5) A special institution of judges provided by law shall submit recommendations to the President concerning the appointment of judges, as well as their promotion, transference, or dismissal from office.</p>

Macedonia	<p>Article 104</p> <p>(1) The Republican Judicial Council is composed of seven members.</p> <p>(2) The Assembly elects the members of the Council.</p> <p>(3) The members of the Council are elected from the ranks of outstanding members of the legal profession for a term of six years with the right to one reelection.</p> <p>(4) Members of the Republican Judicial Council are granted immunity. The Assembly decides on their immunity.</p> <p>(5) The office of a member of the Republican Judicial Council is incompatible with the performance of other public offices, professions or membership in political parties.</p> <p>Article 105</p> <p>The Republican Judicial Council</p> <ul style="list-style-type: none"> - proposes to the Assembly the election and discharge of judges and determines proposals for the discharge of a judge's office in cases laid down in the Constitution; - decides on the disciplinary answerability of judges; - assesses the competence and ethics of judges in the performance of their office; and - proposes two judges to sit on the Constitutional Court of Macedonia.
Hungary	Does not contain provisions.
Moldova	<p>SECOND SECTION - The Higher Magistrates' Council</p> <p>Article 122 Composition</p> <p>(1) The Higher Magistrates' Council is composed of 11 magistrates whose mandate is valid for 5 years.</p> <p>(2) The following belong by right to the Higher Magistrates' Court: the Minister of Justice, the President of the Supreme Court of Justice, the President of the Court of Appeal, the President of the Court of Business Audit, the Prosecutor General.</p> <p>(3) Furthermore, the reunited colleges of the Supreme Court Justice select by secret ballot three more magistrates and another three are selected by Parliament from amongst accredited university professors.</p> <p>Article 123. Powers</p> <p>The Higher Magistrates' Council in accordance with regulations established in the organization of the judiciary performs the appointments, transfers, promotions of judges, as well as the disciplinary actions against them.</p>

<p>Poland</p>	<p>Article 186 [] (1) The National Council of the Judiciary shall safeguard the independence of courts and judges. (2) The National Council of the Judiciary may make application to the Constitutional Tribunal regarding the conformity to the Constitution of normative acts to the extent to which they relate to the independence of courts and judges.</p> <p>Article 187 [] (1) The National Council of the Judiciary shall be composed as follows: 1) the First President of the Supreme Court, the Minister of Justice, the President of the Chief Administrative Court and an individual appointed by the President of the Republic; 2) 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts; 3) 4 members chosen by the House of Representatives (Sejm) from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators. (2) The National Council of the Judiciary shall choose, from amongst its members, a chairperson and two deputy chairpersons. (3) The term of office of those chosen as members of the National Council of the Judiciary shall be 4 years. (4) The organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, as well as the manner of choosing its members, shall be specified by statute.</p>
<p>Portugal</p>	<p>Article 218 1. The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and shall have the following composition: a. 2 members appointed by the President of the Republic; b. 7 members elected by the Assembly of the Republic; c. 7 judges elected by their peers by a system of proportional representation. 2. The rules relating to guarantees for judges apply to all members of the Superior Council for the Judiciary. 3. The law may provide for the participation of court officials elected by their peers in the Superior Council</p>

	for the Judiciary for the exclusive purposes of discussing and voting on questions relating to the assessment of the professional merit and disciplinary control of court officials.
Rumania	<p>Article 124</p> <p>(1) ...Promotion, transfer, and sanctions against Judges may be decided upon only by the Superior Council of the Magistracy, in accordance with the law.</p> <p>Section 3 Superior Council of the Magistracy</p> <p>Article 132 [Term]</p> <p>The Superior Council of the Magistracy shall consist of magistrates elected for a term of four years by the Chamber of Deputies and the Senate, in a joint session.</p> <p>Article 133 [Tasks]</p> <p>(1) The Superior Council of the Magistracy shall nominate Judges and Public Prosecutors for appointment by the President of Romania, except those on probation, in accordance with the law. In this case, the proceedings shall be presided over by the Minister of Justice, who shall have no right to vote.</p> <p>(2) The Superior Council of the Magistracy shall perform the role of a disciplinary council for Judges, in which case proceedings shall be presided over by the President of the Supreme Court of Justice.</p>
Russia	Does not contain provisions.
Slovakia	<p>Article 145</p> <p>(1) Judges are elected by the National Council of the Slovak Republic at the recommendation of the Government of the Slovak Republic for four years. After the expiry of this term, at the recommendation of the Government of the Slovak Republic, the National Council of the Slovak Republic elects judges for an unlimited period of time.</p> <p>(2) The chairman and deputy chairmen of the Supreme Court are elected by the National Council of the Slovak Republic from the ranks of judges of the Supreme Court for a period of five years, for a maximum of two consecutive terms.</p> <p>Article 147</p> <p>(1) The National Council of the Slovak Republic will recall a judge</p> <p>a) on the basis of a legally valid sentence passed for a deliberate criminal offense,</p>

	<p>b) on the basis of a disciplinary court decision made on account of a deed that is incompatible with the execution of his post.</p> <p>(2) The National Council of the Slovak Republic may recall a judge</p> <p>a) if his state of health does not allow him over the long term, for a period of at least one year, to properly discharge his duties as judge,</p> <p>b) if he has reached the age of 65.</p> <p>(3) Prior to recalling a judge from his post, the National Council of the Slovak Republic will ask the appropriate disciplinary court for its standpoint.</p>
Slovenia	<p>Article 131 (Judicial Council)</p> <p>The Judicial Council is composed of eleven members. The National Assembly elects five members from the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas judges holding permanent judicial office elect six members from among their own number. The members of the council select a president from among their own number.</p>
Spain	<p>Article 122 (2) The General Council of the Judicial Power is the governing organ of the latter. The organic law shall establish its statute and the system of incompatibilities for its members and their functions, particularly in matters of appointments, promotions, inspections, and disciplinary regime.</p> <p>(3) The General Council of the Judicial Power shall consist of the President of the Supreme Court, who shall preside, and twenty members appointed by the King for a period of five years. Of these, twelve shall be Judges and Magistrates of all the judicial categories under the terms the organic law establishes; four will be proposed by the House of Representatives; and four by the Senate, elected in both cases by three-fifths majority of their members, from among lawyers and jurists of recognized competence with more than fifteen years in the exercise of their profession.</p>
Ukraine	<p>Article 131</p> <p>The High Council of Justice operates in Ukraine, whose competence comprises:</p> <p>1) forwarding submissions on the appointment of judges to office or on their dismissal from office;</p> <p>2) adopting decisions in regard to the violation by</p>

	<p>judges and procurators of the requirements concerning incompatibility;</p> <p>3) exercising disciplinary procedure in regard to judges of the Supreme Court of Ukraine and judges of high specialized courts, and the consideration of complaints regarding decisions on bringing to disciplinary liability judges of courts of appeal and local courts, and also procurators.</p> <p>The High Council of Justice consists of twenty members. The Verkhovna Rada of Ukraine, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, and the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions, each appoint three members to the High Council of Justice, and the All-Ukrainian Conference of Employees of the Procuracy — two members of the High Council of Justice.</p> <p>The Chairman of the Supreme Court of Ukraine, the Minister of Justice of Ukraine and the Procurator General of Ukraine are ex officio members of the High Council of Justice.</p>
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PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	PERMANENCY OF JUDICIAL TENURE Judges shall have life tenure.
Constitution of Serbia	Article 101. Judges shall have life tenure.
Austria	Does not contain provisions.
Belgium	Article 152 [Status of Judges] (1) Judges are appointed for life.
Bulgaria	Article 129 (2) The Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court, and the Chief Prosecutor shall be appointed and dismissed by the President of the Republic on a motion from the Supreme Judicial Council for a period of seven years, and shall not be eligible for a second term in office. The President shall not deny an appointment or dismissal on a repeated motion. (3) Justices, prosecutors, and investigating magistrates shall become un-substitutable upon completing a third year in the respective office. They shall be dismissed only upon retirement, resignation, upon the enforcement of a prison sentence for a deliberate crime, or upon lasting actual disability to perform their functions over more than one year.
Czech Republic	Article 93 (1) Judges are appointed by the President of the Republic for an unlimited term. They assume the office on taking an oath.
Denmark	Does not contain provisions.
Finland	Does not contain provisions.
Greece	Article 88 1. Judicial functionaries shall be appointed by presidential decree in compliance with a law specifying the qualifications and the procedure for their selection and are appointed for life.
Germany	<i>Article 97 [Independence of Judges]</i> (2) Judges appointed permanently on a full-time basis in established positions can not, Legislation may set age limits for the retirement of judges appointed for life.

Croatia	Article 122 Judicial office shall be permanent. Exceptionally to the provision of section 1 of this Article, at the assuming of judicial duty for the first time, judges shall be appointed for a five-year term. After the renewal of the appointment, the judge assumes his duty as permanent.
Holland	Article 117 (1) Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree.
Italy	Does not contain provisions.
Latvia	Does not contain provisions.
Lithuania	Does not contain provisions.
Macedonia	Article 99 (1) A judge is elected without restriction of his/her term of office.
Hungary	Does not contain provisions.
Moldova	Article 116. Status of Judges (2) The judges sitting in the courts of law are appointed by the President of the Republic of Moldova following a proposal submitted to him by the Higher Magistrates Council. Those judges who have passed the judicature entry test are appointed in their positions at first for a 5-year term, and subsequently for a 10-year term. After 15 years judges will be appointed for a term of office which expires with their reaching the age limit.
Poland	Article 179 [] Judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.
Portugal	Article 216 Guarantees and disqualifications 1. Judges have security of tenure and may be transferred, suspended, retired or removed from office only as provided by law.
Romania	Article 124 [Judges' Office] (1) Judges appointed by the President of Romania shall be irremovable, according to the law. The President and other judges of the Supreme Court of Justice shall be

	appointed for a term of six years, and may be re-invested in office...
Russia	Does not contain provisions.
Slovakia	Article 145 (1) Judges are elected by the National Council of the Slovak Republic at the recommendation of the Government of the Slovak Republic for four years. After the expiry of this term, at the recommendation of the Government of the Slovak Republic, the National Council of the Slovak Republic elects judges for an unlimited period of time.
Slovenia	Article 129 (Permanence of Judicial Office) (1) The office of a judge is permanent. The age requirement and other conditions for election are determined by law. (2) The retirement age of judges is determined by law.
Spain	Article 117 [Independence, Courts, Tribunals] (1) Justice emanates from the people and is administered in the name of the King by Judges and Magistrates who are members of the judicial power and are independent, irremovable, responsible, and subject only to the rule of the law.
Ukraine	Article 126 Judges hold office for permanent terms, except judges of the Constitutional Court of Ukraine, and judges appointed to the office of judge for the first time.

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	NON-TRANSFERABILITY OF JUDGES
Constitution of Serbia	<p>A judge shall not be transferred to another court without his/her consent, except in case of termination of the court or predominant part of its jurisdiction.</p> <p>Article 101 A judge may not be transferred to another post against his will.</p>
Austria	<p>Article 88 [Retirement, Suspension] (2) Otherwise judges may be removed from office or transferred against their will or superannuated only in the cases and ways prescribed by law and by reason of a formal judicial decision. These provisions do not apply to transfers and retirements which become necessary through changes in the organization of the courts. In such a case the law will lay down within which period judges can, without the formalities otherwise prescribed, be transferred and superannuated.</p>
Belgium	<p>Art. 152 (3) The transfer of a judge can only take place with his consent and after a replacement has been appointed.</p>
Bulgaria	<p>Art. 129 (1) Justices, prosecutors, and investigating magistrates are elected, promoted, demoted, reassigned, and dismissed by the Supreme Judicial Council.</p>
Czech	<p>Art. 82:(2) A judge cannot be dismissed or transferred to another court against his or her will; exceptions, primarily in disciplinary responsibility, are stipulated by law.</p>
Denmark	<p>Art. 64: Judges shall not be dismissed except by judgment, nor shall they be transferred against their will, except in the instances where a rearrangement of the courts of justice is made....</p>
Finland	<p>Does not contain provision.</p>
Greece	<p>Art. 88: (6) Transfer of judicial functionaries into another branch is prohibited. Exceptionally, the transfer of associate judges to courts of first instance or of associate prosecutors to public prosecutors offices, is permitted, upon request of the persons concerned, as specified by law. Judges of ordinary administrative courts shall be promoted to the rank of Councilor of the Supreme Administrative Court and to one fifth of the posts, as specified by law.</p>
Germany	<p><i>Article 97 [Independence of Judges]</i> (2) Judges appointed permanently on a full-time basis in</p>

	<p>established positions cannot, against their will, be dismissed or permanently or temporarily suspended from office or given a different posting or retired before the expiration of their term of office except by virtue of a judicial decision and only on the grounds and in the form provided for by statute.</p> <p>In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary.</p>
Croatia	<p>Article 122</p> <p>A judge shall not be transferred against his will except in the case the Court is abolished or reorganized in conformity with law.</p>
Holland	Does not contain provision
Italy	<p>Article 107 [Disciplinary Action] (1) Members of the judiciary may not be removed from office. They may not be dismissed, suspended, or moved to other jurisdictions or functions except either by decision of the superior council of the judiciary for reasons and with opportunity of defense as defined by the organizational law, or by their own consent.</p>
Latvia	Does not contain provision
Lithuania	Does not contain provision
Macedonia	<p>Article 99</p> <p>(2) A judge cannot be transferred against his/her will.</p>
Hungary	Does not contain provision
Moldova	Art: 116 (4) Judges may be promoted or transferred at their own consent only.
Poland	Art: 180 (4) Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration
Portugal	Art. 216 Judges have security of tenure and may be transferred, suspended, retired or removed from office only as provided by law
Romania	Art. 124: (1) Judges appointed by the President of Romania shall be irremovable, according to the law. The President and other judges of the Supreme Court of Justice shall be appointed for a term of six years, and may be re-invested in office. Promotion, transfer, and sanctions against Judges may be decided upon only by the Superior Council of the Magistracy, in accordance with the law

Russia	Does not contain provision
Slovak	Does not contain provision
Slovenia	Does not contain provision
Spain	Art. 117: (2) The Judges and Magistrates cannot be separated, suspended, transferred, or retired except for causes and with the guarantees provided for in the law.
Ukraine	Does not contain provision

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	INCOMPATIBILITY OF A JUDICIAL FUNCTION WITH OTHER EMPLOYMENT OR WORK Judicial function is not compatible with a function in other state bodies, membership in political organizations and other functions and activities determined by law. Exceptionally, a judge can perform functions, in other state bodies, related to interest of the judiciary, on the basis of a decision made by the Judicial Council, for a period of not more than four years, during which time his/her judicial function will rest.
Constitution of Serbia	Article 100. A judge may not engage in a service or a job which are deemed by law to be incompatible with the judicial function.
Austria	Article 92 [Supreme Court] (2) Members of the Federal Government, a State government, or a popular representative body cannot be members of the Supreme Court. For members of a popular representative body elected for a fixed term of legislation or office such incompatibility continues until the expiry of that term of legislation or office even though they prematurely renounce their seat. Anyone who during the preceding four years has exercised one of the aforesaid functions cannot be appointed President or Vice-President of the Supreme Court.
Belgium	Article 155 [Incompatibility, Courts of Appeal] No judge may accept a salaried role on behalf of a Government, unless this role is exercised free of charge and without the existence of incompatibility determined by law.

Bulgaria	Does not contain provisions
Czech	Article 82 [Judges] (3) The discharge of the function of a judge is incompatible with the office of the President of the Republic, member of Parliament, or any other function in public administration; other activities incompatible with the discharge of the function of a judge are determined by law.
Denmark	Does not contain provisions
Finland	Does not contain provisions
Greece	<p>Article 89</p> <p>1. Judicial functionaries shall be prohibited from performing any other salaried service or practicing any other profession.</p> <p>** 2. Exceptionally, judicial functionaries are allowed to be elected members of the Athens Academy or of the teaching staff of university level institutions, as well as to sit in special councils or committees exercising competences of a disciplinary, auditing or judicial nature and in legislative work committees, provided that their participation is specifically stipulated by the law. Substitution of judicial functionaries by other persons in councils or committees established or in duties assigned by a declaration of intention by a private individual, inter vivos or mortis causa, with the exception of the cases of the preceding section, shall be provided by law.</p> <p>** 3. Assignment of administrative duties to judicial functionaries is prohibited. Duties relating to the training of judicial functionaries are considered to be of a judicial nature. Assignment to judicial functionaries of the duties of representing the Country in international organizations is permitted.</p> <p>The conduct of arbitrations by judicial functionaries is allowed only in the context of their official duties, as specified by law.</p> <p>4. Participation of judicial functionaries in the Government is prohibited.</p> <p>5. The establishment of an association of judicial functionaries shall be permitted, as specified by law.</p>
Germany	<p>Article 137 [Eligibility of Civil Servants]</p> <p>(1) The right of civil servants, of other salaried public employees, of professional soldiers, of temporary volunteer soldiers or of judges to stand for election in the Federation, in the States [Länder] or in the communes may be restricted by legislation.</p>

Croatia	Art. 122 A judge shall not hold an office or perform work defined by law as being incompatible with his judicial office.
Holland	Does not contain provision
Italy	Does not contain provision
Latvia	Does not contain provision
Lithuania	Article 113 The judge may not hold any other elected or appointed office, may not work in any business, commercial, or other private establishments or enterprises. He is also not permitted to receive any remuneration other than the remuneration established for the judge and payment for educational or creative activities. A judge may not participate in the activities of political parties and other political organizations.
Macedonia	Article 100 (3) The performance of a judge's office is incompatible with other public office, profession or membership in a political party. (4) Political organization and activity in the judiciary is prohibited.
Hungary	Article 50 [Powers, National Council of Justice] (3) Judges are independent and answer only to the law. Judges may not be members of political parties and may not engage in political activities.
Moldavia	Article 116. Status of Judges (6) The office of judge is incompatible with holding and other public or private remunerated position, except In the area of teaching or scientific research.
Poland	Does not contain provision
Portugal	Article 216 3. Judges in office may not perform any other functions, whether public or private, other than in unpaid teaching or legal research, as provided by law. 4. Judges in office may not be assigned to perform other functions unrelated to the work of the courts unless authorized by the appropriate superior council. 5. The law may establish other circumstances that are incompatible with performance of the functions of a judge
Romania	Article 124 [Judges' Office] (2) The office of a Judge shall be incompatible with any other public or private office, except that of an academic professorial activity.

Russia	Does not contain provision
Slovakia	Art. 148: (1) The status, rights, and duties of judges will be defined by law..
Slovenia	Article 133 (Incompatibility of Judicial Office) Judicial office is not compatible with office in other state bodies, in local self-government bodies and in bodies of political parties, and with other offices and activities as provided by law.
Spain	Does not contain provision
Ukraine	Article 127 Professional judges shall not belong to political parties and trade unions, take part in any political activity, hold a representative mandate, occupy any other paid positions, and perform other remunerated work except scholarly, teaching and creative activity.

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	ELECTION AND DISMISSAL OF JUDGES AND COURT PRESIDENTS
	<p>The Judicial Council shall elect and dismiss judges and Court Presidents.</p> <p>The selection shall be performed through public announcement.</p> <p>Judges shall be elected on the grounds of objective criteria based on their professional ability, competence and worthiness to perform judicial function, and pursuant to the conditions set forth by the law.</p> <p>A judge shall be dismissed:</p> <ul style="list-style-type: none"> - at his/her own request, -when he/she reaches the maximum age determined by law, -when he/she permanently loses working capacity, -when he/she is convicted, by a final court decision, to prison sentence of more than six months, -when he/she performs her judicial duty unprofessionally, and -when he/she commits a serious disciplinary offense, as determined by law. <p>Against the decision to dismiss, a judge may appeal to the Constitutional Court within 15 days from the day of the receipt of the decision.</p>

<p>Constitution of Serbia</p>	<p>Article 101. A judge's tenure of office shall terminate at his own request or when he meets conditions for retirement as specified by law. A judge may not be dismissed against his will, except when he has been convicted of a criminal offence to an unconditional penalty of imprisonment for no less than six months; or of a criminal offence which makes him unsuitable to perform judicial function, or when he performs his judicial function unprofessionally and unconscientiously, or when he has permanently lost the working capacity for performing judicial function. The Supreme Court shall establish in accordance with law whether grounds exist for the termination of judge's tenure of office or for dismissal of a judge, and shall inform the National Assembly accordingly.</p>
<p>Austria</p>	<p>Article 86 [Appointment] (1) Save as provided otherwise by this law, judges are appointed pursuant to the proposal of the Federal Government by the Federal President or, by reason of his authorization, by the competent Federal Minister; the Federal Government or the Federal Minister shall obtain proposals for appointment from the tribunals competent through the law on the organization of the courts. Article 88 [Retirement, Suspension] (1) The law on the organization of the courts will prescribe an age limit upon whose attainment judges will be put on the permanently retired list. (2) Otherwise judges may be removed from office or transferred against their will or superannuated only in the cases and ways prescribed by law and by reason of a formal judicial decision. These provisions do not apply to transfers and retirements which become necessary through changes in the organization of the courts. In such a case the law will lay down within which period judges can, without the formalities otherwise prescribed, be transferred and superannuated.</p>
<p>Belgium</p>	<p>Article 151 [Nomination of Judges] (1) Court magistrates and court judges are directly named by the King. (4) Courts choose within themselves their presidents and vice-presidents.</p>
<p>Bulgaria</p>	<p>Art. 129 (1) Justices, prosecutors, and investigating</p>

	<p>magistrates are elected, promoted, demoted, reassigned, and dismissed by the Supreme Judicial Council. (2) The Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court, and the Chief Prosecutor shall be appointed and dismissed by the President of the Republic on a motion from the Supreme Judicial Council for a period of seven years, and shall not be eligible for a second term in office. The President shall not deny an appointment or dismissal on a repeated motion. (3) Justices, prosecutors, and investigating magistrates shall become un-substitutable upon completing a third year in the respective office. They shall be dismissed only upon retirement, resignation, upon the enforcement of a prison sentence for a deliberate crime, or upon lasting actual disability to perform their functions over more than one year.</p>
Czech	<p>Art. 93: Judges are appointed by the President of the Republic for an unlimited term. They assume the office on taking an oath.</p> <p>(2) Any citizen of integrity, having a university education in law, can be appointed judge. Other requirements and procedures are stipulated by law.</p>
Denmark	<p>Art. 64: ... Judges shall not be dismissed except by judgment, nor shall they be transferred against their will, except in the instances where a rearrangement of the courts of justice is made. However, a judge who has completed his sixty-fifth year may be retired, but without loss of income up to the time when he is due for retirement on account of age.</p>
Finland	<p>Art. 102 Tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an Act. Provisions on the appointment of other judges are laid down by an Act.</p> <p>Art. 103 (2) Provisions on the duty of a judge to resign at the attainment of a given age or after losing capability to work are laid down by an Act.</p>
Greece	<p>Art. 88. 1. Judicial functionaries shall be appointed by presidential decree in compliance with a law specifying the qualifications and the procedure for their selection and are appointed for life.</p> <p>** 2. The remuneration of judicial functionaries shall be commensurate with their office. Matters concerning their rank, remuneration and their general status shall be regulated by special statutes.</p>

	<p>Notwithstanding articles 94, 95 and 98, disputes concerning all kinds of remunerations and pensions of judicial functionaries and provided that the resolution of the relevant legal issues may affect the salary, pension or fiscal status of a wider circle of persons, shall be tried by the special court of article 99. In such cases, the composition of the court includes the participation of one additional full professor and one additional barrister, as specified by law. Matters relating to the continuation of pending processes before the courts shall be specified by law.</p> <p>3. A training and trial period for judicial functionaries of up to three years prior to their appointment as regular judges may be provided for by law. During this period they may also act as regular judges, as specified by law.</p> <p>4. Judicial functionaries may be dismissed only pursuant a court judgment resulting from a criminal conviction or a grave disciplinary breach or illness or disability or professional incompetence, confirmed as specified by law and in compliance with the provisions of article 93 paragraphs 2 and 3.</p> <p>5. Retirement from the service of the judiciary shall be compulsory upon attainment of the age of sixty five years for all functionaries up to and including the rank of Court of Appeal judge or Deputy Prosecutor of the Court of Appeals, or a rank corresponding thereto. In the case of judicial functionaries of a rank higher than the one stated, or of a corresponding rank, retirement shall be compulsory upon attainment of the age of sixty seven years. In the application of this provision, the 30th of June of the year of retirement shall in all cases be taken as the date of attainment of the above age limit.</p>
Germany	<p><i>Article 60 [Appointments, Pardon]</i> (1) The President appoints and dismisses the federal judges, the federal civil servants, the officers and non-commissioned officers, except as may otherwise be provided for by statute.</p> <p><i>Article 95 [Highest Courts of Justice, Joint Panel]</i> (2) The judges of each of these courts are selected jointly by the competent Minister and a committee for the selection of judges consisting of the competent State [Land] ministers and an equal number of members elected by the House of Representatives [Bundestag].</p>

	<p><i>Article 98 [Legal Status of Judges]</i> (4) The States [Länder] may provide that the State [Land] minister of Justice together with a committee for the selection of judges decides on the appointment of judges in the States [Länder].</p>
Croatia	<p>Article 122 (1) Judicial office shall be permanent. (2) Exceptionally to the provision of section 1 of this Article, at the assuming of judicial duty for the first time, judges shall be appointed for a five-year term. After the renewal of the appointment, the judge assumes his duty as permanent. A judge shall be relieved of his judicial office: - at his own request, - if he has become permanently incapacitated to perform his office, - if he has been sentenced for a criminal offence which makes him unworthy to hold judicial office, - if, in conformity with law, so decides the National Judicial Council due to the commission of an act of serious infringement of discipline, - when reaching seventy years of age. (3) Against the decision of being relieved from his duty the judge shall have the right to appeal to the Constitutional Court within the term of 15 days from the day the decision has been served, onto which the Constitutional Court shall decide in the procedure and composition determined by the Constitutional Act on the Constitutional Court of the Republic of Croatia.</p>
Holland	<p>Article 117 (1) Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree. (2) Such persons shall cease to hold office on resignation or on attaining an age to be determined by Act of Parliament. (3) In cases laid down by Act of Parliament such persons may be suspended or dismissed by a court that is part of the judiciary and designated by Act of Parliament. (4) Their legal status shall in other respects be regulated by Act of Parliament.</p>
Italy	<p>Art. 105: The superior council of the judiciary, as defined by organizational law, has the exclusive competence to</p>

	appoint, assign, move, promote, and discipline members of the judiciary.
Latvia	Art: 84 Judicial appointments shall be confirmed by the Parliament and they shall be irrevocable. The Parliament may remove judges from office against their will only in the cases provided for by law, based upon a decision of the Judicial Disciplinary Board or a judgment of the Court in a criminal case. The age of retirement from office for judges may be determined by law.
Lithuania	Art: 112: (4) Judges and presidents of regional, local, and specialised courts shall be appointed and transferred to other places of work, by the President of the Republic .A special institution of judges provided for by law shall advise the President of the Republic concerning the appointment of judges, as well as their promotion, transference, or dismissal from office.
Macedonia	Article 99 (1) A judge is elected without restriction of his/her term of office. (2) A judge cannot be transferred against his/her will. (3) A judge is discharged - if he/she so requests; - if he/she permanently loses the capability of carrying out a judge's office, which is determined by the Republican Judicial Council; - if he/she fulfills the conditions for retirement; - if he/she is sentenced for a criminal offence to a prison term of a minimum of six months; - owing to a serious disciplinary offence defined in law, making him/her unsuitable to perform a judge's office as decided by the Republican Judicial Council; and - owing to unprofessional and unethical performance of a judge's office, as decided by the Republican Judicial Council in a procedure regulated by law.
Hungary	Art. 48: 1) Based on the recommendation made by the President of the Republic, the Parliament shall elect the President of the Supreme Court; based on the recommendation made by the President of the Supreme Court, the President of the Republic shall appoint the Deputy Presidents of the Supreme Court. A majority of two-thirds of the votes of the Members of Parliament is required to elect the President of the Supreme Court. (2) The President of the Republic shall appoint professional judges in the manner specified by law.

	(3) Judges may only be removed from office on the grounds and in accordance with the procedures specified by law.
Moldavia	<p>Article 116</p> <p>(2) The judges sitting in the courts of law are appointed by the President of the Republic of Moldova following a proposal submitted to him by the Higher Magistrates Council. Those judges who have passed the judiciary entry test are appointed in their positions at first for a 5-year term, and subsequently for a 10-year term. After 15 years judges will be appointed for a term of office which expires with their reaching the age limit.</p> <p>(3) Both the President and the members of the Supreme Court of Justice shall be appointed by Parliament following a proposal submitted by the Higher Magistrates Council. They must provide evidence of work experience in courts of law that is not less than 15 years long.</p>
Poland	Art. 179 Judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.
Portugal	Art. 215: . The judges of the courts of law constitute a single body which shall be governed by its own statute. 2. The law shall determine the qualifications and rules for the selection of the judges of the courts of law of first instance. 3. Selection of the judges of the courts of law of second instance shall be made prevalingly on merit, by means a competition among the judges of the courts of first instance, based on their curricula. 4. Appointment to the Supreme Court of Justice shall be by means of a competition, based on curricula and shall be open to members of the judiciary, public prosecutors and other jurists of merit, as the law shall determine.
Romania	<p>Article 124 [Judges' Office]</p> <p>(1) Judges appointed by the President of Romania shall be irremovable, according to the law. The President and other judges of the Supreme Court of Justice shall be appointed for a term of six years, and may be re-invested in office. Promotion, transfer, and sanctions against Judges may be decided upon only by the Superior Council of the Magistracy, in accordance with the law.</p>
Russia	<p>Article 119.</p> <p>Citizens of the Russian Federation aged 25 and older, holding a law degree and having worked in the law profession for at least five years may become judges. The</p>

	<p>federal law may establish additional requirements for judges in the courts of the Russian Federation Article 121. Judges may not be replaced. A judge may not have his powers terminated or suspended except under procedures and on grounds established by federal law.</p>
Slovakia	<p>Article 145 (1) Judges are elected by the National Council of the Slovak Republic at the recommendation of the Government of the Slovak Republic for four years. After the expiry of this term, at the recommendation of the Government of the Slovak Republic, the National Council of the Slovak Republic elects judges for an unlimited period of time. (2) The chairman and deputy chairmen of the Supreme Court are elected by the National Council of the Slovak Republic from the ranks of judges of the Supreme Court for a period of five years, for a maximum of two consecutive terms. Article 148 (2) The manner of appointing associate judges will be defined by law.</p>
Slovenia	<p>Article 130 (Election of Judges) Judges are elected by the National Assembly on the proposal of the Judicial Council. Article 132 (Termination of and Dismissal from Judicial Office) (1) A judge ceases to hold judicial office where circumstances arise as provided by law. (2) If in the performance of the judicial office a judge violates the Constitution or seriously violates the law, the National Assembly may dismiss such judge on the proposal of the Judicial Council. (3) If a judge is found by a final judgment to have deliberately committed a criminal offence through the abuse of the judicial office, the National Assembly dismisses such judge.</p>
Spain	<p>Art. 122: (1) The organic law on judicial power shall determine the structure, operation, and administration of the Courts and Tribunals, as well as the legal status of Judges and Magistrates, who form a single body, and of the personnel at the service of the Administration of Justice.</p>

Ukraine	<p>Art. 126 ...A judge is dismissed from office by the body that elected or appointed him or her in the event of: the expiration of the term for which he or she was elected or appointed; the judge's attainment of the age of sixty-five; the impossibility to exercise his or her authority for reasons of health; the violation by the judge of requirements concerning incompatibility; the breach of oath by the judge; the entry into legal force of a verdict of guilty against him or her; the termination of his or her citizenship; the declaration that he or she is missing, or the pronouncement that he or she is dead; the submission by the judge of a statement of resignation or of voluntary dismissal from office. The authority of the judge terminates in the event of his or her death.</p> <p>Art. 128 The first appointment of a professional judge to office for a five-year term is made by the President of Ukraine. All other judges, except the judges of the Constitutional Court of Ukraine, are elected by the Verkhovna Rada of Ukraine for permanent terms by the procedure established by law. The Chairman of the Supreme Court of Ukraine is elected to office and dismissed from office by the Plenary Assembly of the Supreme Court of Ukraine by secret ballot, by the procedure established by law.</p>
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PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	DISCIPLINARY RESPONSIBILITY It shall be determined by law when unprofessional performance of judicial duties and improper judicial conduct represent a disciplinary offense, as well as the appropriate sanctions after the disciplinary procedure has been conducted. The Judicial Council is in charge of conducting disciplinary procedure and determining a disciplinary sanction. A judge has the right of appeal against the disciplinary decision to the Supreme Court of Serbia within 15 days from the day of the receipt of the decision.
Constitution of Serbia	Does not contain provision
Austria	Art: 88 (3) The temporary suspension of judges from office may take place only by decree of the senior judge or the higher judicial authority together with simultaneous reference of the matter to the competent court.
Belgium	Does not contain provision
Bulgaria	Art 133: The organization and the activity of the Supreme Judicial Council, of the courts, the prosecution and the investigation, the status of the justices, prosecutors and investigating magistrates, the conditions and the procedure for the appointment and dismissal of justices, court assessors, prosecutors, and investigating magistrates, and the materialization of their liability shall be established by law.
Czech	Art. 82: (2) A judge cannot be dismissed or transferred to another court against his or her will; exceptions, primarily in disciplinary responsibility, are stipulated by law.
Denmark	Does not contain provision
Finland	Does not contain provision
Greece	Art. 91: (1) 1. Disciplinary authority over judicial functionaries from and above the rank of member of the Supreme Civil and Criminal Court or Deputy Prosecutor of the Supreme Civil and Criminal Court, or a rank corresponding thereto, shall be exercised by a Supreme Disciplinary Council, as specified by law. Disciplinary action shall be initiated by the Minister of Justice.

	<p>2. The Supreme Disciplinary Council shall be composed of the President of the Supreme Administrative Court as Chairman, and of two Vice-Presidents or Councillors of the Supreme Administrative Court, two Vice-Presidents or members of the Supreme Civil and Criminal Court, two Vice-Presidents or Councillors of the Court of Auditors and two law professors from the Law Schools of the country's universities, as members. The members of the Council shall be chosen by lot from among those having at least three years of service in the respective highest in rank court or law school. Members belonging to the court of which the conduct of one of the judges, prosecutors or commissioners the Council has been called on to judge, shall be excluded. In cases involving disciplinary action against members of the Supreme Administrative Court, the Supreme Disciplinary Council shall be presided over by the President of the Supreme Civil and Criminal Court.</p> <p>3. The disciplinary authority over all other judicial functionaries shall be exercised, in the first and second instance by councils composed of regular judges chosen by lot, as specified by law. Disciplinary action may also be initiated by the Minister of Justice.</p> <p>4. Disciplinary rulings in accordance with the provisions of this Article shall not be subject to remedies before the Supreme Administrative Court.</p>
Germany	Does not contain provisions.
Croatia	Art. 122: ... Against the decision of the National Judicial Council on disciplinary responsibility, the judge shall have the right to appeal to the Constitutional Court of the Republic of Croatia within the term of 15 days from the day the decision has been served. The Constitutional Court shall decide on the appeal in the way and the procedure determined by the Constitutional Act on the Constitutional Court of the Republic of Art. 123: Judges shall, according to the Constitution and law, be appointed and relieved of duty by the National Judicial Council, which will also decide on all matters concerning their disciplinary responsibilities....
Holland	Art. 116: (4) The supervision of members of the judiciary responsible for the administration of justice of the manner in which such members and the persons referred to in the previous paragraph fulfill their duties shall be regulated by Act of Parliament.

Italy	<p>Art. 105: The superior council of the judiciary, as defined by organizational law, has the exclusive competence to appoint, assign, move, promote, and discipline members of the judiciary.</p> <p>Article 107 [Disciplinary Action]</p> <p>(1) Members of the judiciary may not be removed from office. They may not be dismissed, suspended, or moved to other jurisdictions or functions except either by decision of the superior council of the judiciary for reasons and with opportunity of defense as defined by the organizational law, or by their own consent.</p> <p>(2) The minister of justice may initiate disciplinary action.</p>
Latvia	Does not contain provision
Lithuania	Does not contain provision
Macedonia	<p>Article 105</p> <p>The Republican Judicial Council</p> <ul style="list-style-type: none"> - proposes to the Assembly the election and discharge of judges and determines proposals for the discharge of a judge's office in cases laid down in the Constitution; - decides on the disciplinary answerability of judges; - assesses the competence and ethics of judges in the performance of their office; and - proposes two judges to sit on the Constitutional Court of Macedonia.
Hungary	Does not contain provision
Moldova	Does not contain provision
Poland	Does not contain provision
Portugal	<p>Article 217</p> <p>3. The power to appoint, assign, transfer and promote the judges of other courts, and to exercise disciplinary control over them, shall be determined by law, subject to the guarantees contained in this Constitution.</p>
Romania	Does not contain provision.
Russia	Does not contain provision
Slovakia	<p>Article 147</p> <p>(1) The National Council of the Slovak Republic will recall a judge</p> <p>b) on the basis of a disciplinary court decision made on account of a deed that is incompatible with the execution of his post.</p>
Slovenia	Does not contain provision
Spain	Art. 122: (1) The organic law on judicial power shall

	determine the structure, operation, and administration of the Courts and Tribunals, as well as the legal status of Judges and Magistrates, who form a single body, and of the personnel at the service of the Administration of Justice.
Ukraine	Article 131 The High Council of Justice operates in Ukraine, whose competence comprises: 3) exercising disciplinary procedure in regard to judges of the Supreme Court of Ukraine and judges of high specialised courts, and the consideration of complaints regarding decisions on bringing to disciplinary liability judges of courts of appeal and local courts, and also procurators.

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	TRANSPARENCY (PUBLICITY) OF THE PROCEEDINGS
	Proceedings shall be open to the public. It shall be prescribed by law in which cases the public shall be excluded from the proceedings for reasons of protection of a secret, morality, interests of juveniles or protection of other public interests.
Constitution of Serbia	Article 97. Trial at the court shall be public. For the purpose of preserving a secret, protecting morals and the interests of minors, or protecting other public interests, the law shall specify the cases in which the public may be excluded from a trial at the court
Austria	Art. 82: (2) Judgments and decisions are pronounced and drawn up in the name of the Republic
Belgium	Art. 148: (1) Court hearings are open, unless public access should jeopardize morals or order. In this case, the court so declares by ruling.(2) Regarding political wrongdoings or those of the press, proceedings behind closed doors may be undertaken only on the basis of a unanimous vote.
Bulgaria	Art: 121 (3) All courts shall conduct their hearings in public, unless provided otherwise by law.
Czech	Art. 96: (2) (2) Proceedings in the court are verbal and open to public; exceptions are specified by law. The verdict of the court is always publicly declared. .

Denmark	Does not contain provision
Finland	Does not contain provision
Greece	Art. 93: (2) The sittings of all courts shall be public, except when the court decides that publicity would be detrimental to the good usages or that special reasons call for the protection of the private or family life of the litigants.
Germany	Does not contain provisions.
Croatia	Art. 119 Court hearings shall be open to the public and judgments shall be pronounced publicly in the name of the Republic of Croatia. The public may be barred from a hearing or part of it for the reasons necessary in a democratic society in the interest of morals, public order or State security, in particular if minors are tried, or in order to protect private lives of the parties, or in marital disputes and proceedings in connection with guardianship and adoption, or for the purpose of protection of military, official or business secrets and for the protection of the security and defense of the Republic of Croatia, but only to the extent which is in the opinion of the court absolutely necessary in the specific circumstances in which the public might be harmful to the interests of justice.
Holland	Article 121 Except in cases lay down by Act of Parliament, trials shall be held in public and judgments shall specify the grounds on which they are based. Judgments shall be pronounced in public.
Italy	Does not contain provision
Latvia	Does not contain provision
Lithuania	Art. 117 In all courts, the consideration of cases shall be public. A closed court sitting may be held in order to protect the secrecy of private life of the human being or his family, also if the public consideration of the case may disclose a State, professional, or commercial secret.
Macedonia	Article 102 (1) Court hearings and the passing of verdicts are public. (2) The public can be excluded in cases determined by law.
Hungary	Does not contain provision
Moldavia	Art. 117. Legal hearings in all courts of law are public. Cases may be heard behind closed doors only as

	stipulated by law under compliance with all established legal procedures.
Poland	Does not contain provision
Portugal	Art. 206. Court hearings shall be public, unless the court hearing a matter rules otherwise in the interests of safeguarding personal dignity or public morality or of guaranteeing its own proper operation.
Romania	Article 126 [Publicity] Proceedings shall be public, except for the cases provided by law.
Russia	Art. 123. All trials in all law courts shall be open.
Slovakia	Article 142 (3) Verdicts are proclaimed in the name of the Slovak Republic. They are always proclaimed publicly.
Slovenia	Does not contain provision
Spain	Art. 120 (1) Judicial proceedings shall be public, with the exceptions provided for by the laws on procedure.
Ukraine	Art. 129: ... The main principles of judicial proceedings are..7) openness of a trial and its complete recording by technical means

PROPOSAL OF THE JUDGES' ASSOCIATION OF SERBIA	COURT BUDGET
	<p>Financial means for the independent and efficient work of courts, the Judicial Council, salaries, and professional advancement of judges and other court employees, shall be provided by the separate court budget, proposed to the Parliament by the Court Budget Committee.</p> <p>Members of the Court Budget Committee are: The President of the Supreme Court of Serbia, the Minister of Justice, the Minister of Finance, and two members elected by court presidents among themselves.</p>
Constitution of Serbia	Does not contain provisions.

Austria	Does not contain provisions.
Belgium	Does not contain provisions.
Bulgaria	Article 117 (3) The judicial branch of government shall have an independent budget.
Czech Republic	Does not contain provisions.
Denmark	Does not contain provisions.
Finland	Does not contain provisions.
Greece	Does not contain provisions.
Germany	Does not contain provisions.
Netherlands	Does not contain provisions.
Croatia	Does not contain provisions.
Italy	Does not contain provisions.
Latvia	Does not contain provisions.
Lithuania	Does not contain provisions.
Macedonia	Does not contain provisions.
Hungary	Does not contain provisions.
Moldova	Article 121 (1) The budget of the courts of law is approved by Parliament and is included in the national budget.
Poland	Does not contain provisions.
Portugal	Does not contain provisions.
Romania	Does not contain provisions.
Russia	Article 124 Law courts shall be financed only out of the federal budget and financing shall ensure full and independent administration of justice in accordance with federal law.
Slovakia	Does not contain provisions.
Slovenia	Does not contain provisions.
Spain	Does not contain provisions.
Ukraine	Article 130 The State ensures funding and proper conditions for the operation of courts and the activity of judges. Expenditures for the maintenance of courts are allocated separately in the State Budget of Ukraine.

INTERNATIONAL DOCUMENTS ABOUT THE INDEPENDENCE OF JUDICIARY

U.N. Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its

priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure.

The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Recommendation No. R (94) 12

On the Independence, Efficiency and Role of Judges

(Adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law";

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Noting the essential role of judges and other persons exercising judicial functions in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the independence of judges in order to strengthen the Rule of Law in democratic states;

Aware of the need to reinforce the position and powers of judges in order to achieve an efficient and fair legal system;

Conscious of the desirability of ensuring the proper exercise of judicial responsibilities, which are a collection of judicial duties and powers aimed at protecting the interests of all persons,

Recommends that governments of member states adopt or reinforce all measures necessary to promote the role of individual judges and the judiciary as a whole and strengthen their independence and efficiency, by implementing, in particular, the following principles:

Scope of the recommendation

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional, criminal, civil, commercial and administrative law matters.

2. With respect to lay judges and other persons exercising judicial functions, the principles laid down in this recommendation apply except where it is clear from the context that they only apply to professional judges, such as regarding the principles concerning the remuneration and career of judges.

Principle I - General principles on the independence of judges

1. All necessary measures should be taken to respect, protect and promote the independence of judges.

2. In particular, the following measures should be taken:

a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:

i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law;

ii. the terms of office of judges and their remuneration should be guaranteed by law;

iii. no organ other than the courts themselves should decide on its own competence, as defined by law;

iv. with the exception of decisions on amnesty, pardon or similar, the government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.

b. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.

c. All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above. These guarantees could be, for example, one or more of the following:

i. a special independent and competent body to give the government advice which it follows in practice; or

ii. the right for an individual to appeal against a decision to an independent authority; or

iii. the authority which makes the decision safeguards against undue or improper influences.

d. In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.

e. The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system.

f. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

Principle II - The authority of judges

1. All persons connected with a case, including state bodies or their representatives, should be subject to the authority of the judge.

2. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court.

Principle III - Proper working conditions

1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:

a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;

b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;

c. providing a clear career structure in order to recruit and retain able judges;

d. providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay;

e. taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.

2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats.

Principle IV - Associations

Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protect their interests.

Principle V - Judicial responsibilities

1. In proceedings, judges have the duty to protect the rights and freedoms of all persons.

2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily.

3. Judges should in particular have the following responsibilities:

a. to act independently in all cases and free from any outside influence;

b. to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected pursuant to the provisions of the Convention;

c. to withdraw from a case or decline to act where there are valid reasons, and not otherwise. Such reasons should be defined by law and may, for instance, relate to serious health problems, conflicts of interest or the interests of justice;

d. where necessary, to explain in an impartial manner procedural matters to parties;

e. where appropriate, to encourage the parties to reach a friendly settlement;

f. except where the law or established practice otherwise provides, to give clear and complete reasons for their judgments, using language which is readily understandable;

g. to undergo any necessary training in order to carry out their duties in an efficient and proper manner.

Principle VI - Failure to carry out responsibilities and disciplinary offences

1. Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance:

a. withdrawal of cases from the judge;

b. moving the judge to other judicial tasks within the court;

c. economic sanctions such as a reduction in salary for a temporary period;

d. suspension.

2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period, or may relate to incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules.

3. Where measures under paragraphs 1 and 2 of this article need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention, for instance that the case should be heard within a reasonable time and that they should have a right to answer any charges.

EUROPEAN CHARTER ON THE STATUTE FOR JUDGES

Strasbourg, 8 - 10 July 1998

The participants at the multilateral meeting on the statute for judges in Europe, organized by the Council of Europe, between 8-10 July 1998,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" ;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Having referred to Recommendation No R (94) 12 of the Committee of Ministers to member states on the independence, efficiency and role of judges, and having made their own, the objectives which it expresses ;

Being concerned to see the promotion of judicial independence, necessary for the strengthening of the pre-eminence of law and for the protection of individual liberties within democratic states, made more effective;

Conscious of the necessity that provisions calculated to ensure the best guarantees of the competence, independence and impartiality of judges should be specified in a formal document intended for all European States ;

Desiring to see the judges' statutes of the different European States take into account these provisions in order to ensure in concrete terms the best level of guarantees;

Have adopted the present European Charter on the statute for judges.

1. GENERAL PRINCIPLES

1.1. The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. The present Charter is composed hereafter of the provisions which are best able to guarantee the achievement of those objectives. Its provisions aim at raising the level of guarantees in the various European States. They cannot justify modifications in national statutes tending to decrease the level of guarantees already achieved in the countries concerned.

1.2. In each European State, the fundamental principles of the statute for judges are set out in internal norms at the highest level, and its rules in norms at least at the legislative level.

1.3. In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.

1.4. The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

1.5. Judges must show, in discharging their duties, availability, respect for individuals, and vigilance in maintaining the high level of

competence which the decision of cases requires on every occasion - decisions on which depend the guarantee of individual rights and in preserving the secrecy of information which is entrusted to them in the course of proceedings.

1.6. The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly, and in particular to deal with cases within a reasonable period.

1.7. Professional organizations set up by judges, and to which all judges may freely adhere, contribute notably to the defense of those rights which are conferred on them by their statute, in particular in relation to authorities and bodies which are involved in decisions regarding them.

1.8. Judges are associated through their representatives and their professional organizations in decisions relating to the administration of the courts and as to the determination of their means, and their allocation at a national and local level. They are consulted in the same manner over plans to modify their statute, and over the determination of the terms of their remuneration and of their social welfare.

2. SELECTION, RECRUITMENT, INITIAL TRAINING

2.1. The rules of the statute relating to the selection and recruitment of judges by an independent body or panel, base the choice of candidates on their ability to assess freely and impartially the legal matters which will be referred to them, and to apply the law to them with respect for individual dignity. The statute excludes any candidate being ruled out by reason only of their sex, or ethnic or social origin, or by reason of their philosophical and political opinions or religious convictions.

2.2. The statute makes provision for the conditions which guarantee, by requirements linked to educational qualifications or previous experience, the ability specifically to discharge judicial duties.

2.3. The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties. The authority referred to at paragraph 1.3 hereof, ensures the appropriateness of training programs and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties.

3. APPOINTMENT AND IRREMOVABILITY

3.1. The decision to appoint a selected candidate as a judge, and to assign him or her to a tribunal, are taken by the independent authority referred to at paragraph 1.3 hereof or on its proposal, or its recommendation or with its agreement or following its opinion.

3.2. The statute establishes the circumstances in which a candidate's previous activities, or those engaged in by his or her close relations, may, by reason of the legitimate and objective doubts to which they give rise as to the impartiality and independence of the candidate concerned, constitute an impediment to his or her appointment to a court.

3.3. Where the recruitment procedure provides for a trial period, necessarily short, after nomination to the position of judge but before confirmation on a permanent basis, or where recruitment is made for a limited period capable of renewal, the decision not to make a permanent appointment or not to renew, may only be taken by the independent authority referred to at paragraph 1.3 hereof, or on its proposal, or its recommendation or with its agreement or following its opinion. The provisions at point 1.4 hereof are also applicable to an individual subject to a trial period.

3.4. A judge holding office at a court may not in principle be appointed to another judicial office or assigned elsewhere, even by way of promotion, without having freely consented thereto. An exception to this principle is permitted only in the case where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighboring court, the maximum duration of such assignment being strictly limited by the statute, without prejudice to the application of the provisions at paragraph 1.4 hereof.

4. CAREER DEVELOPMENT

4.1. When it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned. Decisions as to promotion are then pronounced by the authority referred to at paragraph 1.3 hereof or on its proposal, or with its agreement.

Judges who are not proposed with a view to promotion must be entitled to lodge a complaint before this authority.

4.2. Judges freely carry out activities outside their judicial mandate including those which are the embodiment of their rights as citizens. This freedom may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her. The exercise of an outside activity, other than literary or artistic, giving rise to remuneration, must be the object of a prior authorization on conditions laid down by the statute.

4.3. Judges must refrain from any behavior, action or expression of a kind effectively to affect confidence in their impartiality and their independence.

4.4. The statute guarantees to judges the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the State pays for, and ensures its organization whilst respecting the conditions set out at paragraph 2.3 hereof.

5. LIABILITY

5.1. The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority.

5.2. Compensation for harm wrongfully suffered as a result of the decision or the behavior of a judge in the exercise of his or her duties is guaranteed by the State. The statute may provide that the State has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the case of a gross and inexcusable breach of the rules governing the performance of judicial duties. The

submission of the claim to the competent court must form the subject of prior agreement with the authority referred to at paragraph 1.3 hereof.

5.3. Each individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body. This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference.

6. REMUNERATION AND SOCIAL WELFARE

6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behavior within their jurisdiction, thereby impairing their independence and impartiality.

6.2. Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.

6.3. The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.

6.4. In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.

7. TERMINATION OF OFFICE

7.1. A judge permanently ceases to exercise office through resignation, medical certification of physical unfitness, reaching the age limit, the expiry of a fixed legal term, or dismissal pronounced within the framework of a procedure such as envisaged at paragraph 5.1 hereof.

7.2. The occurrence of one of the causes envisaged at paragraph 7.1 hereof, other than reaching the age limit or the expiry of a fixed term of office, must be verified by the authority referred to at paragraph 1.3 hereof.