ANALYSIS OF THE DRAFT JUDICIAL CODE FOR
THE REPUBLIC OF ARMENIA

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Analysis of the Draft Judicial Code for the Republic of Armenia
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Analysis of the Draft Judicial Code for the Republic of Armenia

I. Introduction and General Assessment

The purpose of this exercise is to assess the compliance of the draft Judicial Code of the Republic of Armenia [hereinafter “Draft Code”] with existing international and regional standards for judicial independence and accountability. If adopted, the Draft Code will replace the 1999 Laws of the Republic of Armenia “On the Judicial System” and “On Status of Judges,” which are currently in force. These statutory revisions are necessitated by the recent set of amendments to the Constitution of the Republic of Armenia that, inter alia, enhance the de jure independence of the judicial branch and attempt to bring it in line with the recognized international norms.

The Constitution of the Republic of Armenia [hereinafter “Constitution”] was adopted in 1995 and amended through a nationwide referendum in November 2005. It serves as the foundation of Armenia’s legal system. The Constitution declares, in its Article 5, that Armenia’s system of government shall be based on the principle of the separation and balance of the legislative, executive and judicial powers. The provisions pertaining to the judicial power are found in Chapter 6 of the Constitution, which begins with Article 91 stating that in the Republic of Armenia justice shall be administered solely by the courts in accordance with the Constitution and the laws. The Constitution properly recognizes the importance of independent courts and their exclusive responsibility for the exercise of the judicial function in the administration of justice.

Notably, the Constitution devotes its Chapter 2 to Fundamental Human and Civil Rights and Freedoms and acknowledges that those rights and freedoms are "ultimate values" that are directly applicable by courts. Indeed, Article 18 of the Constitution explicitly states, “Everyone shall be entitled to effective legal remedies to protect his/her rights and freedoms before judicial as well as other public bodies.” This constitutional enactment provides a foundation for the enforcement of the right to judicial protection, which is also prescribed by Article 7 of the Draft Code.

As a preliminary note, the Draft Code provides a comprehensive framework for the Armenian judicial system, and generally conforms to international standards and the Armenian Constitution. In essence, it seeks to advance and protect the judicial values of impartiality, independence, and competence that are necessary to maintain the rule of law. Accordingly, its adoption will represent an important step forward in the effort to achieve an institutionally independent judiciary and court system.

At the same time, the Draft Code reflects a somewhat unusual and all-inclusive approach to the concept of a fundamental judicial system law. It has been drawn up with an astounding diligence, and as a result, covers substantially more than all the necessary elements appropriate for this type of legislation. The risk associated with such a detail-oriented methodology is that it may unintentionally...
constrain judicial independence by surrounding and subordinating the judiciary’s ability to define and manage its internal administrative and operational practices and procedures.

II. International and Regional Standards

The international community has long recognized that freedom, peace and security cannot be sustained without preserving the fundamental principles of justice, equality, and respect for the rule of law. Compelling reinforcement of these principles came with the adoption of the Charter of the United Nations, by virtue of which the nations from around the globe have declared their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms. The Universal Declaration of Human Rights [hereinafter “Declaration”] followed, to ensure that these basic rights are protected, one of the most prominent being the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law (see Article 8). The Declaration further proclaimed, in Article 10, that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” This provision soon attained legally binding force through Article 14 of the International Covenant on Civil and Political Rights [hereinafter “ICCPR”] enunciating due process rights. The right to a fair trial also found a prominent place in the European Convention for the Protection of Human Rights and Fundamental Freedoms, which explicitly stipulates in its Article 6 that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

Significantly, international law does not offer a binding, universal instrument that would prescribe how judicial systems in respective countries should operate in order to ensure that the fundamental due process rights are guaranteed and preserved. Instead, the international community, acting through international organizations and professional associations of judges, lawyers and legal scholars, offers an array of non-binding documents that provide invaluable guidance on what principles are indispensable for the proper functioning of the judiciary, and how those principles ought to be promoted and enforced.

The first document of this kind, titled United Nations Basic Principles on the Independence of the Judiciary [hereinafter “U.N. Principles”], was adopted in 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and subsequently endorsed by the General Assembly Resolutions No. 40/32 of November 29, 1985, and No. 40/146 of December 13, 1985. The U.N. Principles are formulated to assist respective states in their task of securing and promoting the independence of the judiciary. They essentially expand upon the abovementioned rights envisioned by the Declaration and ICCPR.; They acknowledge that judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens, and therefore deem it appropriate to give all due consideration to the judges’ role in relation to the system of justice and to the importance of their appointment, training, conduct, and discipline. After declaring that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, the U.N. Principles provide important standards on judges’ freedom of expression and association, as well as their qualifications, selection, conditions of service, discipline, suspension, and removal.
Fifteen years after the U.N. Principles surfaced, the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders gave grounds to the first meeting of the Judicial Group on Strengthening Judicial Integrity [hereinafter “Judicial Integrity Group”], held in Vienna in April 2000 on the invitation of the U.N. Center for International Crime Prevention. The Judicial Integrity Group, comprised mainly of chief justices and senior judges from common law countries in Asia and Africa, recognized the need for a code against which the conduct of judges could be measured. At its second meeting held in Bangalore, India, in February 2001, the Judicial Integrity Group identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct, which was subsequently widely disseminated among judges from both the common law and the civil law systems. The revised draft was discussed before a Round-Table Meeting of Chief Justices held in The Hague, Netherlands, in November 2002. As a result of that meeting, the Bangalore Principles of Judicial Conduct [hereinafter “Bangalore Principles”] emerged. The Bangalore Principles contemplate that the implementation of all human rights ultimately depends upon the proper administration of justice, and therefore emphasize the importance of a competent, independent, and impartial judiciary. They also stress that competent, independent, and impartial judiciary is likewise essential to uphold the rule of law. In essence, the Bangalore Principles establish standards for ethical conduct of judges by identifying six core judicial values, their governing principles, and their application. These values include independence, impartiality, integrity, propriety, equality, and competence and diligence. The Bangalore Principles are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and legislative branches of the government, in addition to lawyers and the public in general, to better understand and support the judiciary.

In addition to standards developed within the general framework of the United Nations, three documents adopted under the auspices of the Council of Europe merit emphasis, namely Recommendation R (94) of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges [hereinafter “Recommendation R (94)"], the European Charter on the Statute for Judges [hereinafter “European Charter"], and Opinion No. 3 of the Consultative Council of European Judges (CCJE) on the Principles and Rules Governing Judges’ Professional Conduct, in Particular Ethics, Incompatible Behavior and Impartiality [hereinafter “CCJE Opinion No. 3”].

Recommendation R (94), adopted on December 13, 1994, acknowledges 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, the Recommendation prompts the member states of the Council of Europe to adopt all measures necessary to promote the role of individual judges and the judiciary as a whole. It identifies and defines six key principles: independence of judges, their authority, proper working conditions, judicial associations, judicial responsibilities and a judge’s failure to carry out responsibilities, and disciplinary offences. The Recommendation further emphasizes the pre-eminent role played by judges in securing the aims of the Council of Europe, namely protection of a democratic system characterized by the rule of law and promotion of human rights and fundamental freedoms.

Another product of the Council of Europe is the European Charter, adopted in July 1998. The European Charter endeavors to define the status of judges, and therefore discusses such issues
as selection, recruitment, training, appointment, irrevocability, career development, responsibility, remuneration, social welfare, and termination of office.

CCJE Opinion No. 3, drafted in November 2002 to be presented to the attention of the Committee of Ministers of the Council of Europe, covers two main areas: 1) the principles and rules governing judges’ professional conduct, based on determination of ethical principles, which must meet very high standards and may be incorporated in a statement of standards of professional conduct drawn up by the judges themselves; and 2) the principles and procedures governing criminal, civil, and disciplinary liability of judges. CCJE drafted this Opinion on the basis of replies by the Member States to a questionnaire seeking to establish whether existing rules and principles were in all respects consistent with the independence and impartiality of tribunals required by the European Convention on Human Rights.

Finally, it is also worth mentioning several instruments drafted by professional organizations of lawyers and judges. These are the Universal Charter of the Judge approved by the delegates attending the 1999 meeting of the Central Council of the International Association of Judges, the International Bar Association’s Minimum Standards of Judicial Independence adopted in 1982, and the Judges’ Charter in Europe embraced by the European Association of Judges in 1997.

III. Organization of the Draft Code

While the substance of the Armenian Draft Code is good, its organization is too diffuse and insufficiently inspiring. The Code seeks to include essentially everything entailed in the concept of a functional judicial system: from governance, operations, administration, security, ethics, and case management; through judicial training, selection, appointment, and discipline; to the organization and function of the judicial police. Moreover, it addresses some of these issues not only at the macro-level, where they presumably ought to be addressed in an originating document of this kind, but, in addition, on the micro-level. Indeed, some of the sections read more like a detailed administrative manual rather than an organic judicial system statute.

Arguments can be raised as to why such an all-inclusive approach is not worth pursuing. The most persuasive among them suggests that trying to incorporate a great number of details into an originating law will result in a major legislative act that is constantly under review and subject to change. As the country’s judicial system grows and evolves in response to the changing needs of its citizens participating in an increasingly global environment, laws and regulations that define its structure and governance need to be reviewed, revised, and amended. This need emerges most frequently on the micro-level in areas that should fall within the inherent authority of the judiciary. Thus, judicial system’s leaders should have the ability to initiate administrative and operational changes on their own, without having to pursue further consent from the legislative and executive branches of the government. However, where the micro-level language that defines these areas is embedded in the primary statute, it loses such flexibility, since even the most insignificant amendments must be subject to the formal and lengthy legislative review and approval process.

For purposes of maximizing judicial independence, the Draft Code should be better organized to emphasize more clearly the primary values that animate its provisions. First, key areas such as governance, jurisdiction, and fundamental principles of judicial impartiality, competence, independence, and integrity should be given greater prominence in the organizing structure of the
Draft Code. Second, issuance of internal administrative and operational policies and procedures should be reserved for the judicial system leaders. Accordingly, minutia of those regulations should be left to subsidiary laws or guidelines manuals. Third, a number of sections could benefit from simplification. As a comparison, it is worth evoking the 2002 Courts Act of the Republic of Estonia, which, in dealing with similar topics, benefits from the use of more precise and limited language. Lastly, there would be a substantial practical advantage from topic reorganization, enhancement of cross-references, and development of the chapter approach to the Code’s organization to provide for its greater internal consistency. This may be a translation issue, but certain sections of the Draft Code, such as those pertaining to the Administrative and Cassation Courts, are preceded by the word “Chapter,” while other, such as those relating to the Insolvency or Appellate Courts, are not. Using chapters in a more coherent way would be helpful.

Specific recommendations of how the Draft Code could be better structured are provided throughout this analysis, but some examples are provided in the following paragraph. Rather than having a separate section such as Article 18 dealing with Individual or Collective Case Hearing, that topic would be better addressed within the separate sections dealing with each court. Within each section pertaining to Universal Courts, Insolvency Courts, Administrative Courts, Courts of Appeal, and the Cassation Court, sub-topic relating to how cases are resolved should be included. This would provide for clarity and assure that the issue is squarely addressed for each court. Further, in Article 8 on Equality Before Law In Court, subsections 3 and 4 seem to address very different issues than those expressed in subsections 1 and 2. Since subsections 3 and 4 deal with the important question of *res judicata* and what appears to be the principle of *stare decisis*, they should be highlighted as such and clarified. These are legal principles that will have a very significant effect on the operation of the legal system, and therefore should be explained to some degree, particularly if they have not been embraced in the past.

A final suggestion relates to the incorporation of principle of anti-discrimination in the Draft Code. While this principle is, with minor exceptions, given due deference and the Draft Code in essence preserves equality of everyone before the law and court, the drafters may wish to address the following significant concerns. First, the equality provisions of the Draft Code, enshrined in Article 8, do not explicitly cover corporations and other law-created entities. It needs to be clarified whether this is intended. Second, the Draft Code has a tendency of utilizing gender-excluding language uniformly referring to a judge as a “he.”

IV. Definitions

According to Article 1 of the Draft Code, judicial power in the Republic of Armenia shall be exercised by courts in accordance with the Constitution and laws. By contrast, paragraphs 2 and 3 of Article 4 refer to the authority of a judge prescribing that any judge is vested with the authority to administer justice, and that a judge shall exercise his or her authority on permanent grounds. A question arises whether the Armenian language distinguishes between “power” and “authority,” and whether the drafters mean to vest “judicial power” or “judicial authority” in the courts as institutions or in judges as the operative actors in the courts.

This distinction is important. First, it should be clear that full judicial authority is given to the courts, with none reserved for legislative or executive branches of the government. Second, a person may have or exercise governmental power without legal authority. It needs to be noted, however,
that judges act as the court, not for the court, signing judgments in their own names as holders of judicial office. For this reason, Article 4 paragraph 2, which is currently too vague and may provide too much discretion for judges in some situations, should be rewritten to make it clear that the judges’ discretion is limited by the law and that the judges cannot lawfully create or apply their own notions of justice. The provision might be amplified to state: “A judge is vested with the authority to administer justice as provided by law, or in accordance with the law, or under the law.”

V. Judicial Independence

A. General Remarks

The independence of the judiciary vis-à-vis the political class and the private actors is the fundamental precondition for an efficient and democratic judicial system, strictly associated with the principles of meritocracy and accountability. The U.N. Principles focus on six interrelated areas: the independence of the judiciary; freedom of expression and association; qualifications, selection and training of judges; conditions of service and tenure; professional secrecy and immunity; and discipline, suspension, and removal of judges.

In recognizing that judicial independence is a pre-requisite to the rule of law, the Bangalore Principles accept as an application of that principle that “a judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.” A further relevant application is that “a judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.” Additionally, it is recognized that the inappropriate connections from which a judge must be free include the executive and legislative branches of government. Significantly, not only the existence of such freedom but also an appearance to a reasonable observer of such freedom is material. As a result, judges must apply the laws without reference to transient political and social pressures that may influence elected executive or legislative officials.

The Draft Code recognizes, in its Article 7, that courts must be independent, competent, and impartial. These important attributes of judicial excellence are necessary to secure equal justice before the courts of law, and thus could perhaps have played a larger role in the structure of the Draft Code itself, although each is reflected in several important provisions of the document. Threats to judicial independence and the proper functioning of the courts can arise from both external and internal causes. Judicial codes must protect against external pressure, but also against incompetence and corruption. Litigants and the government have a duty to respect the courts, but also a right to learned and impartial justice.

There are two types of judicial independence: independence of the courts from control of other branches or institutions of government, and independence of each judge in the decision-making that should be exercised according to that judge’s own judgment in applying the law. This distinction should be made clear in the Draft Code. For doctrinal and pedagogical reasons, the European theory of law also distinguishes between functional and personal independence of judges. The first concerns guarantees related to the exercise of their functions, the second to their personal
status. This division is made evident, for example, in the first section of the International Bar Association’s Minimum Standards of Judicial Independence.

The fundamental rule is that judges, in exercising their duties, are subject only to their conscience, the Constitution, and the laws. Although the principle looks clear, it is not always easy to avoid "gray zones" in its application. The limits between the judicial activism and an excessive restraint are not easily discernible. For instance, one might speculate to what extent the judge can rely on his personal conception of justice, as opposed to the will of the legislator. There are several recognized safeguards of personal independence, such as judicial immunity, the appointment of judges for an indefinite period, the involvement of the self-governing judicial bodies in the process of the appointment of judges, the removal and the retirement age of the judges strictly provided by the Constitution, the suspension or transfer of judges to another branch or position only on the basis of court decision, judges’ political neutrality, guaranteed appropriate conditions of work with remuneration consistent with the dignity of the office, and scope of the judicial duties. All of these safeguards will be examined in greater depth in the subsequent sections of this assessment.

By and large, the Armenian Constitution and the Draft Code endorse judicial independence and thus, the drafter’s efforts are to be recognized and noted. Indeed, the Draft Code explicitly proclaims the principle of the independence of the judge and autonomy of the court (Article 13), as well as the value of judicial autonomy and its protection through self-regulation by the judiciary (Article 11). In addition, both documents recognize that independent courts have the duty not only to apply and protect the laws and the Constitution against usurpation by other branches of the government, but also to safeguard the liberty and security of the individuals. It has to be noted, however, that with extensive executive powers over the judiciary, the notion of separation of powers as enshrined in the Constitution often does not seem to be the reality, and might well be contrary to the culture of the country. In practice, it seems as though the President’s powers regarding judicial appointments, discipline, and dismissal, might continue to threaten and even possibly infringe on the judiciary’s independence. Also, the Draft Code’s provisions on the Magistrates School, training, and disciplinary regime pose a number of concerns which will be discussed below. For the foregoing reasons, Articles 97 through 163 of the Draft Code should be reconsidered. In addition, it should be made more explicit that provisions on judicial immunity (Article 15) and life tenure of judges (Art. 16) serve essentially the same end as safeguards listed in Article 13 dealing specifically with judicial independence.

**B. Budgetary Autonomy**

An important aspect of judicial independence is the judiciary’s autonomy in the area of budgetary matters. To this end, the drafters of the Armenian Code may consider the establishment of a self-governing institution that would take over control of administrative problems and allocation of budgetary resources allocated by the legislature. More budgetary autonomy reserved for independent judicial organs would definitely strengthen their position. The drafters may also consider granting such body full independence in preparing the budgetary proposal. It does not mean that the budgetary functions cannot be dispersed among different bodies. It is not unusual that the Minister of Justice, being short of supervisory powers, may provide an opinion without the actual possibility to change the budgetary proposal. The judicial budget should be incorporated into the government budgetary proposal and accordingly voted upon by the Parliament. In this respect, Article 62 of the Draft Code, which gives the courts a healthy amount of budgetary autonomy is
salutary. However, the government of Armenia, i.e. the executive branch, should not have the authority to approve, reject, or change the courts’ budget. Separation of powers and the independence of the judiciary mandate that funding requests go to the legislative branch, without executive intervention, curtailment, interference, or comment. What the judicial branch proposes to the executive branch for the overall budget should simply be included as such. At the same time, in most countries the legislature has final decision to accept, reject, or amend the budget, and this right does not violate either the independence of judicial power or the principle of separation of powers.

VI. Organization of the Court System

A. General Remarks

The Draft Code follows the revised Constitution to create a number of judicial system institutions that can be divided into the following groups:

1. A three-tiered court system of general jurisdiction comprising of “universal courts,” i.e., the Courts of First Instance, two Courts of Appeals (one with civil jurisdiction and one with criminal and military jurisdiction), and the Court of Cassation as the highest court in the country.

2. Courts examining administrative and insolvency cases.

3. An array of self-governance bodies empowered to assist with the proper administration of justice, such as the Council of Justice, the Council of Judges, and the General Meeting of Judges.

It should be noted that the Draft Code does not contain provisions related to a separate constitutional regime embedded in the Constitutional Court, with its exclusive jurisdiction over issues regarding the constitutionality of laws and resolutions of the National Assembly, as well as rulings of the President, other government decrees, and treaties.

The organization of the Armenian court system is similar to that in other European countries as well as the United States. For each of the courts described, a statement of the authority of the chairman is set forth. This is very helpful to assuring the consistent administration of the various courts. However, it does not appear that budgetary authority is included among the responsibilities of the chairman. The role the chairman may play in both securing funding and ensuring that funds are properly expended can have a significant impact on the way in which the business of respective court is carried out. In addition, although there is a reference to of overseeing the performance of court staff, the powers of the chairman in personnel matters are not defined. It appears that this is a function carried out only by the Council of Judges. Contemporary management principles of efficiency and fairness, as well as experience of countries such as the United States have demonstrated the wisdom of providing at least some local control of court budgets and personnel matters.

In addition, certain provisions pertaining to the Cassation Court and the Administrative Courts necessitate the following remarks.
**B. Cassation Court**

Pursuant to Article 3 of the Draft Code, the Cassation Court constitutes the highest judicial instance in the Republic of Armenia, with the exception of constitutional justice matters. Harmony must be assured as to the role and duties of the Cassation Court. While Article 3 states that the Court’s assignment is to ensure the uniform application of law, Article 46.2 (2) gives the Cassation Court jurisdiction also over discrete cases where a mistake may cause grave consequences. Such cases do not necessarily involve comparatives or precedent, which are the tools to assure uniformity.

Article 46 of the Draft Code provides three exclusive grounds for the Cassation Court to accept appeals: (1) judicial act brought in for a given case may essentially impact the judicial practice, (2) reconsidered judicial act contradicts to decision previously adopted by the Cassation Court, or (3) as a result of procedural or substantive right violation by subordinate court, possible judicial mistake may cause grave consequences. These three grounds are quite broad and should allow the Court to have enough discretion to take appropriate cases. Article 49 provides for a “small chamber” process for deciding on which appeals to accept. The small chamber consists of the Chamber Chairman and two other judges chosen by the Court Chairman. This procedure seems to be workable. However, it grants the Court Chairman a vast power to choose two of the three members of the panel, and thereby influence the selection (or rejection) of cases. Alternatively, the drafters might consider a certiorari procedure, whereby either the Chairman or four (or even five) of the nine other judges can vote to accept a case. This system is used by the U.S. Supreme Court and it seems to work well, as it allows the Supreme Court to calibrate its caseload as it sees fit.

Article 50 of the Draft Code provides that the Court’s quorum requires at least seven judges, while a resolution of a case requires at least five votes. This would oddly seem to rule out the possibility of 4-3 votes.

The drafters may also reconsider the wording of Article 57.2, concerning situations where a Chamber of the Cassation Court acts as a court of first instance. This provision stipulates that decisions issued in such circumstances are not subject to any appeal. Perhaps there should be a procedure for such cases to be reheard by the full Court following a petition for en banc review.

The remainder of the provisions relating to the procedural aspects of the Cassation Court’s operations seem well thought-out. Similarly, the provisions in Articles 59-60, concerning the role of the Court Chairman in managing the Council of Judges, also seem sensible and necessary.

**C. Administrative Court**

With regard to the Administrative Court, the Draft Code contains no description of what is included in the category of administrative cases. Consequently, the jurisdiction of this court is not entirely transparent. By contrast, constitutions and judicial system laws of many other countries make explicit provisions for specialized courts and commonly include a more specific description as to kinds of cases they hear, e.g., labor disputes, governmental agency matters, etc. In particular, the Administrative Court could serve as the centrepiece of scrutiny of state action below the review of laws, which would be reserved to the Constitutional Court. In sum, it is not sufficient to simply say that the Administrative Court hears all administrative cases per se. The Judicial Code should include a definition of an “administrative case,” which ought to include all final decisions made by
administrative agencies. In such a case, the terms “finality” and “agency” need fleshing out. Otherwise confusion may occur as to which court a particular action should be filed with.

It is also unclear whether the law in the Republic of Armenia requires a person to first exhaust all appeals with the administrative appeal structure before bringing a case to the Administrative Court. A question needs to be answered whether the Administrative Court would be obliged to refuse a petition of an appellant that tried to skip an administrative appeal. Of course there may be reasons not to enforce this rule, e.g., where an appeal would be futile, where only questions of law are presented, or where speed is extraordinarily important. For example, the German law makes it clear which types of administrative acts must first be appealed to the higher-level body before going to court. It might be helpful for the Armenian Draft Code to clarify this as well.

Further, it needs to be more precisely set forth that appeals from Administrative Courts are directed to Cassation Courts.

VII. Self-Governance Bodies of the Judicial Authority

A. General Remarks

The establishment of the self-governing judicial bodies is deeply rooted in European, predominantly French, traditions where these bodies are supposed to be professional, independent institutions cooperating with executive and legislative organs in the process of the appointment and removal of judicial and para-judicial officers. The existence of intermediary judicial authorities usually strengthens the accountability of judges without compromising their independence.

Typically, the self-governing judicial bodies are partially appointed by the judicial branch and also include several ex-officio political appointees. Such bodies usually worked efficiently in Western European circumstances. The term of the elected and appointed members – longer than the term of the legislative and executive bodies – enhanced the independence of self-governing judicial structures. The incompatibilities of the membership on these institutions with the positions of the members of Parliament and political parties, mayors, and municipal councilors were supposed to secure the independence of judicial structures and protect them from excessive politicization. It has to be noted, however, that in some post-communist states, the safeguards smoothly working in several other countries proved insufficient. Low salaries, a heavy backlog of cases, a lack of properly trained administrative staff, corruption, weak coordination between prosecutors, investigators and the courts, and, above all, political pressure of the government and the parties controlling the Parliament on their appointees contributed to high politicization of the self-governing judicial bodies and resulted in the weak record of the countries in fighting with organized crimes and human rights violations.

In light of the above comments, the proposed Armenian system of self-governance for the judiciary, laid out in the Constitution and the Draft Code, raises several concerns.

According to Articles 68-71 and 97-112 of the Draft Code, read in conjunction with Article 94 of the Constitution, the judicial self-governance system in the Republic of Armenia consists of three bodies: the General Meeting of Judges, the Council of Judges, and the Council of Justice.
As a preliminary statement, it needs to be noted that the provisions of the draft Judicial Code relating to these judicial institutions lack clarity and proper structure. First, the Draft Code mentions, on numerous occasions, the Justice Council and the Judicial Council without specifying which of the three self-governance bodies it refers to. If this is not just a matter of translation, the terminology of the Code needs to be clarified. So do the membership, structure, creation, and functions of the “Judicial Council Ethics Committee” referred to in Article 26, unless the Ethics Committee is an equivalent of one of the three Commissions that, per Article 71, are to be established within the Council of Judges. In such case, the Council of Judges should define the Ethics Committee’s membership and duties. It is also unclear what is the Commission of Ethics referred to in Article 146.

It is not quite evident that Armenia really needs all these bodies with expensive administrative and budgetary needs. The Council of Judges is basically an administrative, consultative, and coordinating body. The Council of Justice, although involved in the selection of judicial candidates, disciplinary actions against the judges, and in the removal of judges, presents recommendations to the President of the Republic of Armenia, who has the final authority over all these issues. The co-existence of these two bodies may result in unnecessary competition for financial resources, as well as organizational and administrative problems.

Indeed, the Draft Code does not determine how the meetings of judicial self-governance bodies and their administration will be paid for. Even Article 112 that touches upon the financing of the Council of Justice is vague. The drafters may need to contemplate the following questions. Are judges expected to pay on their own for participation in the self-governance bodies? Will they be required to use their own staff for these operations? Is there to be an administrative office for the judicial branch to handle the operations of the General Meeting of Judges and the Council of Justice as well as the promulgation of “judicial acts”? Further, it appears that the Administrative Court and the Insolvency Court have no membership either in the General Meeting of Judges or in the Council of Judges. It needs to be explained whether this is intended. Finally, Article 70.5 (15), setting forth the Council of Judges’ duty to coordinate international links of the Armenian courts, could be less ambiguous. Does this stipulation relate to official case sharing with international courts or to relationships such as exchange visits?

Although the Draft Code addresses the issue of judicial governance, and the notion of “self-governance” is very laudable, it is difficult to discern where the ultimate authority for overall supervision of the court lies. It appears that a large portion of this responsibility resides with the chairman of the Cassation Court and the Council of Justice. However, a definitive statement clarifying overall administrative and budgetary authority for the entire court system would be helpful.

**B. Council of Justice**

The Council of Justice serves as the constitutionally created body empowered with extensive authority over the judiciary. Aside from administrative powers exercised over all courts, including the Constitutional Court, the Council has the authority to recommend to the President of the Republic of Armenia the appointment, discipline, and removal of judges, and is primarily responsible for the advancement of the judiciary. The Council acts through the discussion of issues
The Council constitutes a part of the judicial branch of the Armenian government. However, review of the Draft Code, as it relates to the structure and functions of the Council, leads to a conclusion that the respective provisions are inconsistent with the instruction and values of the principle of separation and balance of the legislative, executive and judicial powers articulated in Article 5 of the Constitution.

The Draft Code enunciates that the Council of Justice is an independent body. In practice, however, it is neither separate nor independent from other branches of the Armenian government, since four of its thirteen members are appointed either by the President or the National Assembly. Specifically, the Draft Code, in Articles 97-99, follows the Constitution, which provides that the Council of Justice will be composed of nine judges elected by the General Meeting of Judges and four legal scholars: two appointed by the President and two elected by the National Assembly. The Draft Code in an enigmatic way confirms that the legal scholars or “scientists” may be appointed to the Council, and that the appointing authorities have the right to remove them. This in itself seems conceptually conflicting with the principle of separation of powers and the first sentence of Article 94 of the Draft Code, which seeks to acknowledge that the Constitution and laws of the Republic of Armenia shall guarantee the independence of courts. Nonetheless, this composition is consistent with the practice of many European countries, where Judicial Councils or other similar bodies typically include representatives of other branches of government or political appointees. In addition, this also conforms to the international standards regarding similar organs. Notably, Principle 1.3 of the European Charter provides that such bodies be “independent of the executive and legislative powers [and] 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.”

Nonetheless, to ensure the full separation of powers, the drafters of the Draft Code may wish to consider a rule according to which all of the Council’s members would be sitting judges chosen by sitting judges. In this scenario, the Council could select its own legal scholars who would serve as a resource for the Council, but not as members bestowed with voting rights. In any case, it is recommended that the legal scholars have no vote on any matters that come before the Council. As the Draft Code is now written, the legal scientists on the Council do not participate in voting when the Council acts as a court. That is insufficient. Only members of the judicial branch should have voting rights in the Council. Otherwise, if the judiciary cannot constitute its own Council, then the judicial branch is not separate and is not independent.

An additional affront to the constitutional notion of separation of powers exists by virtue of the fact that the Minister of Justice, an executive officer, may not only participate in the sessions of the Council of Justice but also has a right to a consultative vote, which is not defined. This leads to a situation where the lines between the executive, the legislative, and the judicial branches are blurred to the point of obscuring any reality of the independence of the judiciary. Consequently, the influence of the Council of Justice on the judiciary should be reconsidered, because the President and the National Assembly, acting in tandem, can effectively control a substantial minority of its members. In other words, the Council’s supervisory and recommendatory roles should be clearly stated, as well as the President’s power to appoint, remove, and discipline all judges, along with two members of the Council of Justice. Although this would require a constitutional amendment, the
granting of the right of appointment and dismissal of the members of the Council of Justice entirely to the body composed of the representatives of the judicial bodies, the faculties of law schools, or the associations of lawyers might enhance the independence and true self-governing character of the Council.

C. Concluding Remarks

The articles pertaining to the Council of Justice seem unnecessarily detailed, and may benefit from allocation to subsections to better guide the reader. For example, similarly titled provisions that apply only to specific aspects of the Council’s work should be easier to distinguish. This applies, inter alia, to Article 100 on voting for electing members, as distinguished from Article 116 on voting for judicial candidates.

Further, some provisions pertaining to the functioning of the Council, particularly Articles 106-110, look too analytical for the matter they regulate. It would be better for the functional independence of the Council if the law stipulated merely general principles on its operation, and the remaining details would be defined by the bylaws issued by the Council itself. For example, Article 108, detailing the norms for discussing issues by the Council, should be omitted from the Draft Code in its entirety. Ideally, the Council should be allowed to adopt its own rules for the conduct of its sessions. For the purposes of clarity, the drafters may also reconsider the wording of the following enactments: Article 112 on financing; Article 102.4, as it is not apparent who will have the authority to recognize that the legal scientist is “incapable of work”; Article 116.3, as it could be better explained how the guarantee of eight slots for the minority gender is to be implemented; and Article 107, as it is unclear who drafts a protocol of sessions, and what happens if a party considers the protocol incomplete or even inaccurate. A possibility of verbatim reproduction of important expressions made during the session, mentioned in Article 107.3, may be insufficient, especially in the absence of critically important definitions of what is defined as “important.” Finally, strict time limits proposed in Article 110.7 of the Draft Code for appealing the Council’s decisions and conclusions ought to have a general exception for extraordinary circumstances that justify a delay.

It also appears that the judicial branch, through the Council of Justice, may be overstepping its bounds into a separate area reserved to the executive branch in Article 163. Pardoning is a function unique to the executive branch. Even though the Constitution also mandates, in its Article 95, that the Council of Justice shall express opinions on the granting of pardons at the request of the President, it is suggested that this provision be deleted. The judicial branch should not interfere in the work of a separate and independent branch of government.

The institution of the Council of Justice should significantly help to insulate judges from external political pressures. Given the central influence of the Council to the independence of the judiciary, its role should have been given more prominence in the Draft Code. Also, the respective provisions should have been accompanied by a more instructive and inspiring preamble. This body will have considerable power and thus, its probity and disinterestedness will be of tremendous importance. It is at the heart of the Draft Code, but its central role is not entirely clear without reference to the Constitution.
VIII. Adjudication of Cases

A. Role of Judicial Precedent

The Armenian Draft Code generally adheres in form and substance to similar approaches taken in other countries that follow a civil law tradition. The main difference stems from the drafters’ attempt, as mandated by the recent Constitutional amendments, to incorporate into the Armenian legal system the common law concept of precedent and introduce an adversarial system for court proceedings, which would replace inquisitorial proceedings typical of classic civil law countries. While one must note that the traditional confrontation of precedential and statutory systems and inquisitorial as opposed to adversarial proceedings is not clear-cut anymore, and many countries experiment with the mixed systems, the simple adoption of one of these concepts is not a matter of a pure choice.

The institution of precedent and the technique of adversarial proceedings are deeply rooted in the legal education system of common law jurisdictions. Law students in the common law countries are well trained in how to construct and determine “holding,” how to narrow or broaden holdings for adversarial purposes, how to construe ambiguous facts, or how to apply analogical reasoning. Accordingly, the drafters of the Armenian Code should consider whether the introduction of features of the common law system would work in the Armenian circumstances without the prior introduction of a practice-oriented system of legal education.

The adoption of an adversarial approach to adjudication will have wide-ranging implications for the functions and responsibilities of judges and lawyers and for the manner in which cases are presented in the Armenian courts. Consequently, the Draft Code should be more specific as to how these proceedings are to be carried out. By the same token, the Draft Code should be more precise as to what situations will allow a lower court to invoke “lofty circumstances” for not following a higher court’s ruling in a factually similar case. The current provision, articulated in Article 8 paragraph 4 of the Draft Code, seems too open-ended given that the distinction between “the same factual circumstances” and “lofty circumstances” is one of the most formidable challenges for the judges.

B. Individual vs. Collective Hearing of Cases

The Draft Code does not mention the use of juries or lay judges. Therefore, adjudication in the Armenian legal system is meant to be solely the province of professional judges. While some attention is paid to whether cases are decided by individual judges or panels of judges, this subject requires clarification. Specifically, whether decisions must be unanimous and whether in appellate matters cases may be decided by panels of judges comprised of less than all of the court’s members should be more precisely outlined. This topic is addressed to some extent in the Courts Act of the Republic of Estonia, where a provision for utilizing lay judges is included and it is stated that judicial matters are resolved by a simple majority of votes. In addition, the clarity of the Draft Code would benefit from having separate articles on individual versus collective adjudication of cases within the chapters dealing with each court, rather than having a separate Article 18 devoted to this topic.
C. Contempt Powers

Article 6.2 of the Draft Code stipulates that contempt of court or of a judge in relation to the administration of justice shall trigger a procedural sanction and other liability prescribed by law. The drafters may wish to reconsider the scope and potential effects of this enactment, as it seems to interdict any critical remarks of a judicial act. If this is intended, then this provision is incompatible with the general tendency of giving the media a possibility to critically comment on the judicial verdicts.

While sanctions for unruly or contemptuous behavior in the process of case adjudication are clearly necessary, sanctionable behavior should be defined, at least by a non-exclusive list that would enumerate specific instances and thus, a range. Also, it ought to be specified, at least to some degree, what behavior is subject to a fine and what behavior is subject to a referral to the Prosecutor-General or the Chamber of Advocates. For example, only accusations of a crime or misbehavior by a public prosecutor should be referred to the Prosecutor-General. In the interest of fairness, conduct referred to the Chamber of Advocates should be subject to the Chamber’s independent inquiry, with opportunity to be heard, before a sanction such as suspension from the practice of law is imposed. Contrary to the disposition of Article 61 paragraph 8, which states that any court decision applying a judicial sanction shall be final, all cases of severe sanctions should be appealable. Although paragraph 2 of Article 61 requires proportionality of the sanctions, the current stipulation empowers judges with enormous discretion, which can be abused with impunity and chill zealous advocacy for parties. Notably, the judge cannot require removal of an attorney from the case but only from “the courtroom.” Such action may effectively require a party to hire other counsel.

D. Other Issues

Article 17 paragraph 2 of the Draft Code lays out the principles of effectiveness in the administration of justice. It stipulates, inter alia, that, as a rule, hearing of a case in court must be completed within one court session. This provision should be awarded more flexibility to give deference to cases that must be interrupted for a good reason pertaining to that case or to other duties of a presiding judge(s).

Article 19 of the Draft Code emphasizes that Armenian shall be the trial language in the Republic of Armenia, and provides guidance on the use of translators. However, the Draft Code does not specify what qualifications a translator should have to be allowed to provide service during case hearings. Including a provision dealing with court certification of translators after proper training, exam, and oath would be beneficial.

IX. Appellate Courts and Procedures

Articles 34 through 47 of the Draft Code cover the appellate courts in the Republic of Armenia, i.e., the Civil Appellate Court and the Criminal Appellate Court. A substantial number of these enactments are dedicated to procedural aspects of appeals. The relevant provisions, are, however, incomplete and often refer for further procedural guidance to indefinite procedural law. This approach should be reconsidered. First, the entirety of the appellate process would be more easily understood and followed if it is presented as a whole. Second, it is neither necessary nor advised to have the rules of procedure in the Judicial Code, the function of which is to focus on the
structure of the court system, the powers, competencies, and protections of the various levels of courts, and the indicia of independence necessary for proper functioning of courts and judges.

A. Limitations on the Right to Appeal

Article 40 of the Draft Code enumerates limitations on lodging appeals in civil cases. Its paragraph 2 contains a jurisdictional amount requirement in property rights cases. Specifically, an appeal of a civil case regarding a property claim shall be permissible only if the value of the disputed property exceeds 50-fold the minimal salary. This provision appears to be discriminatory because it determines appealability of property claims based on a person’s salary, which is an irrelevant and arbitrary factor. Further, Article 40.3 seems to bar appeals based on judicial error where the appellant had failed to object during the first instance court’s examination of the case. This provision should perhaps contain a “good cause” exception.

B. Grounds for Appeal

The Draft Code presents a number of serious concerns pertaining to the scope of judicial review used by the Armenian appellate courts. For example, in the United States, an appeals court normally reviews the factual decision of a first-instance court by using the “clearly erroneous” test while legal questions are often reviewed de novo. Per Article 39 of the Draft Code, in Armenia an appeal may be lodged on the ground of a judicial error or newly emerged circumstances. Thus, there may be a different standard for questions of law and questions of fact.

If the provision prescribing for newly emerged circumstances as one of the grounds for lodging an appeal is kept, the Draft Code ought to explicitly define “newly-emerged circumstances” that are allowed to be invoked in order to avoid abuse and incompleteness of a trial. This is of great importance, as the scope of “newly-emerged circumstances” appears to be broader than “newly discovered evidence.” The latter, in limited and articulated situations, would be justified, such as in criminal cases where DNA testing became available to establish that a convicted person did not commit the crime. The broad and general term “newly-emerged circumstances” would seem to allow a party to save some aspects of a case and then bring them up for an appeal, claiming it is “newly emerged.” If new evidence is always allowed on appeal, the appellate courts will essentially become trial courts. In addition to being awkward, such a process will overwhelm the appellate courts.

C. Appeals by Non-Parties

Articles 37.2 and 38.8.1(2) for Appellate Courts, and Article 52.1(2) for Cassation Court, create an atypical mechanism that allows appeals by non-parties whose rights and obligations have been affected by the judicial act intended to solve the case in substance. It appears that this mechanism could be utilized in the following scenario. If the case tried in the court of first instance did not bring in all parties in interest, although the initial parties should have been obligated to notify all other parties so that their interests could be protected from the outset, then the losing party could bring in a third party who is affected by the judicial act and who can raise new legal issues which the losing party had waived for failure to raise. If intended, such a scenario portends abuse because it can be used as a deliberate strategy. The mechanism permitting appeals by non-parties poses a number of additional concerns. If new parties can be brought into the appellate proceedings, the first instance court judge can never have full control over the outcome of the case. In addition, if the
rights of all affected persons are not addressed or adjudicated from the outset, the first instance court’s judgment is essentially never complete.

Given the seriousness of the identified concerns, a number of questions arise. What do the above-mentioned mechanisms aim to avoid or redress? Have the drafters considered any alternatives, such as a motion to set aside judgment or an extraordinary motion for new trial that, if granted, would allow bringing in the late-coming new parties at the trial court level? Do these mechanisms constitute an effort to achieve what a class action can do? If so, the class action mechanism should be considered as a substitute for the “non-party” procedure. By the same token, the drafters might consider allowing more liberal participation by interveners in the first instance courts, and then allowing them to appeal. That way, non-parties would only be allowed to appeal in cases where they did not have an opportunity to intervene.

In sum, the concept of allowing appeals by non-parties or for newly-emerged circumstances is a very different approach than is customarily taken in the United States or other common law countries, and could have serious adverse consequences for trade and commerce, particularly on the international level. Such an approach contradicts the principle that what a party does not raise in the first instance court is waived on appeal. The requirement of “raise or waive” serves efficiency, speediness, and cost-containment of the administration of justice. As drafted, Article 40 permits parties to agree to waive an appeal, but refrains from specifying whether a non-party with rights under Article 38 can pursue an appeal in such circumstances.

**D. Statute of Limitations for Appeals**

Generally, it is wise to place time limits on appeals. However, the Draft Code’s provisions on the time available for appeal appear to be problematic. Article 37.1 provides for appeal “before the end of the period set for [a judicial] act to come into legal force,” which according to Article 23.1 is one month after promulgation. Article 23.1 also provides that the law may prescribe another term. If that happens, care must be taken not to eliminate or unreasonably curtail the time for lodging an appeal. This can be achieved by providing in Article 37.1 that the period be not less than one month. In cases when an appeal is lodged on the grounds of newly emerged circumstances or by a non-party, the draft Judicial Code contains time limits that are both too short and too long. On the one hand, the Draft Code allows appeals only within one month from the moment a prospective appellant has learned or could have learned of the judicial act in question. On the other hand, it bars any appeal of a judicial acts that is over 20 years old, which means that decisions adopted in the courts of first instance may not have finality for 20 years. Twenty years is certainly a very long time for a trial court judgment to be left subject to reversal, and has the effect of preventing adherence to the widely recognized legal principle of finality. Consequently, the drafters might contemplate finality of judicial acts after the initial 3 months – provided that when new circumstances arise, a new case, which shows the distinction from the first one, can be instituted.

**E. Interlocutory Appeals**

Articles 34.2 and 37.3 of the Draft Code discuss interim or interlocutory appeals. Generally, a possibility of an interim appeal is a good idea, as it helps to avoid lengthy and costly trial proceedings in which there is an early and correctible mistake, such as refusal to add a party or error about jurisdiction. However, the following issues need to be taken into consideration. First, the
Draft Code neither articulates standards for determining which “interim judicial acts” can be appealed, nor specifies whether a party has a right to such an appeal or whether it is within the discretion of the court of the first instance to allow it. Accordingly, the drafters ought to consider either enumerating the type of interim decisions that are appropriate for interlocutory appeal or requiring that the party desiring such an appeal get a certificate from the first instance court to allow it. In essence, an appropriate subject for interlocutory appeals is the decision that a court has or does not have jurisdiction over a person or subject matter. Second, there should be a time limit for the appellate court to decide such matters, so as not to hold up the proceedings in the court of the first instance unreasonably. The goal, after all, is to resolve the dispute at the earliest practicable time. However, the 3-day period for such appeals gives no time to review the decision, consider appealability, prepare the required papers, and mail them to the appellate court. It should be also specified when the 3 days are counted from and to.

F. Issues

Article 43 of the Draft Code specifies that, as a rule, the appellate court shall examine the case by means of written correspondence. Perhaps the default rule should be the other way, as it is in the U.S. Courts of Appeals, where ordinarily oral argument is eliminated only when all three judges on the appeal panel agree it is not necessary.

One aspect of appeals that is not provided for by the Draft Code is the concept of discretionary appeals. There are certain categories of cases where there is very little likelihood of reversal due to, for example, the large degree of discretion in the matter given to the court of the first instance. In such circumstances, which should be listed in the Judicial Code, the appellant must first make an application to the appellate court asking for permission to appeal and explaining why it is possible that the judgment of the first instance court would be reversed. The appellate court would then exercise its discretion to grant or deny the right to full appeal. This saves time for the parties, achieves quicker finality of what would be affirmed in the end anyway, and keeps the appellate court from being overloaded with cases where the outcome would not change. For instance, the State of Georgia in the United States has such a procedure, which works very well. The legislature determines the categories of cases subject to this method of weeding out cases that do not warrant full-blown appeal.

X. Transparency of the Judiciary

A. Trial Publicity

One of the most important aspects of case adjudication is publicity and openness of trials, which is enshrined in Article 20 of the Draft Code. Although paragraph 1 of that Article explicitly provides that cases shall be heard openly, further paragraphs allow closure for the purposes of protection of public norms, public order, state security, private life of litigants, and justice interests. The judges’ discretion to conduct proceedings in secret seems to be very broad and thus can be subject to abuse. While closing court proceedings in certain circumstances may be justified, deference should be given to transparency and openness as much as possible. The public nature of court proceedings is necessary to assure public trust and confidence in the courts, as well as to safeguard the rights of parties and the concomitant freedom of the press to cover court proceedings.
B. Transparency of Court Decisions

Paragraph 2 of Article 13 of the Draft Code, which generally relates to the independence of judges and autonomy of courts, enunciates a rule that a judge is not obliged to give any explanation when discharging justice, unless the law explicitly envisages such a duty. Although it is vital to preserve judicial independence, this provision is too broad as it opens the door for arbitrariness and hasty decision-making leading to erroneously based decisions.

One of the challenges facing particularly young and inexperienced judges in many civil law countries is the lack of a corpus of instructive case law. Because the tradition is to craft short decisions that often include either very little or no judicial reasoning or instructive justification, such decisions are typically of little value for purposes of providing direction and guidance. The drafters of the Code might consider adding some advisory language either in the Draft Code or in other subsidiary laws or regulations to the effect that judges, in preparing decisions, must include their reasoning and justification. In addition to being instructive, at least some degree of transparency in decision writing would: 1) serve as precedent or at least as useful information for lower courts and attorneys in future cases; 2) assure the judge himself or herself that he or she did not skip any vital elements in the legal analysis; 3) assist judges in the higher-level courts when they review cases on appeal; and 4) give parties a reasoned basis to understand why they lost, thus reducing the likelihood of appeal and decreasing the possibility of reversal by the appellate court. Lastly, providing the reasoning behind judicial decisions would enhance the public trust and confidence in the courts.

In regard to transparency and openness of the judiciary, it is noted that per Articles 65 and 66 of the Draft Code judicial acts, i.e., substantive decisions of Cassation, Appellate, and first instance courts, must be published on the Armenian judiciary’s official website. In addition to the website, judicial acts of the Cassation Court, which solve the case in substance, must be published in the Official Bulletin of the Republic of Armenia. While both of these regulations are welcome, the drafters should consider publishing all decisions of both the Cassation and the Appellate Courts, particularly those which have precedential significance, in a publicly disseminated official print paper publication, so that those judges, lawyers, and members of the public who do not have Internet access can easily view them. In addition, it would be beneficial to publish all final decisions, even not substantive, because procedural issues may dispose of the case and create precedent, which would govern similar situations. Furthermore, if the Armenian system allows for dissenting and concurring opinions in appellate cases, as it ought to, then such opinions should also be published in the Official Bulletin and on the website.

A final set of comments pertains to the effective dates of judicial decisions. Article 23 of the Draft Code states that unless otherwise provided by law, a judicial act of a universal court, which solves the case in substantive terms, shall come into legal force one month after promulgation. It is recommended that this rule be complemented by a provision that would allow universal courts to provide for a shorter effective date period where good cause is shown. This is also inconsistent with provisions of Article 31 of the Draft Code related to Insolvency Court, whose decisions can come into force immediately, i.e., from the moment of their promulgation.
XI. Professional Conduct and Ethics of Judges

A. Code of Judicial Ethics

The continental judicial tradition strongly supports the idea of codifying standards of professional conduct for judges. The first European Judicial Ethics Code was adopted in 1994 by the Italian Judges’ Association as a self-regulatory instrument distinct from disciplinary or criminal rules. Similar codes now exist in most countries in Western and Eastern Europe.

On the one hand, codes of conduct possess a number of vital benefits. They help judges resolve questions of professional ethics, giving them autonomy in their decision-making. They also inform the public about the standards of conduct expected from judges, and contribute to the public assurance that justice is administered independently and impartially. On the other hand, such codes may also create problems. They can give an impression that they contain all rules governing judicial conduct, whereas in practice they are constantly evolving. Indeed, it is rather impossible to compile a complete list of pre-determined activities which judges are forbidden from pursuing. For these reasons, CCJE Opinion No. 3 suggests that it may be preferable to adopt a statement of standards of professional conduct rather than a code. This also applies to codes of ethics that are part of larger statutes such as judicial codes. In addition, it is advisable that principles of professional conduct are drawn up by the judges themselves, enabling the judicial authority to acquire legitimacy by operating within a framework of generally accepted ethical standards. This approach is also taken by the Bangalore Principles, the gold standard for ethics used as a template by many judiciaries throughout the world. In fact, the Bangalore Principles themselves were designed and adopted by judges as guidance to other judges. On a separate note, using the term conduct instead of ethics is recognized to better reflect the relevant principles.

In substance, the Judicial Code of Ethics proposed in the Draft Code [hereinafter “Code of Ethics”] appears to be, at least to a large extent, consistent with general international and European standards, although two issues raise noteworthy concerns. First, international and European standards are much more general than the Armenian draft. Second, the inclusion of the Code of Ethics in the Armenian Judicial Code is incompatible with the general tendency, reflected in the CCJE Opinion No. 3, that any formal codification of professional standards should be avoided, especially in an act of parliament. Thus, while the provisions of the Armenian Code of Ethics are not seriously flawed, changing the format to more closely follow the Bangalore Principles might make the Code more readable.

The Armenian Code of Ethics states clearly what conduct is required of judges and what conduct is not allowed. It lays out workable standards, by which judges must govern themselves in the performance of their judicial responsibilities. It also anticipates problems arising from non-judicial work and receipt of gifts and, in view of that, provides standards by which judges and, in certain instances, judge-candidates, must conduct their private lives.

The Armenian Code of Ethics begins with a disclaimer, set forth in Article 86, which stipulates that the Code’s provisions are not exhaustive, and authorizes the General Meeting of Judges to prescribe additional rules and commentaries pertaining to judicial ethics. The substance of this clause may be looked at from two different angles. On the one hand, it is appropriate for this type of legislation to establish minimum standards required by the Parliament, and allow judges
themselves to enhance them. Presumably, the role of the General Meeting of Judges in advancing the ethics rules will not only take care of circumstances not foreseen by the Parliament, but also further raise the people’s trust and confidence in the judicial system. On the other hand, it needs to be emphasized that judges ought to be able to read this Code and have clarity as to what is allowed and what is prohibited. Thus, an argument can be raised that the Code of Ethics should incorporate all substantive rules governing judicial conduct.

The primary purpose of the Code of Ethics should be to secure the impartiality, competence, integrity, and independence of the judiciary. The Draft Code rightly recognizes and declares this purpose in its Article 87, before reaching more substantive provisions. This is a laudable purpose which seems to be, however, aspirational. Article 87 urges that “a judge must aspire to contribute to building respect for and confidence in the impartiality and independence of the judiciary.” A question arises if violation of this rule can be the basis of a disciplinary action against a judge. Both the Bangalore Principles and CCJE Opinion No. 3 may shed some light on how this issue should have been addressed by the Armenian drafters. The Bangalore Principles and the Armenian Code of Ethics have a similar function: both are supposed to guide the judges and educate the public. However, the structure chosen to set forth the provisions in these documents differs. The Bangalore Principles first state the value identified, followed by the principle found in the Value and applications of the value and the principle stated. This approach is consistent with the position taken in CCJE Opinion No. 3, according to which two separate but consistent sets of standards of conduct should apply to judges: (1) professional standards developed by judges which represent best practice that “all judges should aim to develop and towards which all judges should aspire,” and (2) a law setting forth standards of conduct fundamentally contrary to that expected of a judge under which judges maybe disciplined or dismissed. CCJE Opinion No. 3 indicates that the statement of standards should be, in substance, informative. It should define the failings that may give rise to disciplinary sanctions, as well as the procedures to be followed, but in practice, it ought to be separated from the judges’ disciplinary system. More specifically, a failure to observe one of principles of conduct should not, in and of itself, constitute a disciplinary infringement or a civil or criminal offence. This is because sets of ethical principles represent best practice, whereas for disciplinary proceedings to be undertaken, misconduct must be serious and flagrant. If there is agreement by the Armenian judges that this clarity is important, then the Code of Ethics should be redrafted with this criticism in mind.

Article 88 of the Draft Code sets forth a duty of each judge to comply with the Code of Ethics. This enactment is a good step forward as it reaffirms that ethical conduct is a matter that reflects positively, or – if not followed – negatively, on the entire judiciary. However, it is recommended that the drafters consider placing different requirements for action on the judge who has only “reasonable suspicion” that another judge has committed an ethics violation as opposed to the judge who overtly learns about an actual violation. The requirement to report an ethics violation to the Ethics Committee should be reserved for those instances where the judge knows of an actual violation. Other steps could be required, short of reporting, when the judge has a reasonable suspicion as opposed to actual knowledge. Otherwise, this requirement could lead to the situation where “if everything is serious, then nothing is serious.”

The overall assessment is that the proposed Code of Ethics suffers from too broad a focus and too little prominence in the Draft Code as a whole, but constitutes an extremely important and
valuable section of the document. It would be helpful to make a clearer distinction between prohibited activities that might call a judge's impartiality into question and regulations of judicial demeanor which more properly concern the dignity of the court. Articles 89 and 90 contain most of the requirements and prohibitions. Perhaps these articles should be subdivided and rearranged for greater clarity in presentation. This may seem unimportant, since the substance is quite good already, but judges will benefit most from being inspired by high principles, rather than simply feeling themselves to be constrained by specific rules.

B. Judicial Impartiality, Integrity, and Propriety

Judicial impartiality is the essence of equality before the law and constitutes a fundamental element in maintaining the rule of law. It compels judges to minimize their non-judicial activities that might influence or appear to influence their judgment on the court, and requires that their family, social and other relationships not be allowed to have an impact on their judicial behavior. In asserting the importance of judicial impartiality, the Bangalore Principles state that impartiality is essential to the proper discharge of judicial office, with respect to both the decision and the process by which it is reached. The applications of this principle recognize that a judge must perform his or her judicial duties without fear, bias, or prejudice. Further, a judge must ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of the judge and of the judiciary.

The Draft Code contains a number of references to and prohibitions against many potential threats to judicial impartiality. First, it rightly recognizes and declares, in its Article 89, that judges must not use their official positions to advance personal interests or connections of any kind. The draft also reinforces the doctrines of precedent (Article 8.4) and res judicata (Article 8.3), to assure that judges do not improperly discriminate between individuals in applying the law. Further, the Draft Code acknowledges that judges must be above partisan politics (Article 12), outside commerce (Article 14), and beyond the influence of private relationships (Article 89.4). Finally, the Draft Code stipulates that judges should avoid adherence to controversial social movements (Article 89.9) and disregard public opinion which may overlook the proper safeguards of the law (Article 90.3.3).

Values that effectively reinforce the principle of judicial impartiality, and are intended to prevent the occurrence of corruption, are judicial integrity and propriety. A particular application of the latter, articulated in the Bangalore Principles, is that “a judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge’s court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.” Such situations may arise, for example, from a judge's family situation and financial interests. Importantly, in relation to the possibility of corruption, the Bangalore Principles state “a judge and members of the judge's family shall neither ask for, nor accept, any gift, bequest, loan or favor in relation anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.” This is qualified to the extent that, subject to the law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made, provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in performance of judicial duties or otherwise give rise to an appearance of partiality.
The Draft Code properly admonishes judges in a number of stipulations not to engage in activities that may lead to an anticipated conflict of interest. Such activities may range from political participation, extra-judicial employment, or receipt of certain gifts, to name a few. The following comments will illustrate positive aspects and shortcomings of those portions in the Draft Code that discuss behavior of persons holding the office of a judge, and effectively govern their public and private lives.

C. Political Activity of Judges

One of the first references to judicial impartiality and integrity is encompassed in Article 12.1 of the Draft Code, which positions Armenian judges above politics by prohibiting them from even being a member of a political party. While inclusion of a provision disallowing political activity (other than voting) on the part of judges is understandable, barring membership in a political party seems unnecessary. Does a person who is already a member have to drop his or her membership upon becoming a candidate for appointment as a judge? Also, Article 12.3 regarding political neutrality of judges in fulfilling their duties in electoral commissions seems worrisome. Because of the inherently political and highly charged nature of such work, insofar as confidence in courts is concerned, it might be wiser to form electoral commissions of upstanding non-judge citizens, including lawyers.

D. Involvement in Extra-Judicial Activities

Article 14.1 of the Draft Code, read in conjunction with its Article 92, permits judges to receive compensation for non-judicial work only in scientific, pedagogical, and creative occupations. The drafters might consider adding additional detail or more carefully specifying what is contemplated under “scientific” and “creative” work. Can a judge engage in such work for pay and take time for over and above judicial duties? Is a judge not expected to work full time at court and on judicial matters such as periodic judicial training? Most civil- and common-law systems restrict extra-judicial employment to teaching in law-related areas and writing on topics related to the law and the judicial system. Scientific and creative work introduces a new dimension with many possible options, not all of which would be either suitable or appropriate for judges. Scientific might be interpreted, for example, as permitting a judge to take a part-time position as a legal advisor or advisory board member in a technology, pharmaceutical, or other type of organization that engages in scientific research and development. Creative can also be interpreted in a number of ways that might result in position options that compromise judicial independence and integrity.

Article 92 of the Draft Code requires judges to report non-judicial activities to the Judicial Council Ethics Committee within a one-week period for consultation about the compatibility of these activities with the judicial office. This may be a translation matter, but it appears from the context that the reporting is to occur after the activity in question has commenced. The drafters may wish to authorize judges to seek, and require the Committee to provide, guidance in advance of starting the activity. In the current wording, the Draft Code authorizes judicial participation in activities that the Ethics Committee may later deem unethical or problematic. The drafters may also wish to require the Ethics Committee to publish edited versions of the consultations it provides to individual judges, in order to guide other judges who may face similar questions. The Committee could be given the discretion to identify which consultations appear to have general applicability and to publish generic advisory opinions that do not identify the individual judge who sought the advice.
As far as compensation for non-judicial work is concerned, Article 93.1 allows payment equivalent to the amount that a non-judge would aspire to receive for the same work. But if the work involves judicial matters, it may be so little of a burden on the judge that any payment for it may be, or are perceived as, a payment to the judge for doing no work. As a comparison, federal judges and other officials in the United States may receive no payment for writing articles or giving lectures on topics related to their work, because preparing such an article or lecture is sufficiently easy that any payment is unnecessary. They may receive compensation, however, for books they write or courses they teach. Obviously, not every article or single lecture requires little work, but the drafters of the U.S. rules adopted this is a distinction to avoid the appearance of impropriety.

Per Article 89 of the Draft Code, a judge may not advise grant-making organizations to allocate funds to projects related to law, legislation, and the administration of justice, if a judge's court or a court whose decisions the judge reviews has, or anticipates, a case involving the grant-making organization. Per Article 92.5(2), a judge may not hold an office in a non-profit organization if the same conditions apply. These qualifiers are appropriate if they refer to courts that commonly get cases from grant-making or non-profit institutions as a general matter, but make less sense if they ask a judge to predict whether or not he or she will receive a case from a specific litigant. In this regard, the drafters may want to consider two questions. Can these situations be better dealt with by recusal requirements, if a conflict arises? And would not it be better simply to prohibit the judges from the practice of seeking grants to avoid the problem? If the Armenian judiciary relies on grants from outside groups as a regular part of its court improvement activities, the drafters may wish to consider establishing a separate body, composed of non-judges, to seek and accept grants. In the case of the United States, it is Federal Judicial Center (FJC), the federal courts’ research and education agency, which operates on funds provided primarily by the Congress. The United States Congress also created the FJC Foundation, which has the authority to receive gifts to support the FJC’s work. Any gifts designated for specific projects must be utilized for endeavors that the FJC’s governing body has already authorized.

E. Gifts

By virtue of Article 95 of the Draft Code, a judge is not allowed to accept a gift from anyone or agree to accept it in the future. It is recommended that “inherited property” be deleted from the list of prohibited gifts. Only those gifts should be prohibited which would otherwise come to the judge because he or she is a judge, not because he or she is a family member or a friend. Regarding the list of permissible gifts as defined in Article 95.2, subsection 2 pertaining to books, computer software, and other similar materials, is questionable. Further, even if judges receive permissible gifts at no cost and for official use only, it is suggested that they should be limited to a value of 50,000 drams per year, not 150,000 drams. Noticeably, Article 95 requires a judge to report the total gifts within one week, in case they exceed a prescribed value within a given calendar year. However, it does not specify when that one week is measured from. If it should be measured from the first of January of the succeeding year, a question could be raised whether this is practical.

Another exception from the general prohibition of accepting gifts is articulated in subsection 8 of Article 95 and relates to scholarships, grants, or benefits awarded as a result of a public tender on the same conditions and criteria as those applied toward other applicants. If this provision is read alongside with Article 75 of the Draft Code, which permits judges to participate in educational and training programs, conferences, and other professional gatherings of lawyers, two questions arise.
First, unless it is a translation matter, Article 75 would appear to bar judges’ participation in educational programs with scientists or others who are not lawyers. Second, if judges may accept scholarships to participate in educational programs, the “other applicants” criteria may be insufficient for determining the amount of an acceptable scholarship. The drafters may wish to consider whether private groups may offer judge-only seminars, and provide very attractive scholarships, in amounts that could be, or are perceived as, efforts to gain favor with the judges. In case of judge-only seminars, restriction of Article 95.8 to scholarships determined on the same conditions and criteria as those applied toward other applicants simply would not be relevant.

F. Disqualification/Recusal of Judges

The final criticism of the provisions on judicial impartiality and integrity revolves around Article 91, regarding recusal of judges. While the provision in question gives a thorough description of the situations in which judges should consider not participating in a case and wisely allows the parties to waive recusal, it does not seem to include a procedure allowing a party to challenge a judge’s presiding over a given case. Instead, recusal is left exclusively to the judge. What is also needed is an opportunity for a party to challenge a judge’s possible conflict of interest that might affect the impartiality, or even create such an appearance. It is insufficient and inherently myopic and self-serving for even the most honest and objective judge to assess his or her own possible prejudice about a party, an attorney, or an issue if there is a question about it. Even enumeration of grounds for “self-challenge” does not take into account issue prejudice given that the prior knowledge prejudice is limited only to “disputed evidentiary facts.” This latter ground is too narrow because it will not be until the trial when a judge, who has prior knowledge, will be able to realize if it relates to disputed facts, much less allegations, rumors, or comments. This relates in part to pretrial or trial press coverage of the incident being tried.

As to the omitted opportunity for a party to seek recusal of a judge, the request should be such that the judge does not know which party requested removal. The judicial clerk should immediately forward the motion for assignment to a pre-determined panel of colleagues to decide on written request and responses. The judge whose removal is sought for reasons of bias should not participate in or influence the decision-making because if the request is denied, the challenged judge will continue with the case. In addition, while the Draft Code rightly permitted the motion to remove a judge based on his or her financial interest in the case (or that of his or her immediate relatives), the Code should include a mechanism that would give litigants access to information on judges’ current financial holdings. In its current wording, the Draft Code does little to achieve this objective. Although Article 96 requires judges to file a financial declaration, it is not clear whether this filing is public and easily accessible.

It also ought to be reconsidered whether the parties should be able to waive all potential conflicts, as they occasionally may spot a conflict of which the judge is unaware. The parallel United States law, for example, permits waiver except in certain circumstances, where recusal is mandatory. Lastly, although this may be a translation matter, Article 91.2(1), permitting a judge to participate in the case if an economic interest is insignificant, may provide too little guidance. One option, depending on the extent of judge-power available, is to mandate recusal if a judge has any economic interest in the case, however small.
G. Duty of Confidentiality

Article 90.3(11), stipulating that a judge should not publicize or otherwise use non-public information that became known to him as a result of performing his official duties, refers to the principle of confidentiality. It is recommended that the phrase “non-public information” be qualified by a phrase “which is designated as such.” This would require precise documentation of information considered confidential. It is important to make sure that both the judge and all the persons involved understand what can and what cannot be made public.

H. Applicability of Certain Rules to Judicial Candidates

Notably, Article 86 of the Draft Code renders the provisions pertaining to judicial conduct and ethics expressly applicable not only to all judges, but also, in part, to judicial candidates. Applicability of certain sections of the Code of Ethics to judicial candidates is, however, made dubious by the language “to the extent that they are effectively applicable to them.” Given this language, a judicial candidate cannot know for sure what he or she may or may not do.

In addition, it needs to be emphasized that all of Article 92, as well as subsections 1 and 2 of Article 94, are applicable to judicial candidates. This means that, a judicial candidate is prohibited from performing any paid work, with the exception of government work, or “scientific, pedagogic, and creative work.” What is more, judicial candidates may not work in a for-profit organization, be a sole entrepreneur, or be a member of an economic company. Consequently, if a candidate is not already employed in the government, and is not a scientist, a teacher, or a writer, then a question arises how he or she is supposed to support himself or herself during the time on the short-list of candidates. It would be wise to delete Article 92.1 from applicability to judicial candidates, as it is questionable whether all of these restrictions are necessary, realistic, or even capable of being followed by these individuals.

I. Other Issues

Article 90.4 of the Draft Code mandates that a judge should give any person with an interest in the outcome of the case the possibility to be heard by the court. If this is intended, then the requirement is far too broad. Certainly any party to a case must be able to be heard, but no one other than a party or an approved witness should have this possibility. The same subsection mandates that a judge shall disregard any ex parte communication he or she hears. Apart from the exceptions listed in Article 90.4(1)-(5), the judge should not be receiving any ex parte communications at all, so there should be nothing to disregard. Further, Article 90.4(4) seems to contemplate a judge acting as a mediator in a case. If this is the case, consideration should be given to assuring that a judge other than the mediator tries the case if mediation fails and no peaceful settlement is reached. This will prevent the judge from learning things that would be inadmissible at trial, and will also allow the judge and the parties to disclose and discuss everything that might bring parties to the settlement without fear of jeopardizing the trial if the same judge were to preside over it in the event mediation fails.

One of the most atypical enactments of the Draft Code is Article 84, stipulating that a judge is entitled to immediate reception by the President of Armenia. It needs to be answered why a judge would be meeting the President at all, much less on an on-demand basis. Protection of separation of powers, independence of judges, and avoidance of undue influence and of appearance of
impropriety urge not only the omission of this provision but also the practice. If the provision is to be kept, it should also demand that strict public record be kept of such visits and the content of the discussion.

The obligation to file a financial declaration by a judge, prescribed in Article 96 of the Draft Code, is positive. However, the Draft Code should state when and how often the judge should make the financial filing. Perhaps that is specified in the Law on Declaration of Income and Assets of Senior Officials of the Republic of Armenia Authorities, but it might be useful to state it in the Draft Code as well, especially since a judge is required to send a copy of this filing to the Judicial Council Ethics Committee.

On a separate note, the drafters might reflect on adding “sexual preference” to the list of bases on which a judge may not discriminate, listed in subsection 9 of Article 89. It would be also beneficial if prohibited categories listed in Article 90.3(6) were identical with those listed in Article 89. For example, Article 90.3(6) expressly includes “physical handicap” as an illegal discriminatory basis, which is omitted in Article 89.

In conclusion, while the substance of the provisions relating to the judicial impartiality, integrity and propriety in the Draft Code is generally sound, it would have been useful if these provisions were a more prominent place among the earlier articles of the Draft Code, following the general provisions and declarations of principles. In addition, they could have been strengthened by grouping the prohibitions together under a single heading.

**XII. Selection and Appointment of Judges**

**A. General Remarks**

There are two major internationally recognized systems for appointment of judges: election by a general or special electorate or appointment by the head of the state, the legislature, or any other state authority, usually following a selection process based on a competitive examination. Although the first method looks more democratic in principle, it is not easy to be implemented in countries without a mature democratic tradition, as it risks promoting patronage and the affiliation of the judicial functionaries with groups of interests or political parties. Therefore, the examination procedure seems to be more suitable, as it simultaneously ensures the selection of the most qualified and excludes political bias.

There are two theories that discuss the role of the executive branch in the selection and appointment of judges in a legal system that does not provide for judicial elections. The first one claims that, in order to preserve the independence of the judiciary, the power to recruit and promote judges should be entrusted with a committee comprised of members of the judicial and legislative branches of the government. Accordingly, the role of the executive branch in the selection of judges is reduced to a minimum, because the requirement of presidential approval of judicial candidates may influence a judge’s discretion and independence. According to the second theory, the final appointment decision should rest with the executive power, as the judiciary has to be independent in its management and its decision making process, but not in its appointment process where checks and balances are essential ingredients of democracies.
International comparative perspective seems to substantiate the claim that there is a trend towards restricting influence of the executive on the career of judges. In France, for instance, an amendment to the law adopted in 1993 widened and reinforced the jurisdiction of the Conseil Supérieur de la Magistrature (CSM), and required the President to share with the Parliament his power to appoint CSM's members. The CSM now proposes not only the appointments to the Court of Cassation and the chief judges of the Court of Appeal, but also the appointments of the chief judges to the tribunals de grande instance, France’s major trial courts. Thus, all of these judges are nominated by the President based on the proposal of the CSM. In addition, the CSM's advice on review of the nominations of other judges, which are made by the Minister of Justice, became binding. As a result, the executive’s role in the appointment of all of the most important posts within the judiciary has been severely curtailed, and the role of the Minister of Justice's with respect to the remaining appointments has been subjected to an important control by the self-governance body of the judiciary.

A similar procedure is also in place in Italy. The Italian Constitution of 1948 provides that all decisions concerning judges and prosecutors, from recruitment to retirement (including promotions, transfers, discipline, and disability), be within the exclusive competence of the Consiglio Superiore della Magistratura (CSdM), composed by two thirds of judges and prosecutors elected by their colleagues and by one third of the members elected by the Parliament from among law professors and lawyers with at least 15 years of professional experience. Since the 1970s, promotion to the different levels of the judicial hierarchy is based neither on written or oral exams nor on the evaluation of written judicial work, while promotions “for judicial merit” to the highest ranks are granted discretionally by the CSdM. This has opened up the possibility of acquiring rewarding extra-judicial appointments in public non-judicial functions, without any prejudice to the development of a full-fledged judicial career. It is worth noting that the Italian CSdM is self-activating for all its decisions, except those concerning discipline where the CSdM acts as a court. By contrast, the section of the French CSM that decides on judges may, with respect to most of its decisions, act only at the request of the Minister of Justice. Moreover, the Italian Minister of Justice is not a member of the CSdM. In France, the Minister of Justice is the vice president of the CSM and presides over all meetings except those in which this role is to be performed by the President of France.

On the other hand, the executive branch in many democratic systems is given the authority to decide on a judicial candidate following recommendations by the legal profession through bar associations, or by a body of judges similar to the Armenian Council of Justice. One may claim that this system allows for greater transparency and ensures respect for traditional checks and balances, because the leadership of the executive branch is elected by the people, and the people give the executive branch a democratic authority to appoint judges.

The Constitution of Armenia and the current wording of the Draft Code direct the Council of Justice to compile the list of judicial candidates on the basis of qualification examination, and to present this list to the President of the Republic for approval. However, presidential approval is not guided or checked by any objective criteria. Article 116.4 only requires that the candidates are acceptable to the President. The drafters ought to consider enumerating objective criteria for appointment.

It is certainly recommended that the Council of Justice have the authority to review judicial candidates and make recommendations to the executive branch as to which candidates are most
qualified for the position of a judge. However, it is not entirely agreed upon whether these recommendations should be binding. If the theory that the executive branch should be the final authority to appoint judges is adopted, then the proposed system vests too much authority in the Council of Justice, which can effectively gear the system to bring forward its own candidates who will remain on the list even if they are rejected by the democratically elected President of the Republic. An alternative, conforming to the constitutional provisions, could be the attribution to the President of Armenia only of a delaying veto. In this scenario, the President could send a nomination or advancement proposal back to the Council for reevaluation, but the Council's final decision should be binding for him.

The proposed system of appointment of judges to the appellate courts is more complex. According to the Draft Code, the Chairman of the Cassation Court recommends candidates for appellate judgeships to the Council of Justice, which then votes on the appointment of the candidate by open ballot. Following a positive conclusion of the Council, the candidate is presented to the President of Armenia for confirmation or rejection. It is recommended that the Chairman of the Cassation Court retain his right to make such recommendations directly to the President.

B. Judicial Competence and Examinations

The provisions of the Draft Code concerning the competence of judges receive less prominence than provisions concerning either independence or impartiality. Prospective judges are subject to a qualification examination, which results in a list of candidates to be evaluated by the Council of Justice and recommended for appointment to the President. One of the advantages of the Armenian qualification examination process is that the judiciary is apparently accessible to members of diverse groups of society, and yet a sufficiently level of competency is required. By virtue of Article 128 of the Draft Code, the criteria to be applied by the Council in evaluating judges for advancement include scholarship, reputation, capacity, ethical standards, and organizational abilities.

Nonetheless, Articles 114 and 115 of the Draft Code, pertaining to the judicial qualification examination, seem in a state of disarray. First, although a judicial test is required for anyone aspiring to be a judge in Republic, and although the provisions for taking a judicial test are well drafted, it remains unclear whether a candidate must have had prior experience as a practicing lawyer. It is even more unclear whether all applicants for the judicial position who take the test and are approved by the Council are appointed as judges to the court of first instance, or whether some of them can be assigned to a higher court upon passing the examination. In other words, a question must be answered whether a candidate is allowed to apply for positions with different levels of the courts, or if he or she is limited to initially becoming a judge on a first instance court. Second, per Article 115, public bodies and officials who possess any knowledge, including privileged information, regarding the given candidate that raises doubts as to his or her reputation and appropriate fulfillment of judicial authority, are obliged to share that information with the Council of Justice within two weeks from the publication of the list of judicial candidates. The use of confidential information related to the reputation of the candidate could be extremely dangerous, unless the candidate is made aware of this information and is given an opportunity to rebut it. What is more troubling, allowing public bodies and officials to raise doubts about the reputation or character of judicial applicants may discourage qualified but politically active candidates.
C. List of Judicial Candidates

Article 113 of the Draft Code specifies that the Council of Justice shall be empowered to compile a list of judicial candidates. However, if a reason exists to remove a candidate from that list, the Council of Justice cannot act to strike the person on its own. Instead, according to Article 118.2, the Council must apply to the President to remove the judicial candidate from the list. In some instances, the President can take a candidate off the list assembled by the Council even before there is a judicial vacancy for which the candidate might be considered. Since the Council of Justice determines who belongs on the list, it should also have the authority to determine who does not belong on the list. Accordingly, an appeal to the President for his or her consent to effectuate removal should not be required.

It is also worth pointing out that the Council of Justice is required to keep too many separate lists when one list of eligible applicants might suffice. After all, there may be no reason at all as to why a legal scientist should not become a judge on a court of first instance, although this is now barred by Article 132.5, or why a judge on a court of first instance should not be as eligible as anyone else to be selected to fill a vacancy on an appellate court, although this is also apparently barred by Article 135. Whether or not that judge is more qualified is, of course, for the Council of Justice to decide.

On a positive note, it should be mentioned that Article 116.3 of the Draft Code provides that gender balance is to be taken into consideration in compiling the list of judicial candidates. While some may consider this provision desirable for a relatively new democracy such as Armenia, where norms of equality may not be as well established by custom and tradition, others will point out that Article 14.1 of the Constitution forbids any discrimination based on sex. The same applies to discrimination based on age, and yet Articles 120.2.1, 120.2.4, 126.5, 130.7, 131.6, 134.2, 135.2.1 of the Draft Code, among others, expressly mandate age prejudice. Lastly, according to paragraph 7 of Article 114, read in conjunction with Articles 125 and 159 of the Draft Code, physical deficiencies or diseases defined by the government prevent the appointment to the position of a judge. This provision may also be discriminatory and contrary to international standards.

In closing, it is suggested that the following enactments on the selection of judges be rewritten: Article 120.1, as it mistakenly states that the Chairman of Cassation Court introduces a candidacy of a judge to the Chairman of Cassation Court; Article 123, as it would be helpful to specify the types of exceptions that would allow a judge’s candidacy to be proposed out of list-order; Articles 116.1 and 117.4, as it is unknown who exactly conducts interviews with judicial candidates, what role the interviews play, or what weight they have in the selection decisions. Lastly, several provisions of the Draft Code, such as Articles 119, 134 and 139, describe how a vacancy be is created, including “suspension” of the current judge’s authority. The drafters may wish to add “death of an incumbent” to the list.

XIII. Magistrates School

A. General Remarks

In general, the Draft Code shows a healthy respect for the educational and professional training of judges (Article 128.7), and their participation in the development and improvement of the law (Article 128.9). The Draft Code devotes a substantial number of provisions to the
Magistrates School, which certainly has the potential to develop valuable standards of competence throughout the Armenian judiciary.

At the outset, the drafters’ recognition of the necessity for a strong theoretical training of judicial candidates deserves acclaim. Given the need to appoint new judges for the newly created courts and to train the sitting judges, the creation of the Magistrates School is a significant development. In general, the Draft Code’s provisions on the Magistrates’ School, covered in Articles 164 through 186, are consistent with approaches taken by most judiciaries throughout the world, although they tend to differ from the United States approaches to judicial education.

The section on the Magistrates School is an illustrative example of why the Draft Code should not endeavor to include and detail everything connected with the operation and administration of the judicial system. The dynamic nature of judicial and staff education and training will evolve over time, and the enabling authority in the Code, with its abundance of detail, will need to be amended accordingly in a prompt and efficient manner, a service that the legislative process, by its nature, is unlikely to deliver. Apart from that, several areas in the existing section warrant the following remarks.

B. Purpose and Functions of the School

Noticeably, the current text of the Draft Code limits the mandate of the Armenian Magistrates School exclusively to the training of new and potential judges. In the future, it would be wise to expand the School’s mission by including continuing judicial education for sitting judges, especially as new important laws or procedural codes are enacted. Such courses should be taught in locations throughout the country, or through the use of video conferencing or satellite broadcasts.

Aside from teaching, the Draft Code tasks the Magistrates School, in its Article 167.4, with the general responsibility for publishing “academic literature.” This mandate is far too broad: it should be limited to publications that deal with the topics relevant and useful to judicial system officials and their adjuncts, such as court support staff, members of the bar, prosecutors, defense counsel, and the public. Moreover, such publications are most likely to be useful when their focus is practical rather than academic. Thus, the Magistrates School should be encouraged to publish applied research reports in such areas as case management practices, weighing caseloads, or handling complex trials.

C. Governance of the School

The international standards impose an obligation on the state to provide training for judges but do not insist that the training provider be an agent of the judicial branch of the government. Nevertheless, the drafters may wish to consider such a statement, perhaps in Article 164 of the Draft Code. Inasmuch as judicial training is a potentially powerful means of influencing the judicial mind, there is merit in an attempt to protect the training function from undue influence by the executive branch. Yet, according to the current wording of the Draft Code, the Magistrates School is simply an agent of the state, acting through the government. Although judges do not necessarily have corner on wisdom in legal education, and can be resistant to the legitimate views of non-judges, responsibility for judicial education needs to be lodged somewhere, and it seems it is best to lodge it in the judicial branch.
Article 166 of the Draft Code stipulates that bylaws if the Magistrates School shall be approved by the Armenian Government. However, it does not reference who will be responsible for drafting such bylaws. The Judicial Code ought to specify that bylaws should be drafted by judicial system officials working with legislative leaders.

Article 169 provides for the Magistrates School Governing Board [hereinafter “Board”]. However, the degree of judicial dominance on the School’s Governing Board is not clear from reading this Article. Its proposed membership includes what appears to be three high-level judges, the Minister of Justice, the bar association chairman, and a law professor. Specifically, Article 169 provides a prominent role on the Board for the chairman and a judge-member of the Judicial Council Training Committee, but it is not entirely clear who can serve as the chairman of this Committee. Assuming this individual is also a judge, judges will constitute half of the Board’s six members.

Oddly, none of the Board members are likely to have either significant professional experience or expertise in the areas of judicial and court staff education and training. Neither are they likely to be in a good position to analyze the education and training needs of rank and file judges and support staff, to whom most of the Magistrates School’s resources will be directed. For this Board to be effective, its membership should include one or two first instance court judges who can articulate what the education and training needs of their respective population are. It should also include at least one non-judicial senior-level administrative manager who is computer literate and in a position to articulate the needs of court support staff managers, supervisors, line staff, and court technical experts. Moreover, Board membership should include an academic official who has considerable formal training and experience in the practice of modern adult education, and who can advise and guide the Board on how to maximize the effectiveness of the resources that are committed to the Magistrates School. Finally, since the Magistrates School will be providing training for judicial servants as well as judges, including the Head of the Judicial Department on the School’s Board would be advisable. It seems that a non-judicial staff person will have a significantly different perspective on educational and training needs for the staff than judges will. That way, the entity responsible for making decisions about the educational programs provided by the Magistrates School will include representation from all groups it is designed to educate.

Further, Article 186 of the Draft Code discusses a Qualification Committee and a Training Committee but provides no detail on who the members will be or what their qualifications are. Yet both Committees carry important responsibilities relating to the School’s curriculum and the training requirements.

D. Executive Director of the School

Article 173 of the Draft Code deals with the duties of the Magistrates School’s Executive Director. The following issues arise from the revision of its relevant paragraphs and subsections. First, paragraph 1 provides for a three-year term of the Executive Director, but does not indicate if the term is renewable. The drafters may wish to consider such a provision, or, alternatively, provide no term. In this regard, it is noted that Article 170.5 authorizes the Governing Board to appoint and dismiss the Director. If the Director serves at the pleasure of the Board, is a term necessary?Alternatively, the drafters may want to specify that the Director may serve his or her full term barring some extraordinary failure, which would require confirmation by more than the Board.
Perhaps more importantly, the Draft Code says little about the Executive Director’s required or desirable qualifications. It should be made clear that the Director need not be a judge or a lawyer, but must have some familiarity with the principles of adult education, preferably professional adult education. The Board can assess whether candidates have familiarity with the Armenian judicial system necessary to design the curriculum, or have the capacity to acquire such familiarity. From a comparative perspective, insisting that judicial school directors be judges severely limits the pool of good candidates. Of course, judges may be suspicious of a school led by a non-judge, but it is the board’s job to find a director with the interpersonal skills to overcome that suspicion.

Article 173.8 of the Draft Code essentially weakens the position of the Executive Director by ceding all authority for disciplinary sanctions against trainees to the Board. The Director is only required to make recommendations regarding attendees’ discipline. The prospect is further complicated by Article 176.4, which provides that attendees may appeal disciplinary action taken against them. It remains unresolved what organizational entity will handle the appeals. An alternative solution is to delegate the responsibility for routine disciplinary actions to the Executive Director and a small committee of higher-level School officials. In this case, only more serious disciplinary actions could be appealed to the Board. Also, only the most serious actions with the most serious disciplinary consequences would warrant the Executive Director to make a formal recommendation to the Board. Generally, once standards and guidelines are implemented, School officials would be in a much better position than Board members to determine when and what kind of disciplinary action should be taken.

E. Faculty and Curriculum Development

Similarly to the provisions on the Executive Director, Article 181 on the School’s faculty does not define what are the minimum qualifications for employment as a teacher at the Magistrates School, or which body is responsible for setting such standards. It is suggested that Magistrates School’s faculty have not only the requisite subject-matter expertise but also the ability to provide instruction through the use of modern adult education practices and procedures. The effectiveness of lecturing as a means for dispensing instruction for adults is limited, and the Board and Executive Director should minimize the extent to which the teachers rely on lecturing to deliver the curriculum. In addition, as time goes on, the faculty at the School would presumably consist primarily of the more experienced judges or law professors.

In its Article 179, the Draft Code provides for an academic program centered on promoting the development of an impartial and competent judiciary through lectures, debates, seminars, court case analysis, moot court games, and other activities. Although the importance of theoretical training is recognized, the Armenian judiciary would benefit from a training system that requires both theoretical training and practical experience. While the drafters emphasized, in Article 182, that exams taken by attendees are to evaluate both theoretical knowledge and practical skills, they may also wish to build the practical skills emphasis more pervasively in the articles that govern the Magistrates School. In addition, it is suggested that the drafters consider amending Article 179.2 to emphasize that the School should use educational methods that reflect the learning patterns and preferences of professional adults. Adults have a much greater interest than students in practical education that will help them solve problems they face in their work. Including a provision on mentors for the students is an excellent innovation. In training judges of the specialized courts, such
as the Administrative or Insolvency Courts, it might also be well to include classes in which lawyers
and civil servants mix with the judges.

For more guidance on the functioning of the Magistrates School, the drafters may wish to
take a look at a similar institution, the Latvian Judicial Training Center, that has been operating since
1995 as a non-profit organization with some state financing. The Latvian Judicial Training Center
has a Curriculum Development Working Group (CDWG) consisting of 10 members. The Group
consists of judges from regional courts, district courts, and the Supreme Court, as well as
academicians from the University of Latvia and Riga Graduate School of Law. CDWG is organized
into four subdivisions: on criminal law, civil law, international law, and administrative law. Armenian
drafters could, of course, add a category on insolvency law.

F. Financing of the School

One of the potential problems the Armenian Magistrates School is likely to face is cost
efficiency. In particular, investments made in judicial training may be wasted if judges proceed to
leave the bench after only a few years due to more lucrative opportunities elsewhere. One possibility
might be to require the Magistrates School's attendees to sign a pledge securing a minimum service
commitment. If such a commitment were not honored, either some or all of the education expenses
would have to be reimbursed to the School. In addition, Article 165 on financing of the School
should require the State to allocate the necessary assets to the School on an annual recurring basis
rather than for an indefinite amount of time. The latter implies that the government can revoke its
responsibility to provide assets at any time.

Subsection 8 of Article 170.1 of the Draft Code, which articulates functions of the Board,
authorizes the Board to decide on how to use the profits of the Magistrates School. Using the word
profit may imply that the School would be charging tuition fees for the courses it provides, which is
not recommended. Charging for courses would create an impediment to judges and judicial servants
attending the courses, and thus limit the number of individuals able to participate in the programs. If
this is not indented, using such words as funds or appropriations to describe the Magistrates School's
income would be more suitable.

XIV. Conditions of Service and Advancement of Judges

International standards, including those enshrined in the U.N. Principles, require that the law
adequately secures the term of office of judges, their independence, security, adequate remuneration,
conditions of service, advancement, pensions and the age of retirement. The relevant provisions of
the Draft Code seem generally quite well thought-out, but some of them merit the following
observations.

A. Guaranteed Tenure

Article 16 of the Draft Code provides that judges have life tenure until mandatory retirement
at the age of 65. The continued tenure in office of judges is an important protection against outside
influence but the drafters might wish to consider adding a condition that life tenure is contingent
upon judges conforming to the judicial code of ethics and otherwise obeying the law. The benefit of
life tenure is extended to judges on behalf of the people and it should not be unconditional. In
addition, a question arises why the comparatively young age of 65 was chosen. Extending the tenure
through the retirement age of 70 would perhaps seem more in keeping with human abilities, as well as the practice of many countries in the Western Europe. Many judges will be at the height of their powers at 65, and the lower retirement age may lead to a higher turnover among judges and therefore to a less stable judiciary.

**B. Career Advancement**

For everything related to their career, judges should be supervised only by their senior peers. To avoid direct influence by the political power, they ought to be promoted or transferred according to predetermined general and impersonal criteria by a neutral and objective organ. Such organ can be either formed exclusively by judges, or could be more diverse and include representatives of the Parliament, the legal profession and law schools, or even elected representatives of the judges. It is very important that the government or political parties do not exert political pressure on such a body and its procedures. For reasons of transparency, it is also important that the judge who disagrees with a decision of this organ may refer it to a higher organ. The same possibility may also be given to the Minister of Justice. In any case, persons outside the judiciary should not be part of the judicial advancement procedure.

By contrast, the Draft Code, in its current wording, makes career advancement of judges dependent on the final approval of the President of the Republic. The fact that the President is granted such powers of influence over the judiciary, either directly or through the Council of Justice, might be counterintuitive to the separation of powers ideal of the Constitution. There is a very close relationship between the Council of Justice and the President regarding a judge’s advancement, as well as the selection of chairs of the various courts. It would seem preferable if Armenian courts could choose their own chairs, or if chairmanships were determined by seniority, as is often the case in the United States. Overall, these issues, combined with the fact that the Draft Code provides that not only judges, but also former judges, reserve judges, and even “reputable scientists” may be included in the list of professional advancement of judges, reduces significantly the functional independence of the judiciary. In other words, the Draft Code does not introduce a system of unhindered advancement of the judges of first instance upwards. This implies the evident danger that only the judges “docile” towards the executive branch will be promoted.

Article 128 of the Draft Code enumerates characteristics that are taken into consideration for the professional advancement of judges, designation of court chairmen, appointment as a judge to Appellate Court, as well as a judge and a Chairman of Chamber of Cassation Court. These include professional knowledge of the judge, his or her professional activities and reputation, as well as his work capabilities. It is noted, however, that the Draft Code does not institute a system of inspection and on-going evaluation, with guarantees for independent evaluation of all these qualitative aspects.

Articles 137 and 142, among others, mention inviting candidates for professional advancement for interviews “if necessary.” The drafters may wish to consider making clear that it is the Council of Justice, not the candidate, that determines whether an interview is necessary.

As a final note, Article 132 of the Draft Code prescribes a situation where the Council of Justice erroneously does not have the authority to control a list related to judicial career. It states that legal scientists who wish to be considered for placement on the list of professional advancement
of judges must submit their applications to the Minister of Justice, who may then either present the candidacy to the Council of Justice or refuse to do so. This means that not only does the Council not get to decide who remains on a list, or who is taken off a list, it does not even get to say who can apply to be considered for the list. With this in mind, it needs to be reiterated that if the judicial branch cannot set requirements for and control its own work, then the judicial branch is not separate and it is not independent.

C. Compensation

The provisions regarding judicial salaries (Article 72) and pensions (Article 73) will both help to maintain judicial independence against financial coercion, although the pay disparity between levels of court is quite wide. If lower courts are not paid adequately, judgeships are not likely to attract eminently qualified lawyers to accept judicial positions. As a result, the quality of justice will suffer.

A related note is that one of the possible disciplinary sanctions that the Council of Justice may impose on a judge is the partial deprivation of a judge’s salary. This threat seems patently at odds with the principle of judicial independence.

D. Personal Files of Judges

Certain aspects of Article 76, pertaining to a judge’s personal file, are also worrisome. Although the information in the personal file is not to be published, the file appears to be open to many people and institutions even without cause. This can interfere with a judge’s independence and also risks public disclosure of otherwise private information due to leaks. Also the requirement of monitoring the judges’ “protracted” handling of a case, declared in Article 76.1(5), may jeopardize judicial independence. Accordingly, the obligation to include in a judge’s personal file information on situations when the judge protracted the case should be rethought. It is noted that a judge’s financial record is not required to be kept in his or her personal file. Nonetheless, Article 96 (Judicial Code of Ethics) requires that income and assets be declared to the Judicial Council Ethics Committee. It is unclear where such records are kept and to whom they are open. This should be guarded from disclosure except for legitimate purposes.

XV. Judicial Immunity

Judicial immunity is one of several recognized safeguards of personal independence, and is intended to protect judges from certain legal actions and liability, both in civil and criminal cases. International comparative perspective illustrates that there is a wide variety of ways in which judicial immunity can be implemented dependably on legal systems of respective countries.

The American model, for example, involves the cooperation of the executive, legislative and judicial structures in the punitive and disciplinary actions against judges. It has been assumed that judicial misbehavior amounts to “the highest crime.” Therefore, federal judges in the United States serve during good behavior and they may be impeached for “impeachable offenses” in the same way as the other highest public officials. Judges do not have judicial immunity for criminal acts. Similarly, judges in France do not enjoy blanket immunity from criminal prosecution but they do have immunity from civil suit for acts committed in the performance of their duties. In Germany, judges cannot be removed, suspended, transferred, or retired during their terms without the decisions of
other judges. In Austria, judges are subject to law and can be removed by orders of the criminal, service, or disciplinary courts. The removal is mandatory, if judges are sentenced for more than one year of imprisonment for an intentional crime. Judges are evaluated annually and may be retired by the service court. Finally, the Russian judges may not be replaced or dismissed. They possess immunity. According to Article 122 of the Russian Constitution, “Criminal proceedings may not be brought against a judge except as provided by federal law.”

The judicial reform in many post-communist countries has two clear and interrelated targets. On the one hand, curbing the excessive impunity of the judges is considered an important priority. On the other hand, the difference between impunity and immunity needs to be emphasized. Many of such countries, such as Russia with its over-powerful presidential authority, need well-balanced self-governing judicial structures that could safeguard judicial independence and protect the judges against excessive politicization of judicial functions.

Similarly, for the country with a semi-presidential system like Armenia, the balancing of powers requires fully developed safeguards for judicial independence and, above all, strengthening the self-governing judicial bodies. The Armenian Draft Code, giving the President and the executive the right to wave judicial immunity in individual cases, goes exactly in an opposite direction. Given that Article 5b of the Constitution guarantees the balance between legislative, executive, and judicial powers, the judicial immunity in Armenia should be evaluated from this perspective.

The Draft Code first addresses the question of judicial immunity in its Article 15, which declares that a “judge is immune” without specifying the nature of the immunity and whether it applies to civil as well as criminal matters. The drafters might consider restricting this judicial immunity to actions that judges undertake in their official capacity. Apart from their appointments as judicial officers and the acts they perform in that capacity, judges have no more of an inherent right to immunity from the law than do other citizens. Of course, this leaves open the question of what judicial activity stands for. For example, the Supreme Court of the United States has formulated a two-prong functional test to determine whether an act is “judicial” in its nature. The first prong of the functional approach asks whether the function is one normally performed by a judge. The second prong is whether the judge acted in complete absence of all jurisdiction.

Further, it has to be noted that the prerogatives provided by Article 15, paragraphs 3 and 4, need to be clarified. On the one hand, paragraph 3 gives the Prosecutor General the right to arrest and start criminal proceedings against judges upon notifying the President of the Republic and other high-level officials. On the other hand, paragraph 4 states that without the permission given by President based on recommendation of the Judicial Council the judge cannot be taken into custody. The decision-making process has to be explained in detail, clarifying what officials may start the proceedings against the judge and to what extent the action is contingent on a prior authorization by the President cooperating with the Judicial Council. Also, paragraph 5 of Article 15 would benefit from revision. It seems to limit a judge’s liability for criminal acts to those instances where he or she is arrested immediately. It needs to be addressed whether a judge can or cannot be charged at any time within the statute of limitations for the alleged crime.

Another interesting observation is that certain provisions of the Draft Code, namely Articles 160 through 162 on arrests of judges, may lead to the judicial branch overstepping its judicial authority. Article 160 requires the Prosecutor General to apply to the Council of Justice for consent
to arrest a judge. Although the meaning of the last paragraph of Article 160 is not clear, Article 161 indicates that the Council apparently receives the Prosecutor’s application, decides whether to support it or not, and if so, recommends to the President of Armenia that the Prosecutor General’s request to arrest a judge be granted. It appears that the Council’s envisioned role in the arrest procedure constitutes interference in the work of the executive branch. If a judge commits an act that any other citizen would be arrested for, then the Prosecutor General ought to have the authority to arrest that judge without seeking permission from another branch of government. In addition, the drafters may also wish to consider clarifying whether Articles 160 and 161 refer to arrests after the judge has been convicted of a criminal act, or to restraints against a judge under disciplinary proceedings.

In conclusion, protection of judges is not and should not be all-inclusive. Judicial independence is, essentially, a function of, and must be based on, public confidence and trust. The ability and willingness of the public to extend confidence and trust in the judiciary relies on the assumption that judges, as public officials, are accountable to the public for promoting and upholding the rule of law. The notions of accountability for misconduct that warrants disciplinary actions against judges are discussed below.

XVI. Removal and Discipline of Judges

A. General Remarks

Recommendation R (94) sets forth, in Section VI (Failure to carry out responsibilities and disciplinary offenses), the recommended process to be followed if judges fail to carry out their duties in an efficient and proper manner, or in the event of disciplinary offenses. The Recommendation urges that in such cases all necessary measures that do not prejudice judicial independence should be taken, listing several possible alternatives. It goes on to caution that 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 offenses, or serious infringements of disciplinary rules. Section VI(3) recommends that where such measures need to be taken and they are not dealt with by a court, states should consider setting up, by law, a special competent body tasked to apply disciplinary sanctions and measures, whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. Finally, Recommendation R (94) states that the law should provide for appropriate procedures to ensure that judges in question are granted the due process rights, such as the right to answer any charges or to be heard within a reasonable time.

CCJE Opinion No. 3 also reinforces the general standard that, in addition to principles of conduct for judges, there should be a system by which judges guilty of serious misconduct are dismissed or otherwise disciplined. According to the Opinion, the essence of disciplinary proceedings lies in conduct fundamentally contrary to that expected of a judge, and the disciplinary standards should have the force of law and therefore be enacted under the authority of the legislature. The Opinion goes on to recommend that judges play an active role in the preparation of legislation on this and other matters involving the judicial systems. It also states that disciplinary proceedings should be commenced only by a specific body or person designated to receive complaints, hear the judge’s response, and decide whether proceedings are appropriate.
By way of an example, federal judges in the United States can be removed for official misconduct, which might not be criminal in nature. In the state courts in the United States, impeachment is most often used only with respect to judges of appellate and highest state courts. The judges of other state courts are usually subject to so-called “legislative address,” which means the vote of two-thirds majority of the state’s legislature authorizing the governor to dismiss the judge. The disciplinary actions are regulated by the Judicial Conduct and Disability Act of 1980. Complaints are filed in the office of the chief justice of the relevant circuit, who then transfers them to the Judicial Council of the Circuit. State decisions in disciplinary matters are reserved for the Judicial Tenure Commissions and the Boards of Judicial Standards. Although French judges cannot be administratively removed, they may be disciplined for failure to comply with standards appropriate for a judicial position. Disciplinary cases are handled by the CSM, presided over by the President of the Court of Cassation, without participation of the Minister of Justice. Judges can be reprimanded, suspended, demoted or retired and lose their pension rights.

In sum, it is emphatic that independence and impartiality of the judiciary cannot be protected solely by principles of conduct, and numerous statutory and procedural rules should also play a part. Specifically, while it is important that judges have guaranteed tenure until retirement or expiration of their term of office, there should be a possibility to remove them from office, but only for commission of a crime, mental or physical incapacity, or serious professional insufficiency. Ideally, the authority to institute disciplinary proceedings against a judge should rest solely with the judicial branch (e.g., with the supervising judge). If this is not possible and the relevant disciplinary action is brought by the minister of justice or another representative of the government, it is crucial that at least the final decision for judicial discipline or removal requires a prior judicial approval. In other words, disciplinary authority over judges should be exercised by an organ having at least the same guarantees of independence, and its decisions should be subject to appeal to the courts.

B. Discipline and Removal Grounds

It is apparent that the Draft Code makes a very strong attempt to establish an independent judiciary and to avoid circumstances where judges are subjected to improper influence. However, the provision of Article 13.2, pursuant to which the judge is not accountable before anybody while discharging justice, may be too encompassing in light of other provisions that require judges to adhere to ethical and other standards when carrying out their responsibilities.

Generally, disciplinary proceedings may be brought against any judge who fails to fulfill the duties set forth by the Judicial Code or violates any norms with regard to his or her professional conduct. Most of the grounds for imposing a disciplinary action upon the judge, enumerated in Article 145.2 of the Draft Code, seem quite standard and appropriate for this type of legislation. One of them, however, is too broadly stated and could potentially be used against a judge who dissents too much from the opinions of other judges. This ground is stated in subsection 2 of Article 145.2 and refers to “apparent and gross infringement of norms of judicial law when fulfilling justice.” This phrase certainly needs clarification as it may imply imposing discipline for an erroneous ruling, even though Article 145.3 attempts to guard against this. The remedy in such a situation is to appeal the decision, not to discipline the judge. In fact, imposing discipline on the grounds of judicial opinion or decision is a violation of a judge’s personal independence, however wrong the merits of this decision may be. Further, it is not obvious what an apparent violation means. Moreover, subsection 4 of this Article should be revised because it does not specify whether it refers
to mismanagement of a judge’s personal financial resources or those of the court. If the former is the case, the provision is ill-advised. Finally, “improper discharge of duties,” expressed in Article 157.1, is too vague of a standard for imposing discipline upon the chairman of the court.

As a technical matter, the drafters may wish to renumber Article 149 on sanctions and place it immediately after Article 145. At present, it seems to break the flow of the articles on disciplinary procedures.

C. Due Process Guarantees in Judicial Discipline and Removal

Pursuant to Article 147 of the Draft Code, disciplinary proceedings against an Armenian judge may be instituted by the Chairman of Cassation Court or by the Minister of Justice, who also, per Article 148.5, has the authority to close such proceedings. Conversely, according to Article 145, only the Council of Justice may impose discipline upon judges. Similarly, per Article 110, the power and responsibility for removing judges in Armenia rests with the Council of Justice acting independently.

The Draft Code is generally careful to honor the due process rights of a judge subject to a disciplinary action. It even insists, in its Article 146, that the judge in question be invited to participate in preliminary investigations of possible misconduct that may come to the attention of the Commission of Ethics. Article 152 of the Draft Code further regulates the rights and responsibilities of a judge against whom disciplinary action has been instituted, and it appears to meet European and international standards in this area. In essence, these standards provide that the judge in question must receive all due process guarantees that are granted to an ordinary person against whom this type of proceedings have been brought. In the proposed Armenian regime, judge is entitled to a hearing and to representation by a counsel. In addition, the case has to be heard within a reasonable time. Thus, the provisions in this section appear to safeguard fundamental due process guarantees. Nevertheless, it is strongly recommended that the rules pertaining to disciplinary action against a judge also articulate the due process requirements for a fair and impartial hearing. The procedural guarantees should be stated in detail to avoid any possible discrepancy between the theory and the practice.

Significantly, judges subjected to disciplinary sanctions do not have the capacity to contest the findings of the Council of Justice, because the Council’s relevant decisions are not subject to appeal. Thus, a judge may be removed without first being convicted of any impropriety by a court of law and, once removed, he or she has no rights of appeal. Not only does this seem inappropriate and offends the notions of due process as understood in the Western democracies, but this also could seriously impact human rights concerns and the idea of the right to a fair trial. It is recommended that the judge in question be allowed to appeal the decision of the Council of Justice, for instance, to the Cassation Court or other appropriate body. Accordingly, the part of Article 110.6 that states that the Council’s decision to take disciplinary action against a judge or to suspend judicial authorities is not subject to appeal, should be deleted. The drafters may also wish to include a provision recognizing that these articles do not preclude informal counseling of a judge who may be showing signs of behavioral problems by his or her colleagues, in order to avoid the filing of a disciplinary action. The disadvantage of such counseling is lack of transparency, but the advantage is that it is often times more humane and more effective than the imposition of formal sanctions. In addition, it would be advisable to include a reporting requirement pursuant to which the Council
would be compelled to publish an annual report summarizing the number of disciplinary actions instituted, the grounds, the results of the proceedings, and the nature of sanctions imposed.

Provided that there is no constitutional attribution to the President of the Republic of specific powers regarding the disciplinary procedure, the latter should not have any discretion in the application of the Council’s disciplinary or removal decisions. However, Article 149 of the Draft Code, dealing with disciplinary sanctions applied against a judge, requires the Council of Justice to apply to the Armenian President in order to suspend the authority of the disciplined judge. Also, in no event ought the President have the power to refuse to suspend the authority of a judge who, per the Council’s determination, should be suspended. Yet, Article 158.1 of the Draft Code gives the President a right to refuse the intervention, while Article 159 deals with the President’s mandatory suspension of a judge’s authorities for measures not related to disciplinary proceedings (e.g., resignation or invalid appointment). In any event suspending a judge’s authorities should ideally be a judicial decision, not an executive one. The judicial branch must be able to govern itself. Otherwise, it is neither separate nor independent.

In comparison, the French Law on the Status of the Magistracy establishes far-reaching limitations on the executive branch with respect to disciplinary proceedings. It provides for a particular composition of the CSM when it acts as a disciplinary body over sitting judges. It requires the President of France and the Minister of Justice to recuse themselves, and provides that the disciplinary proceeding should be presided over by the Chief Justice of the Court of Cassation. Under the terms of that Law, the power to initiate disciplinary proceedings belongs to the Minister of Justice, as well as, since the 2001 reform, to the chief judges of Courts of Appeal and of superior appellate tribunals.

In conclusion, it is worth to reiterate the importance of establishing a self-regulated judicial disciplinary regime and a system of peer-review. Such a system is fundamental in safeguarding judicial independence. In accordance with the Recommendations R (94), it is suggested that a special competent body be established by law to decide disciplinary issues against judges. In the case of the Republic of Armenia, the Council of Justice clearly acts as this body. However, the possible intervention of the Minister of Justice in the triggering mechanisms of disciplinary proceedings against the judges of the Cassation Court is of concern since it represents an intrusion by the executive branch in the realm of the judiciary.

XVII. Judicial Department and Court Support Personnel

A. Judicial Department

By virtue of Article 188 of the Draft Code, judicial service, which shall be performed in the Judicial Department, is a professional activity carried out to ensure the performance of functions and powers vested in courts and self-governing bodies of the Armenian judiciary. Clearly stating that service in the Judicial Department is a part of public service gives status, and a degree of prestige, to such activity. Often, that note of dignity is important in order to attract qualified candidates for the positions.

Article 189 of the Draft Code provides an overview of the Judicial Department, which is designed to function as a central administrative support bureau for the Armenian judiciary. Its functions are similar to those of, for example, the Administrative Office of the U.S. Courts in the
federal judicial system of the United States, the administrative bureau in the Hungarian judicial system, or the proposed administrative office recently approved as part of the judicial reform strategy of the Serbian government. This is an important new office for the Armenian judicial system. Its significance for increasing judicial independence in the institutional context is high, and may warrant a separate legislative act that outlines its authority and responsibility in greater detail.

B. Conditions of Service for Judicial Servants

Article 195 of the Draft Code outlines the judicial service position passport. Requiring that the functions of each judicial servant position, along with the requirements for the position, be clearly stated in a written document is an excellent concept. That way, each applicant knows the skills level necessary in order to fill a given vacancy, and each staff person knows what is required of him or her.

The principle ensuring that no one will be discriminated against in serving in a judicial service position, which is articulated in Article 197 on eligibility to take up a judicial service position, is admirable. However, there is a certain inconsistency in requiring judicial servants to be Armenian citizens, and then stating that judicial servants will not be discriminated against based on nationality. If, instead, this is a translation issue, and nationality means national origin, then the inconsistency is eliminated. It is advisable to ensure that people who believe they have been discriminated against have a means of redress for that discrimination. As a comparison, the drafters may refer to the U.S. system where judiciary is not subject to federal anti-discrimination laws, but relies upon its own internal complaint review process. This system is, however, not without its critics. Therefore, the drafters may also want to consider an alternative method of providing for review of discrimination complaints by explicitly stating that such complaints are subject to the Armenian anti-discrimination laws.

Article 201 of the Draft Code provides for closed competition to fill a vacant position of judicial service. While this gives an opportunity for existing judicial servants to be promoted, holding a closed competition without any apparent objective criteria may create problems, such as the appearance of favoritism. Rather than basing the closed competition on either the participant’s performance or an interview, the closed competition should include both factors.

With an aim of emphasizing the responsibilities a judicial servant, it would be suitable to include an oath of office as a requirement for commencing employment. It is also important to ensure, as stated in Article 216, that judicial servants do not have outside employment that might either detract from the dignity of their office or create other types of conflicts. However, allowing judicial servants to engage in passive business opportunities, such as renting real estate, would not create a conflict, while at the same time allowing employees to supplement their income.

Requiring an objective annual review for judicial servants per Article 210 is an important method of ensuring their satisfactory performance. It is suggested that goals for the upcoming year be included as part of this annual performance evaluations. Similarly to the United States, this evaluation should include goal statements and clear-cut guidelines for supervisors and staff members in preparation for such evaluations. In addition, certain sections of Article 211 concerning judicial servant’s performance description report should be reassessed. In particular, summarily dismissing a judicial servant based on one poor annual performance evaluation is somewhat harsh. If a judicial
servant only receives a single performance evaluation during the course of the year, he or she may not be aware of any shortcomings and, as a result, be unable to correct his or her conduct. It would be wise to establish a period of probation for judicial servants who receive an unsatisfactory performance evaluations. During the probation period, the judicial servant would be expected to improve his or her performance by whatever means established, such as attending a training or increasing his or her productivity. That way, employees would not be summarily dismissed without the opportunity to improve their performance. Alternatively, a sanction less severe than dismissal may be an appropriate remedy for the shortcomings in a judicial servant’s performance. For example, courts in the United States have Corrective Action Plans for employees who are not performing at expected levels, which include provisions describing a range of sanctions and Work Improvement Plans.

Subsection 9 of Article 214.1 provides for the right of judicial servants to appeal the results of the competitions and performance evaluations related to their employment and promotion options, including appeals in court. The drafters might wish to restrict the option of court appeal to cases involving gross violations of the employment process. Generally, these types of cases can be processed without compromising individual rights through an effective and fair administrative process, including administrative appeals, which need not involve court chairpersons presiding over formal court proceedings.

Article 223 deals with disciplinary sanctions applied to judicial servants and provides an opportunity for a judicial servant to submit a written explanation regarding the circumstances that form the basis for the proposed disciplinary sanction. It is recommended that more detailed procedures for disciplinary sanctions be adopted to ensure that a judicial servant receives a full and fair review of his or her actions. For example, similarly to the United States, such procedures may include the opportunity for holding an administrative hearing.

Article 213 of the Draft Code, regarding staff reserves, references paragraphs 1 and 2 of Article 224, with respect to including judicial servants who were dismissed on the staff reserve list. Paragraphs 1 and 2 of Article 224 list grounds for dismissal of judicial servants from the office, including commission of recurrent sanctionable disciplinary offenses and grave violations of the Code of Ethics, or conviction to imprisonment for committing a crime, along with some of the grounds that arise through no fault of a judicial servant. Persons dismissed from office for committing serious violations such as those listed above should not be allowed on the staff reserve list. Essentially, they should not be rewarded for their misdeeds by being placed in the staff reserve list. By contrast, some of these grounds, such as elimination of the position due to redundancy, election or appointment to a political or discretionary position, or dismissal of judicial servants assigned to a judge due to the judge’s transfer or dismissal, are more appropriate grounds for retaining a judicial servant on the staff reserve list. Individuals dismissed for these reasons have done nothing wrong, and in fact could be excellent workers who were dismissed due to circumstances beyond their control.

The final comment on judicial servants may relate to an oversight: under Article 231 of the Draft Code, the tasks of judicial police do no include a specific provision for the protection of judicial servants by the judicial police. Attacks against non-judicial officials and staff are almost as frequent as those against judges, and judicial servants should be included in the categories of persons the judicial police are obligated to protect.
XVIII. Conclusion

To state that a properly organized judicial system needs efficiency, responsibility and guarantees of independence sounds commonplace. In fact, finding the right balance between these factors is one of the most demanding challenges for the drafters of the laws on judicial systems. The “right” balance may vary for different countries. It is contingent on the system of distribution of power, cooperation between governmental structures, political and legal culture of the people, maturity of the civil society, historically developed practices, and many other factors. The search for the right balance proved particularly important for the countries of former Soviet dominance. It was expected that in the region with traditions of a heavy communist-party control over the judiciary, strengthening the independence of the judiciary would become a priority. However, in some post-socialist countries, it soon appeared that excessive independence of judicial structures resulted in mass corruption and growing feelings of impunity. Strengthening accountability of judges without compromising their independence became the main objective of a new stage of judicial reform. In other countries, the inclusion of representatives of the legislative and executive bodies into the self-governing judicial structures affected the constitutionally guaranteed balance of powers. For countries with similar problems, de-politicization of the judicial structures became a priority. To summarize this, there was no single panacea that could resolve the deficiencies of the judicial systems in the post-socialist region. Finding the right balance required a careful comparative study of the models operating in a variety of political circumstances.

The dichotomy dividing the Western democratic world into pure presidential and pure parliamentary systems was already the history when the new democracies of Eastern and Central Europe began surfacing on the political map. Still, someone expecting to find the basic features of these two major and several other well-known hybrid political systems simply duplicated in the new post-socialist constitutions would be seriously disappointed. The constitutional experience of the new democracies confirms that political systems are rarely designed on paper. They either evolve around strong, charismatic personalities, or result from a significant political vacuum created by geopolitical circumstances. This proved particularly true for the countries of the former Soviet dominance.

In the republics of Central Asia and Transcaucasia, constitutional “mixing” produced the system of governance which is a hybrid presidential-parliamentary model. It is the combined result of political bargaining and cunning political calculation, which attempted to disguise autocratic tendencies under a semi-democratic shield of presidential systems. Analyzed against this background, the Constitution of Armenia contains all of the above-mentioned features of the hybrid system of governance, which are heterogeneous in origin and composition. The prerogatives of the Armenian President, although not as extensive as the authority of his counterpart in Russia or Belarus, are not balanced by the legislature, the Cabinet, or the judiciary, over which he has significant control through wide powers of appointment. This may infringe the principle of judicial independence in the Republic of Armenia.

The rule of law is a necessary element in any democratic government because it provides a consistent standard of public action to regulate the conduct of both the citizens and the state. The rule of law requires that like cases be treated alike, and that citizens are protected against favoritism, arbitrary power, and corruption. However, while the rule of law is a necessary, it is not a sufficient
condition of democratic government. States have an obligation to provide not only procedural justice in the application of the laws, but also substantive justice in the framing of the laws.

The Draft Judicial Code of the Republic of Armenia generally conforms to both the constitutional provisions and the international standards. It also covers essentially all elements necessary for this type of legislation, with only minor exceptions. On the other hand, the Draft Code frequently includes an approach that is overly inclusive, which may ultimately hinder its adaptability to the frequently changing domestic and global legal environment. As with all laws, its successful implementation in accordance with the spirit of the laws will depend on the attitude and the willingness of those who must abide by it, and the cultural environment they create. While the intentions of the drafters of Armenian Draft Code should be praised, they should also be made more evident in the mélange of details in order to better guide the judges to their duty.
Appendix A

Biographical Statements of Experts Assessing the Draft Law
Biographical Statements of Experts Assessing the Draft Code

The Honorable Dorothy Toth Beasley

The Honorable Dorothy Toth Beasley is a Senior Judge of the State of Georgia, which authorizes her to sit in superior courts when called to a jurisdiction that needs additional or substitute assistance temporarily. She served on the Court of Appeals for more than fourteen years, until 1999, and prior to that on the State Court of Fulton County for seven years. She was an Assistant Attorney General of Georgia in the Criminal Division, and later served as an Assistant United States Attorney. In addition to sitting as a senior judge, Judge Beasley currently serves as a mediator and arbitrator with Henning Mediation and Arbitration Service.

Judge Beasley serves on the ABA/CEELI Advisory Board and frequently contributes as a commentator on draft laws and constitutional provisions for countries in Eastern and Central Europe. She also participated as a teacher in two judicial seminars in Albania in 1991 and, more recently, was involved in the National Center for State Courts International Programs Division, which provides technical assistance for the improvement of court administration in emerging democracies. In June 2003, Judge Beasley lectured in a course on International Commercial Arbitration conducted for students of Georgia State University College of Law in Linz, Austria.

Judge Beasley is on the Dean's Advisory Council at American University Washington College of Law, the Board of Visitors of Georgia State University College of Law, the Board of Visitors of Emory University, the Board of Trustees of the Southern Center of International Studies, the Advisory Board of the Center for International Strategy, Technology and Policy at Georgia Institute of Technology, and the Georgia Council of International Visitors. She also serves on the Church Council and Executive Committee of the Lutheran Church of the Redeemer and is a co-founder of Atlanta's Table, a project of the Atlanta Community Food Bank.

Judge Beasley majored in American history and government at St. Lawrence University, and earned her law degree at American University’s Washington College of Law. She also holds an M.A. in Judicial Process from the University of Virginia, and was awarded an Honorary Degree of Doctor of Humane Letters by her alma mater, St. Lawrence University, as well as the Lodestar Award of American University in 1993.

Stephen Bloom

Stephen Bloom currently serves as ABA/CEELI's Rule of Law Legal Specialist in Armenia, where he works on judicial independence and ethics programs. Prior to joining CEELI in January 2006, he worked at the Armenian Constitutional Rights Protective Centre as a Peace Corps volunteer. He has also served as the U.S. Magistrate Judge for Eastern Oregon in 1988-2004, and practiced law in Pendleton, Oregon.

Mr. Bloom holds a B.A. in English from Dartmouth College and Stanford University and a J.D. from Willamette University College of Law.
The Honorable John A. Bozza

The Honorable John A. Bozza has been a Judge of the Court of Common Pleas of Pennsylvania’s Sixth Judicial District since 1989. He is currently the Administrative Judge of the Court’s Trial Division, where he presides over criminal and civil jury trials and related legal matters and is responsible for the management of the Division. From 1994-1999, he served as the President Judge of the Court of the Sixth Judicial District, and on two occasions has been the recipient of Pennsylvania Conference of Trial Judges awards for innovation in the administration of justice. He previously served as the Administrative Judge of the Court’s Family Division.

Prior to taking the bench, Judge Bozza was an Associate Professor of Criminal Justice and Director of the Criminal Justice program at Gannon University. Since 1999, he has been a faculty member at the National Judicial College at the University of Nevada in Reno, where he teaches sentencing. He has also lectured on sentencing to new judges in Pennsylvania since 1998, and presented educational programs for the Delaware Supreme Court, the Pennsylvania Conference of Trial Judges, and the Erie County Bar Association.

Judge Bozza is an honors graduate of DePaul University Law School and holds a MA in Administration of Justice from the Rockefeller College of Public Affairs at SUNY at Albany. His most recent publication, Judges, Crime Reduction and the Role of Sentencing, appeared in the 2006 winter edition of the ABA’S JUDGES JOURNAL. He also previously participated in ABA/CEELI’s legal commentary on the Bulgarian Judicial Ethics Code.

The Honorable Dierk Helmken

The Honorable Dierk Helmken has been a judge for civil and penal matters for over 16 years, and a public prosecutor for 14 years in the German state of Baden-Wurttemberg. From 2002-203, he served as an international UN judge in Kosovo, where he took part in drafting of the new criminal law. Over the last 25 years, Judge Helmken also participated in the federal law reform committees of the Liberal and the Green Parties in Germany.

The Honorable Martin L.C. Feldman

The Honorable Martin L.C. Feldman was appointed United States District Judge for the Eastern District of Louisiana by President Reagan in 1983, and presently serves as the Chairman of the Fifth Circuit's Committee on Pattern Civil Jury Instructions.

Judge Feldman graduated from Tulane Law School in 1957, where he was a member of the Order of the Coif and an Assistant Editor of the Tulane Law Review. Upon graduation, Judge Feldman became Judge John Minor Wisdom's first law clerk when Judge Wisdom was appointed to the Fifth Circuit United States Court of Appeals. Following his clerkship, Judge Feldman practiced law in New Orleans from 1959 until October 1983. His practice emphasized tax law and complex commercial litigation. He is a past chairman of the Law Reform Committee of the Louisiana State Bar Association and a founding member of the Section on Anti-Trust Law.

Judge Feldman was a member of the Board of Directors of the Federal Judicial Center (1991-1995) and a Chair of the National Conference of Federal Trial Judges (1996-1997). He is a visiting lecturer at Cambridge University, and an Honorary Master of the Bench of the Inner
Temple Inn of Court, London. He is also a Life Member of the American Law Institute. In addition, Judge Feldman is a member of the Advisory Committee of the American Association for the Advancement of Science, a Chair of the Board of Advisory Editors of the Tulane Law Review, and was the Fifth Circuit district judge representative on the Judicial Conference of the United States for the 2001-2004 term. Judge Feldman is also the U.S. District judge member of the Quadrennial Anglo-American Legal Exchange 2004-2005 in London, Oxford University, Washington, D.C., and Boston. From 1994 to 2000, he was a lecturer in constitutional law and war powers at Syracuse University's Maxwell School of Public Administration. During the Fall of 2002, he was Princeton University's Distinguished Visiting Jurist in the James Madison Program of American Ideals and Institutions. He is a frequent James Madison lecturer at Princeton University, and has been a guest lecturer at other American and European universities. Judge Feldman has also worked with ABA/CEELI in Latvia and participated in legal assessments of the constitutions of Slovakia and Belarus.

Elise Groulx

Elise Groulx is a partner and practicing criminal defense lawyer with the Canadian law firm of Desrosiers, Groulx, Turcotte, Latulippe & Marchand. She is also founder and president of the International Criminal Defense Attorneys Association (ICDAA), which supports defense counsel practicing before the international criminal tribunals, and has been directly involved in building the International Criminal Court (ICC). In addition, Ms. Groulx serves as the Co-President of the first International Criminal Bar, an international movement bringing together national bars, individual lawyers and non-governmental organizations to support lawyers practicing at the ICC and to protect the independence of the legal profession in the international justice system.

Since being admitted to the Québec Bar in 1976, Ms. Groulx has defended cases involving virtually all types of criminal offenses and at all levels of the judicial system. Prior to engaging in private practice, Ms. Groulx served as a staff defense lawyer in the criminal defense section of the Québec Legal Aid Community Center for nine years. In 1996, Ms. Groulx was appointed by the Canadian Federal Justice Department to act as legal advisor to the Committee on Self-Defense Review. From 1984 to 1986, Ms. Groulx served as the first female Vice-President of the Association des Avocats de la Défense de Montréal. From 1980 to 1984, she also served on the Association's board of directors. In 1986, she was an instructor at the school of the Québec Bar Association. Ms. Groulx is a member of Société Internationale de Criminologie in Paris, Amnesty International, and the Civil Rights League of Québec. She has also participated in numerous criminal law conferences, workshops, and continuing legal education training courses.

Ms. Groulx received her law degree from the University of Montréal. She has also studied at the Institut de Criminologie (Faculté de Droit Paris II/Sorbonne) in Paris, and holds an LL.M. in Criminology and Comparative Criminal Law from the London School of Economics.

George Katrougalos

George Katrougalos is an Associate Professor of Public Law at Demokritos University in Athens, Greece. He was also a visiting professor at Roskilde University, Denmark, and taught public law at the Athens branch of the University of Orleans, France.
Dr. Katrougalos has worked on research projects for a variety of organizations, including the Council of Europe, ABA/CEELI, the European Foundation for the Improvement of Living and Working Conditions, the French National Center of Research, the Institute of Greek Constitutional History and Constitutional Law, and the University Research Center of Social Security, Health and Assistance of the Law School of Athens. He has provided expert advice to various institution building and constitutional reform projects in Albania, Armenia, Macedonia, Slovakia, Syria, and Uzbekistan. In 2000, he was the Coordinator of the Stability Pact program on Institutional Support to the Countries of Southern Europe of the Greek Ministry of Foreign Affairs. Dr. Katrougalos represented Greece as a legal advisor to the Third Committee of the General Assembly of the United Nations, and was a member of the group of experts of the Greek Ministry of Foreign Affairs for the drafting of the Convention on the Draft Constitution of the European Union (2003-2004).

Dr. Katrougalos is the author of five books and numerous articles on constitutional and human rights issues published in Greek, European, and American legal journals. He is a member of the Greek Association of Constitutional Law, the Greek Society of Political Sciences, the Council of the International Association of Constitutional Law, the Secretariat of the Balkan Law Network “Rights,” as well as the Research Fellow and member of the Executive Committee of the Centre of European Constitutional Law. He also serves as a Board member and pro bono legal advisor of the Greek National Committee of UNICEF.

Dr. Katrougalos holds a law degree from Athens University, and a Masters (D.E.A) and Doctorate in Public Law from the University Paris I-Sorbonne.

James M. Klebba

James M. Klebba is the Victor H. Schiro Professor of Law at Loyola University Law School in New Orleans, where he teaches courses in the areas of civil procedure, evidence, federal courts and comparative judicial systems. In addition, he has lectured extensively in Eastern Europe and the former Soviet Union, and is the Director of Loyola's Summer Legal Studies Program in Moscow and Budapest.

Prior to joining the faculty at Loyola in 1973, Professor Klebba was in private practice with the law firm of Dorsey and Whitney in Minneapolis. He also has experience as an arbitrator. He has served the law school previously as Associate Dean and also as Interim Dean, and has been a visiting law professor at the Universities of Minnesota, Missouri and Kansas. Professor Klebba is a former chair of the Association of American Law Schools Section on Civil Procedure.

Professor Klebba has lectured widely on a variety of subjects and has published extensively. His most recent books include EVIDENCE CASES AND PROBLEMS and MASTER PLAN FOR THE RED RIVER WATERSHED IN LOUISIANA. He contributed to a number of past ABA/CEELI’s legal assessments of draft laws from various countries, including Armenia. He has also been extensively involved with law-related and community activities, as well as within Loyola University New Orleans.

Professor Klebba holds a B.A. in Political Science from St. John’s University and a J.D. from Harvard Law School.
Lynne Kosobucki

_Lynne Kosobucki_ holds the position of permanent law clerk to the Honorable Joseph A. Greenway, Jr. of the United States District Court for the District of New Jersey. Previously, she served as Managing Counsel for Administration at the New Jersey firm of Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C. She has also worked as the Assistant Circuit Executive for the United States Court of Appeals for the Third Circuit, and as the Special Assistant to the Honorable Judith W. Rogers, Chief Judge of the District of Columbia Court of Appeals.

Ms. Kosobucki holds a B.S. in Chemistry and a J.D., both from Georgetown University. She has been admitted to the bars of the District of Columbia, New Jersey, and Pennsylvania, and is a former member of the Pennsylvania Bar Commission on Women in the Profession. She received the John G. Agar Award from Georgetown University in 1992 and the Merit Service Award from the U.S. Court of Appeals for the Third Circuit in 1994.

Ms. Kosobucki has worked with ABA/CEELI in the past as a Legal Specialist on Judicial Administration in Kyrgyzstan, and has also contributed to legal commentaries on several draft laws between 1996 and 1999.

Jeffrey S. Lubbers

_Jeffrey S. Lubbers_ is a Fellow in Administrative Law at American University’s Washington College of Law, where he teaches courses in administrative law, environmental law, federal legal institutions, and alternative disputes resolution. He has also taught at the University of Miami School of Law, Washington and Lee University School of Law, the Georgetown University Law Center, Melbourne University, Ritsumeikan University Law School in Japan, and the University of Ottawa.

Prior to joining American University, Professor Lubbers served in various positions with the Administrative Conference of the United States (ACUS), the U.S. Government’s advisory agency on procedural improvements in federal programs, until its closure by the Congress in 1995. From 1982-1995, he was ACUS’ Research Director. He worked with Congressional committees and agencies to seek implementation of ACUS recommendations, and served as Team Leader for Vice President Gore's National Performance Review team on Improving Regulatory Systems in 1993.

Professor Lubbers has published numerous books and articles on the administrative procedures and rulemaking, participated frequently in training programs for government officials in the United States and overseas, and has won several prestigious honors for his work in administrative law, including a Presidential Rank of Meritorious Executive and special awards from both the American Bar Association and Federal Bar Association. He also serves as the editor for the ABA’S DEVELOPMENTS IN ADMINISTRATIVE LAW AND REGULATORY PRACTICE.

In addition to his teaching, Professor Lubbers has served as a consultant on administrative law reform to various federal agencies, the ABA, the World Bank, USAID, and the Office of Economic Cooperation and Development.

Professor Lubbers holds a B.A. from Cornell University and a J.D. from the University of Chicago Law School, and is a member of the bars of the State of Maryland and the District of Columbia.
Rett R. Ludwikowski

**Rett R. Ludwikowski** has been a Professor of Law at the Catholic University of America Columbus School of Law since 1985, specializing in comparative and international law. He also serves as the director of the School’s Comparative and International Law Institute. Professor Ludwikowski holds doctorate degrees in law and legal and political theory. Until 1982, he taught law and politics, held the chair of Modern Legal and Political Movements and Ideas, and was the chairman of the Division of Law and Business at the Jagiellonian University in Cracow, Poland.

After coming to the United States in 1982, Professor Ludwikowski continued his research work while holding several visiting scholar and visiting fellow positions, including the USICA Program, U.S. State Department (1981), The Heritage Foundation (1981), Elizabethtown College, PA (1982-1983), and the Hoover Institute, Stanford University (1983). He was also a recipient of a Fulbright Scholarship (1997) and the residential Fellowship of Max Planck Institute in Hamburg, Germany (1989).

Professor Ludwiskowski has authored 16 books and numerous articles on issues related to comparative constitutional law and human rights, post-communist transition, international trade and business, and others. In 2001-2003, he was the managing editor of **COMPARATIVE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**, a multi-volume publication of Oceana Publications, Inc.

The Honorable Jon O. Newman

**The Honorable Jon O. Newman** is a Senior Judge on the United States Court of Appeals for the Second Circuit, on which he has served since June 1979. He was the Chief Judge from 1993 to 1997. He served as the United States District Judge for the District of Connecticut from January 1972 until his appointment to the Court of Appeals.

From 1964 to 1969, Judge Newman was the United States Attorney for the District of Connecticut. He previously held staff positions with the Connecticut General Assembly and with Abraham Ribicoff during Mr. Ribicoff’s service as Governor of Connecticut, Secretary of Health, Education, and Welfare, and United States Senator. He also served as a law clerk to Judge George T. Washington of the United States Court of Appeals for the District of Columbia Circuit and as a senior law clerk to Chief Justice Earl Warren at the United States Supreme Court.

Judge Newman was the 1984 Cardozo Lecturer for the Association of the Bar of the City of New York, the 1987 recipient of the Learned Hand Medal of the Federal Bar Council, and the 1992 Madison Lecturer at New York University Law School.

Judge Newman holds an A.B. degree from Princeton University and an LL.B. from Yale Law School.

Kurt H. Riechenberg

**Kurt H. Riechenberg** has been the Chef de Cabinet (Chief of Staff) to the President of the European Court of Justice in Luxembourg since 1998.
Mr. Riechenberg joined the Court in 1983, where he was Référendaire (Clerk) to three judges until 1997. In addition, during the past 15 years, he has lectured in the United States, Germany, Spain, France and South America on a wide range of topics in the field of European Union law. In 1993 and 1996-1997, he was a Visiting Fulbright Professor of European Law at the University of Pittsburgh School of Law. In 1997, he taught Comparative Environmental Law and Comparative Law of Regional Economic Interpretation at the Universidad de los Andes in Bogotá, Colombia. He has also published numerous articles on European Community law in German, English, French and Spanish. Mr. Riechenberg is also a member of the ABA/CEELI Advisory Board.

Earlier in his career, Mr. Riechenberg held positions at the Federal Ministry of Economic Affairs in Bonn, the most recent being Assistant Head of the Legal Service.

Mr. Riechenberg is a German lawyer, and holds postgraduate degrees from the Ecole Nationale d'Administration in Paris and Northwestern University School of Law in Chicago.

The Honorable Maria Teresa Romer

The Honorable Maria Teresa Romer was appointed to the Polish Supreme Court in 1990. During her tenure, she served as the chairman of the Social Insurance Division. Justice Romer retired in 2002, but she maintains her status of the Supreme Court Justice.

Justice Romer is one of the founders of Iustitia, the Polish Judges Association, and has served as its President since its inception in 1990. In 1993, Justice Romer was appointed member of the Bureau of European Association of Judges and Public Prosecutors for Liberty and Democracy (MEDEL), and from 1997 to 2002, she served as its Vice President.

Justice Romer was a lecturer at Warsaw University and the Warsaw Institute of Technology for over 20 years. She has lectured on various areas of law, and especially on labor law. For many years, she has been teaching social rights at the School of the Human Rights organized by the Helsinki Committee Foundation in Warsaw. She is currently a professor at a Trade and Law private university in Warsaw.

Justice Romer has published extensively on labor law, human rights, judicial ethics, and other issues. Through the Council of Europe, she has provided expert advice on matters concerning the judiciary, recently focusing on the former Yugoslavian countries. As the President of Iustitia, she had the opportunity to work with ABA/CEELI in Poland, and also participated in a CEELI conference in Central Asia. She currently serves on the ABA/CEELI Advisory Board.

Justice Romer graduated from the University of Warsaw Law Faculty in 1953.

Mortimer Sellers

Mortimer Sellers is Director of the Center for International and Comparative Law and a University System of Maryland Regents Professor at the University of Baltimore School of Law, where he teaches constitutional law, international law, and legal theory. Prior to joining the faculty in 1989, Professor Sellers served as clerk to the Honorable James Hunter III of the United States Court of Appeals for the Third Circuit.
Professor Sellers has written numerous books and articles on international law, constitutional law, legal history, and jurisprudence. He is the editor of American Society of International Law’s INTERNATIONAL LEGAL THEORY and of IUS GENTIUM, an associate editor of the AMERICAN JOURNAL OF COMPARATIVE LAW, and a member of the editorial board of Notícia do Direito Brasileiro. In the past, he also served as editor of the HARVARD HUMAN RIGHTS YEARBOOK and the HARVARD INTERNATIONAL LAW JOURNAL.

Professor Sellers received his A.B., summa cum laude, from the Harvard College, and J.D., cum laude, from the Harvard Law School. He also studied as Rhodes Scholar at Oxford University where he received his D.Phil. and a graduate degree in civil law. He was also a recipient of the Whitaker and Hopkins prizes, membership in Phi Beta Kappa, the John Harvard Scholarship, the Frank Knox Fellowship, and the T.H. Greene award. Professor Sellers is a member of the District of Columbia, Maryland, New Jersey, Pennsylvania, and United States Supreme Court bars.

The Honorable Robert F. Utter

The Honorable Robert F. Utter served as a Justice on the Supreme Court of the State of Washington from 1971 to 1995. He was also the Acting Chief Justice, later the Chief Justice, from 1977 to 1980. He received his Bachelor of Laws degree in 1954 from the University of Washington. Upon graduation, he became a law clerk to the Honorable Matthew W. Hill of the Washington Supreme Court. Justice Utter served as a Deputy Prosecuting Attorney for King County (Washington) before entering the private practice of law in 1956. He was appointed a Commissioner in 1959, a Judge of the Washington Superior Court in 1964, and to the Court of Appeals in 1969. He has also been an Adjunct Professor at the University of Puget Sound, where he has taught seminars on State Constitutional Law, since 1987.

Justice Utter has provided frequent legal development assistance to nations around the world. In addition to serving on ABA/CEELI’s Advisory Board, he has commented on proposed constitutions for Albania, Romania, Lithuania, Russia, Azerbaijan, Uzbekistan, Belarus, Kazakhstan, and Ukraine. Justice Utter has hosted two judicial training workshops for judges from the Republic of Kazakhstan and the Republic of Kyrgyzstan and participated in a criminal code workshop in Kazakhstan for CEEELI. He has also repeatedly led judges and lawyers comparative law study delegations to the People’s Republic of China, the U.S.S.R., and Indonesia, and led a Dispute Resolution Delegation to China.

The Honorable Marcia K. Walsh

The Honorable Marcia K. Walsh has served on the 16th Judicial Circuit Court of Missouri, Kansas City Municipal Division, for the last 23 years. She also was as a Fulbright Senior Scholar, lecturing in St. Petersburg, Russia, at the St. Petersburg State University Law Faculty. In addition, she served as President of the Missouri Municipal and Associate Circuit Judges’ Association, after having also served as its Vice-President and Secretary. Judge Walsh has often worked with the ABA/CEELI. Her work on 18 other ABA/CEELI projects and two ABA/Asia projects includes the evaluation of judicial codes of four other countries, in addition to Armenia’s.

Judge Walsh earned an M.A. and a J.D. at the University of Kansas, an LL.M at the University of Missouri, Kansas City, and a Master of Judicial Studies at the University of Nevada in Reno.
Russell R. Wheeler

Russell R. Wheeler currently serves the President of the Governance Institute at the Brookings Institution. Prior to joining the Governance Institute, he held numerous positions with the Federal Judicial Center (the training and research organization for the US federal judiciary) from 1977-2005, most recently as its Deputy Director since 1991. He was a Senior Staff Associate at the National Center for State Courts (1976-1977); Research Associate in the Office of the Administrative Assistant to the Chief Justice of the United States (1974-1976); one of the first two United States Supreme Court Fellows (1973-1974); and Assistant Professor in the Department of Political Science at Texas Tech University in 1970-1973.

Mr. Wheeler has authored numerous books and articles on the history and evolution of the U.S. judicial systems; the relationship of the independence and accountability of judges and of the judicial branch, including the impact of judicial selection methods and judicial education programs; judicial administration and organization; and extrajudicial activities of judges. In addition, he is an active international speaker on judicial education and the administration of justice in numerous countries in Latin America and elsewhere in the world.

Mr. Wheeler is a member of the Board of Editors of the JUSTICE SYSTEM JOURNAL, and an Adjunct Professor at American University’s Washington College of Law. He served previously on the Board of Directors of the American Judicature Society and chaired the editorial committee for its journal, JUDICATURE, from 1991-1994. He has also provided major research support to the Commission on Structural Alternatives for the Federal Courts of Appeals, and served as a consultant for the Committee on Long Range Planning of the Judicial Conference of the United States, and a reporter for the Judicial Conference’s Federal Courts Study Committee.

Mr. Wheeler holds a B.A. from Augustana College, Illinois, and an M.A. and Ph.D. in Political Science, both from the University of Chicago.

Markus B. Zimmer

Markus B. Zimmer has served as the Clerk of Court/District Court Executive of the United States District Court for the District of Utah since 1987. From 1978-1987, Mr. Zimmer held senior-level positions at the Federal Judicial Center. He also has served on numerous national advisory and other committees for the judicial branch. He is a past member of the Executive Board of the Federal Court Clerks Association. In 1994, he received the Administrative Office of the United States Courts Director's Award for Outstanding Leadership.

Mr. Zimmer has worked with CEELI since 1992 and has served as a legal/judicial administration specialist in numerous countries. He was involved in the 1993 Russian Jury Trial Project, served on the faculty of the 1995 Workshop for the Justices of the Constitutional Court of Bosnia and Herzegovina, and was a member of the CEELI Institute Curriculum Development Task Force and faculty. Mr. Zimmer has also served as a legal specialist for judicial administration and judicial ethics reform projects, authoring assessment reports and concept papers, and analyzing draft codes, laws and administrative regulations in Central and Eastern Europe, Central Asia, the Middle East, and Africa.
Mr. Zimmer earned B.A. and M.A. degrees from the University of Utah, and Ed.M. and Ed.D. degrees from Harvard University. He was a Fulbright Scholar at the University of Zurich. Mr. Zimmer was born in Basel, Switzerland.
Appendix B

United Nations

Basic Principles on the Independence of the Judiciary
United Nations 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 in Milan from 26 August to 6 September 1985

*Endorsed* by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Preamble

*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, colour, 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 behaviour 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.
Appendix C

The Bangalore Principles of Judicial Conduct
The Bangalore Principles of Judicial Conduct


Preamble

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the United Nations Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions
established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

**Value 1: Independence**

**Principle:**

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

**Application:**

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

**Value 2: Impartiality**

**Principle:**

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

**Application:**

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

   2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
   2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
   2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3: Integrity

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.
Value 4: Propriety

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
4.11 Subject to the proper performance of judicial duties, a judge may:

4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12 A judge shall not practise law whilst the holder of judicial office.

4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

**Value 5: Equality**

**Principle:**

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

**Application:**

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste,
disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6: Competence and Diligence

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with
whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Implementation

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

Definitions

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" includes the personal staff of the judge including law clerks.

"Judge" means any person exercising judicial power, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.
Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:


   (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.

   (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.

   (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.


   (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.

   (h) The Iowa Code of Judicial Conduct.

(j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.

(k) The Code of Conduct for Magistrates in Namibia.

(l) Rules Governing Judicial Conduct, New York State, USA.


(n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.


(p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.


(r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.


(t) The Texas Code of Judicial Conduct


(ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.


At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-
President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.
Appendix D

Council of Europe

Recommendation No. R (94) 12
Of The Committee of Ministers to Member States
On The Independence, Efficiency and Role of Judges
Recommendation No. R (94) 12
Of The Committee of Ministers to Member States
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";


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:
APPENDIX D—COE RECOMMENDATION ON THE INDEPENDENCE, EFFICIENCY, AND ROLE OF JUDGES

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.
Appendix E

European Charter on the Statute for Judges
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 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 defence 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 programmes 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 neighbouring 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 behaviour, 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 behaviour 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 behaviour 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.
Appendix F

Consultative Council of European Judges

Opinion No. 3
On the Principles and Rules Governing Judges’ Professional Conduct, in Particular Ethics, Incompatible Behavior and Impartiality
Consultative Council of European Judges

Opinion No. 3
To the Attention of the Committee of Ministers of the Council of Europe

On the Principles and Rules Governing Judges’ Professional Conduct, in Particular Ethics, Incompatible Behavior and Impartiality

19 November 2002

1. The Consultative Council of European Judges (CCJE) drafted this opinion on the basis of replies by the Member States to a questionnaire and texts drawn up by the CCJE Working Party and the specialist of the CCJE on this topic, Mr Denis SALAS (France).

2. The present opinion makes reference to CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, particularly paragraphs 13, 59, 60 and 71.

3. In preparing this opinion, the CCJE took into account a number of other documents, in particular:

   - the United Nations "Basic principles on the independence of the judiciary" (1985);
   - Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges;
   - the European Charter on the Statute for Judges (1998) (DAJ/DOC(98) 23);
   - the Code of judicial conduct, the Bangalore draft.¹

4. The present opinion covers two main areas:

   - the principles and rules governing judges’ professional conduct, based on determination of ethical principles, which must meet very high standards and may be incorporated in a statement of standards of professional conduct drawn up by the judges themselves;

   - the principles and procedures governing criminal, civil and disciplinary liability of judges.

¹ This has since been revised in November 2002, to become The Bangalore Principles of Judicial Conduct. The CCJE did not have these Principles before it. The Explanatory Note to them acknowledges the input of the CCJE’s Working Party in June 2002.
5. The CCJE questioned, in this context, whether existing rules and principles were in all respects consistent with the independence and impartiality of tribunals required by the European Convention on Human Rights.

6. The CCJE therefore sought to answer the following questions:

- What standards of conduct should apply to judges?
- How should standards of conduct be formulated?
- What if any criminal, civil and disciplinary liability should apply to judges?

7. The CCJE believes that answers to these questions will contribute to the implementation of the framework global action plan for judges in Europe, especially the priorities relating to the rights and responsibilities of judges, professional conduct and ethics (see doc. CCJE (2001) 24, Appendix A, part III B), and refers in this context its conclusions in paragraphs 49, 50, 75, 76 and 77 below.

A. Standards of Judicial Conduct

8. The ethical aspects of judges’ conduct need to be discussed for various reasons. The methods used in the settlement of disputes should always inspire confidence. The powers entrusted to judges are strictly linked to the values of justice, truth and freedom. The standards of conduct applying to judges are the corollary of these values and a precondition for confidence in the administration of justice.

9. Confidence in the justice system is all the more important in view of the increasing globalization of disputes and the wide circulation of judgments. Further, in a State governed by the rule of law, the public is entitled to expect general principles, compatible with the notion of a fair trial and guaranteeing fundamental rights, to be set out. The obligations incumbent on judges have been put in place in order to guarantee their impartiality and the effectiveness of their action.

1) What standards of conduct should apply to judges?

10. Any analysis of the rules governing the professional demands applicable to judges should include consideration of the underlying principles and the objectives pursued.

11. Whatever methods are used to recruit and train them and however broad their mandate, judges are entrusted with powers and operate in spheres which affect the very fabric of people's lives. A recent research report points out that, of all the public authorities, it is probably the judiciary which has changed the most in the European countries. In recent years, democratic societies have been placing increasing demands on their judicial systems. The increasing pluralism of our societies leads each group to seek recognition or protection which it does not always receive. Whilst the architecture of democracies has been profoundly affected, national variations remain marked. It is a truism that the East European countries that are emerging from authoritarian regimes see law and justice as providing the legitimacy essential for the

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reconstruction of democracy. There more than elsewhere, the judicial system is asserting itself in relation to other public authorities through its function of judicial supervision.

12. The powers entrusted to judges are subject not only to domestic law, an expression of the will of the nation, but also to the principles of international law and justice as recognized in modern democratic societies.

13. The purpose for which these powers are entrusted to judges is to enable them to administer justice, by applying the law, and ensuring that every person enjoys the rights and/or assets that are legally theirs and of which they have been or may be unfairly deprived.

14. This aim is expressed in Article 6 of the European Convention on Human Rights which, speaking purely from the point of view of users of the judicial system, states that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Far from suggesting that judges are all-powerful, the Convention highlights the safeguards that are in place for persons on trial and sets out the principles on which the judge’s duties are founded: independence and impartiality.

15. In recent years, there has been some recognition of the need for increased assurances of judicial independence and impartiality; independent bodies have been set up to protect the judiciary from partisan interference; the significance of the European Convention on Human Rights has been developed and felt through the case-law of the European Court in Strasbourg and national courts.

16. Independence of the judge is an essential principle and is the right of the citizens of each State, including its judges. It has both an institutional and an individual aspect. The modern democratic State should be founded on the separation of powers. Each individual judge should do everything to uphold judicial independence at both the institutional and the individual level. The rationale of such independence has been discussed in detail in the Opinion N 1 (2001) of the CCJE, paragraphs 10-13. It is, as there stated, inextricably complemented by and the pre-condition of the impartiality of the judge, which is essential to the credibility of the judicial system and the confidence that it should inspire in a democratic society.

17. Article 2 of the "Basic principles on the independence of the judiciary" drawn up by the United Nations in 1985 stipulates that "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". Under Article 8, 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".

18. In its Recommendation N° R (94) 12 on the independence, efficiency and role of judges (Principle I.2.d), the Committee of Ministers of the Council of Europe stated that "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".

19. The European Charter on the Statute for Judges indicates that the statute for judges should ensure the impartiality which all members of the public are entitled to expect of the courts (paragraph 1.1). The CCJE fully endorses this provision of the Charter.
20. Impartiality is determined by the European Court both according to a *subjective* approach, which takes into account the personal conviction or interest of a particular judge in a given case, and according to an *objective* test, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.³

21. Judges should, in all circumstances, act impartially, to ensure that there can be no legitimate reason for citizens to suspect any partiality. In this regard, impartiality should be apparent in the exercise of both the judge’s judicial functions and his or her other activities.

### a. Impartiality and conduct of judges in the exercise of their judicial functions

22. Public confidence in and respect for the judiciary are the guarantees of the effectiveness of the judicial system: the conduct of judges in their professional activities is understandably seen by members of the public as essential to the credibility of the courts.

23. Judges should therefore discharge their duties without any favouritism, display of prejudice or bias. They should not reach their decisions by taking into consideration anything which falls outside the application of the rules of law. As long as they are dealing with a case or could be required to do so, they should not consciously make any observations which could reasonably suggest some degree of pre-judgment of the resolution of the dispute or which could influence the fairness of the proceedings. They should show the consideration due to all persons (parties, witnesses, counsel, for example) with no distinction based on unlawful grounds or incompatible with the appropriate discharge of their functions. They should also ensure that their professional competence is evident in the discharge of their duties.

24. Judges should also discharge their functions with due respect for the principle of equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring that each receives a fair hearing.

25. The effectiveness of the judicial system also requires judges to have a high degree of professional awareness. They should ensure that they maintain a high degree of professional competence through basic and further training, providing them with the appropriate qualifications.

26. Judges must also fulfill their functions with diligence and reasonable despatch. For this, it is of course necessary that they should be provided with proper facilities, equipment and assistance. So provided, judges should both be mindful of and be able to perform their obligations under Article 6.1 of the European Convention on Human Rights to deliver judgment within a reasonable time.

### b. Impartiality and extra-judicial conduct of judges

27. Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. Moreover, as citizens, judges enjoy the fundamental rights and freedoms protected, in particular, by the European

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Convention on Human Rights (freedom of opinion, religious freedom, etc). They should therefore remain generally free to engage in the extra-professional activities of their choice.

28. However, such activities may jeopardise their impartiality or sometimes even their independence. A reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In the last analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality.

29. Judges should conduct themselves in a respectable way in their private life. In view of the cultural diversity of the member states of the Council of Europe and the constant evolution in moral values, the standards applying to judges’ behaviour in their private lives cannot be laid down too precisely. The CCJE encourages the establishment within the judiciary of one or more bodies or persons having a consultative and advisory role and available to judges whenever they have some uncertainty as to whether a given activity in the private sphere is compatible with their status of judge. The presence of such bodies or persons could encourage discussion within the judiciary on the content and significance of ethical rules. To take just two possibilities, such bodies or persons could be established under the aegis of the Supreme Court or judges' associations. They should in any event be separate from and pursue different objectives to existing bodies responsible for imposing disciplinary sanctions.

30. Judges' participation in political activities poses some major problems. Of course, judges remain citizens and should be allowed to exercise the political rights enjoyed by all citizens. However, in view of the right to a fair trial and legitimate public expectations, judges should show restraint in the exercise of public political activity. Some States have included this principle in their disciplinary rules and sanction any conduct which conflicts with the obligation of judges to exercise reserve. They have also expressly stated that a judge's duties are incompatible with certain political mandates (in the national parliament, European Parliament or local council), sometimes even prohibiting judges' spouses from taking up such positions.

31. More generally, it is necessary to consider the participation of judges in public debates of a political nature. In order to preserve public confidence in the judicial system, judges should not expose themselves to political attacks that are incompatible with the neutrality required by the judiciary.

32. From reading the replies to the questionnaire, it seems that in some States a restrictive view is taken of judges' involvement in politics.

33. The discussions within the CCJE have shown the need to strike a balance between the judges’ freedom of opinion and expression and the requirement of neutrality. It is therefore necessary for judges, even though their membership of a political party or their participation in public debate on the major problems of society cannot be proscribed, to refrain at least from any political activity liable to compromise their independence or jeopardise the appearance of impartiality.

34. However, judges should be allowed to participate in certain debates concerning national judicial policy. They should be able to be consulted and play an active part in the preparation of legislation concerning their statute and, more generally, the functioning of the
judicial system. This subject also raises the question of whether judges should be allowed to join trade unions. Under their freedom of expression and opinion, judges may exercise the right to join trade unions (freedom of association), although restrictions may be placed on the right to strike.

35. Working in a different field offers judges an opportunity to broaden their horizons and gives them an awareness of problems in society which supplements the knowledge acquired from the exercise of their profession. In contrast, it entails some not inconsiderable risks: it could be viewed as contrary to the separation of powers, and could also weaken the public view of the independence and impartiality of judges.

36. The question of judges’ involvement in a certain governmental activities, such as service in the private offices of a minister (cabinet ministériel), poses particular problems. There is nothing to prevent a judge from exercising functions in an administrative department of a ministry (for example a civil or criminal legislation department in the Ministry of Justice); however, the matter is more delicate with regard to a judge who becomes part of the staff of a minister’s private office. Ministers are perfectly entitled to appoint whomsoever they wish to work in their private office but, as the minister's close collaborators, such staff participate to a certain extent in the minister’s political activities. In such circumstances, before a judge enters into service in a minister's private office, an opinion should ideally be obtained from the independent organ responsible for the appointment of judges, so that this body could set out the rules of conduct applicable in each individual case.

c. Impartiality and other professional activities of judges 4

37. The specific nature of the judicial function and the need to maintain the dignity of the office and protect judges from all kinds of pressures mean that judges should behave in such a way as to avoid conflicts of interest or abuses of power. This requires judges to refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner. In some States, incompatibilities with the function of judge are clearly defined by the judges' statute and members of the judiciary are forbidden from carrying out any professional or paid activity. Exceptions are made for educational, research, scientific, literary or artistic activities.

38. Different countries have dealt with incompatibilities to varying effects (a brief summary is annexed) and by various procedures, though in each case with the general objective of avoiding erecting any insurmountable barrier between judges and society.

39. The CCJE considers that rules of professional conduct should require judges to avoid any activities liable to compromise the dignity of their office and to maintain public confidence in the judicial system by minimising the risk of conflicts of interest. To this end, they should refrain from any supplementary professional activity that would restrict their independence and jeopardise their impartiality. In this context, the CCJE endorses the provision of the European Charter on the Statute for Judges under which judges' freedom to carry out activities outside their judicial mandate "may not be limited except in so far as such outside activities are

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4 For a detailed analysis of incompatibilities, see the Communication by Jean-Pierre Atthenont, presented at the seminar organised by the Council of Europe on the statute for judges (Bucharest, 19-21 March 1997) and the Communication by Pierre Cornu presented at a seminar organised by the Council of Europe on the statute for judges (Chisinau, 18-19 September 1997).
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" (para. 4.2). The European Charter also recognises the right of judges to join professional organisations and a right of expression (para. 1.7) in order to avoid "excessive rigidity" which might set up barriers between society and the judges themselves (para. 4.3). It is however essential that judges continue to devote the most of their working time to their role as judges, including associated activities, and not be tempted to devote excessive attention to extra-judicial activities. There is obviously a heightened risk of excessive attention being devoted to such activities, if they are permitted for reward. The precise line between what is permitted and not permitted has however to be drawn on a country by country basis, and there is a role here also for such a body or person as recommended in paragraph 29 above.

d. Impartiality and judges' relations with the media

40. There has been a general trend towards greater media attention focused on judicial matters, especially in the criminal law field, and in particular in certain west European countries. Bearing in mind the links which may be forged between judges and the media, there is a danger that the way judges conduct themselves could be influenced by journalists. The CCJE points out in this connection that in its Opinion No. 1 (2001) it stated that, while the freedom of the press was a pre-eminent principle, the judicial process had to be protected from undue external influence. Accordingly, judges have to show circumspection in their relations with the press and be able to maintain their independence and impartiality, refraining from any personal exploitation of any relations with journalists and any unjustified comments on the cases they are dealing with. The right of the public to information is nevertheless a fundamental principle resulting from Article 10 of the European Convention on Human Rights. It implies that the judge answers the legitimate expectations of the citizens by clearly motivated decisions. Judges should also be free to prepare a summary or communiqué setting up the tenor or clarifying the significance of their judgments for the public. Besides, for the countries where the judges are involved in criminal investigations, it is advisable for them to reconcile the necessary restraint relating to the cases they are dealing with, with the right to information. Only under such conditions can judges freely fulfill their role, without fear of media pressure. The CCJE has noted with interest the practice in force in certain countries of appointing a judge with communication responsibilities or a spokesperson to deal with the press on subjects of interest to the public.

2) How should standards of conduct be formulated?

41. Continental judicial tradition strongly supports the idea of codification. Several countries have already established codes of conduct in the public sector (police), in regulated professions (solicitors, doctors) and in the private sector (press). Codes of ethics have also recently been introduced for judges, particularly in East European countries, following the example of the United States.

42. The oldest is the Italian "Ethical Code" adopted on 7 May 1994 by the Italian Judges' Association, a professional organisation of the judiciary. The word “code” is inappropriate, since it consists of 14 articles which cover the conduct of judges (including presidents of courts) in its entirety and includes public prosecutors. It is clear that the code does not consist of disciplinary

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5 It covers relations with individuals, the duty of competence, the use of public resources, the use of professional information, relations with the press, membership of associations, the image of impartiality and independence,
or criminal rules, but is a self-regulatory instrument generated by the judiciary itself. Article 1 sets out the general principle: "In social life, the judge must behave with dignity and propriety and remain attentive to the public interest. Within the framework of his functions and in each professional act he must be inspired by the values of personal disinterest, independence and impartiality".

43. Other countries, such as Estonia, Lithuania, Ukraine, Moldova, Slovenia, the Czech Republic and Slovakia, have a “judicial code of ethics” or “principles of conduct” adopted by representative assemblies of judges and distinct from disciplinary rules.

44. Codes of conduct have some important benefits: firstly, they help judges to resolve questions of professional ethics, giving them autonomy in their decision-making and guaranteeing their independence from other authorities. Secondly, they inform the public about the standards of conduct it is entitled to expect from judges. Thirdly, they contribute to give the public assurance that justice is administrated independently and impartially.

45. However, the CCJE points out that independence and impartiality cannot be protected solely by principles of conduct and that numerous statutory and procedural rules should also play a part. Standards of professional conduct are different from statutory and disciplinary rules. They express the profession’s ability to reflect its function in values matching public expectations by way of counterpart to the powers conferred on it. These are self-regulatory standards which involve recognising that the application of the law is not a mechanical exercise, involves real discretionary power and places judges in a relationship of responsibility to themselves and to citizens.

46. Codes of professional conduct also create a number of problems. For example, they can give the impression that they contain all the rules and that anything not prohibited must be admissible. They tend to oversimplify situations and, finally, they create the impression that standards of conduct are fixed for a certain period of time, whereas in fact they are constantly evolving. The CCJE suggests that it is desirable to prepare and speak of a “statement of standards of professional conduct”, rather than a code.

47. The CCJE considers that the preparation of such statements is to be encouraged in each country, even though they are not the only way of disseminating rules of professional conduct, since:

- appropriate basic and further training should play a part in the preparation and dissemination of rules of professional conduct;⁶

- in States where they exist, judicial inspectorates, on the basis of their observations of judges' behaviour, could contribute to the development of ethical thinking; their views could be made known through their annual reports;

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⁶ In his summary report, presented following the first meeting of the Lisbon Network, Daniel Ludet stressed that training should offer a link and encourage discussion of judges' professional practices and the ethical principles on which they are based (see Training of judges and prosecutors in matters relating to their professional obligations and ethics. 1st meeting of the members of the network for the exchange of information on the training of judges and prosecutors, Council of Europe Publishing).
Appendix F—CCJE Opinion No. 3 on the Principles and Rules Governing Judges’ Conduct

- through its decisions, the independent authority described in the European Charter on the Statute for Judges, if it is involved in disciplinary proceedings, outlines judges’ duties and obligations; if these decisions were published in an appropriate form, awareness of the values underlying them could be raised more effectively;

- high-level groups, consisting of representatives of different interests involved in the administration of justice, could be set up to consider ethical issues and their conclusions disseminated;

- professional associations should act as forums for the discussion of judges' responsibilities and deontology; they should provide wide dissemination of rules of conduct within judicial circles.

48. The CCJE would like to stress that, in order to provide the necessary protection of judges’ independence, any statement of standards of professional conduct should be based on two fundamental principles:

i) firstly, it should address basic principles of professional conduct. It should recognise the general impossibility of compiling complete lists of pre-determined activities which judges are forbidden from pursuing; the principles set out should serve as self-regulatory instruments for judges, i.e. general rules that guide their activities. Further, although there is both an overlap and an interplay, principles of conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not of itself constitute a disciplinary infringement or a civil or criminal offence;

ii) secondly, principles of professional conduct should be drawn up by the judges themselves. They should be self-regulatory instruments generated by the judiciary itself, enabling the judicial authority to acquire legitimacy by operating within a framework of generally accepted ethical standards. Broad consultation should be organised, possibly under the aegis of a person or body as stated in paragraph 29, which could also be responsible for explaining and interpreting the statement of standards of professional conduct.

3) Conclusions on the standards of conduct

49. The CCJE is of the opinion that:

i) judges should be guided in their activities by principles of professional conduct,

ii) such principles should offer judges guidelines on how to proceed, thereby enabling them to overcome the difficulties they are faced with as regards their independence and impartiality,

iii) the said principles should be drawn up by the judges themselves and be totally separate from the judges’ disciplinary system,

iv) it is desirable to establish in each country one or more bodies or persons within the judiciary to advise judges confronted with a problem related to professional ethics or compatibility of non judicial activities with their status.
50. As regards the rules of conduct of every judge, the CCJE is of the opinion that:

i) each individual judge should do everything to uphold judicial independence at both the institutional and the individual level,

ii) judges should behave with integrity in office and in their private lives,

iii) they should at all times adopt an approach which both is and appears impartial,

iv) they should discharge their duties without favouritism and without actual or apparent prejudice or bias,

v) their decisions should be reached by taking into account all considerations material to the application of the relevant rules of law, and excluding from account all immaterial considerations,

vi) they should show the consideration due to all persons taking part in the judicial proceedings or affected by these proceedings,

vii) they should discharge their duties with due respect for the equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring each a fair hearing,

viii) they should show circumspection in their relations with the media, maintain their independence and impartiality by refraining from any personal exploitation of any relations with the media and from making any unjustified comments on the cases they are dealing with,

ix) they should ensure they maintain a high degree of professional competence,

x) they should have a high degree of professional awareness and be subject to an obligation of diligence in order to comply with the requirement to deliver their judgments in a reasonable time,

xi) they should devote the most of their working time to their judicial functions, including associated activities,

xii) they should refrain from any political activity which could compromise their independence and cause detriment to their image of impartiality.

B. Criminal, Civil and Disciplinary Liability of Judges

4) What criminal, civil and disciplinary liability should apply to judges?

51. The corollary of the powers and the trust conferred by society upon judges is that there should be some means of holding judges responsible, and even removing them from office, in cases of misbehaviour so gross as to justify such a course. The need for caution in the recognition of any such liability arises from the need to maintain judicial independence and
freedom from undue pressure. Against this background, the CCJE considers in turn the topics of criminal, civil and disciplinary liability. In practice, it is the potential disciplinary liability of judges which is most important.

a. Criminal liability

52. Judges who in the conduct of their office commit what would in any circumstances be regarded as crimes (e.g. accept bribes) cannot claim immunity from ordinary criminal process. The answers to questionnaire show that in some countries even well-intentioned judicial failings could constitute crimes. Thus, in Sweden and Austria judges (being assimilated to other public functionaries) can be punished (e.g. by fine) in some cases of gross negligence (e.g. involving putting or keeping someone in prison for too long).

53. Nevertheless, while current practice does not therefore entirely exclude criminal liability on the part of judges for unintentional failings in the exercise of their functions, the CCJE does not regard the introduction of such liability as either generally acceptable or to be encouraged. A judge should not have to operate under the threat of a financial penalty, still less imprisonment, the presence of which may, however sub-consciously, affect his judgment.

54. The vexatious pursuit of criminal proceedings against a judge whom a litigant dislikes has become common in some European states. The CCJE considers that in countries where a criminal investigation or proceedings can be started at the instigation of a private individual, there should be a mechanism for preventing or stopping such investigation or proceedings against a judge relating to the purported performance of his or her office where there is no proper case for suggesting that any criminal liability exists on the part of the judge.

b. Civil liability

55. Similar considerations to those identified in paragraph 53 apply to the imposition on judges personally of civil liability for the consequences of their wrong decisions or for other failings (e.g. excessive delay). As a general principle, judges personally should enjoy absolute freedom from liability in respect of claims made directly against them relating to their exercise in good faith of their functions. Judicial errors, whether in respect of jurisdiction or procedure, in ascertaining or applying the law or in evaluating evidence, should be dealt with by an appeal; other judicial failings which cannot be rectified in this way (including e.g. excessive delay) should, at most, lead to a claim by the dissatisfied litigant against the State. That the state may, in some circumstances, be liable under the European Convention of Human Rights, to compensate a litigant, is a different matter, with which this opinion is not directly concerned.

56. There are however European countries, in which judges may incur civil liability for grossly wrong decisions or other gross failings, particularly at the instance of the state, after the dissatisfied litigant has established a right to compensation against the state. Thus, for example, in the Czech Republic the state may be held liable for damages caused by a judge's illegal decision or incorrect judicial action, but may claim recourse from the judge if and after the judge's misconduct has been established in criminal or disciplinary proceedings. In Italy, the state may, under certain conditions, claim to be reimbursed by a judge who has rendered it liable by

7 Merely because the State has been held liable for excessive delay, it by no means follows, of course, that any individual judge is at fault. The CCJE repeats what it said in paragraph 27 above.
either wilful deceit or “gross negligence”, subject in the latter case to a potential limitation of liability.

57. The European Charter on the statute for judges contemplates the possibility of recourse proceedings of this nature in paragraph 5.2 of its text - with the safeguard that prior agreement should obtained from an independent authority with substantial judicial representation, such as that commended in paragraph 43 of the CCJE’s opinion no. 1 (2001). The commentary to the Charter emphasises in its paragraph 5.2 the need to restrict judges’ civil liability to (a) reimbursing the state for (b) “gross and inexcusable negligence” by way of (c) legal proceedings (d) requiring the prior agreement of such an independent authority. The CCJE endorses all these points, and goes further. The application of concepts such as gross or inexcusable negligence is often difficult. If there was any potential for a recourse action by the state, the judge would be bound to have to become closely concerned at the stage when a claim was made against the state. The CCJE’s conclusion is that it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of willful default.

c. Disciplinary liability

58. All legal systems need some form of disciplinary system, although it is evident from the answers given by different member states to the questionnaires that the need is much more directly felt in some, as opposed to other, member states. There is in this connection a basic distinction between common- law countries, with smaller professional judiciaries appointed from the ranks of experienced practitioners, and civil law countries with larger and on average younger, career judiciaries.

59. The questions which arise are:

i) What conduct is it that should render a judge liable to disciplinary proceedings?

ii) By whom and how should such proceedings be initiated?

iii) By whom and how should they be determined?

iv) What sanctions should be available for misconduct established in disciplinary proceedings?

60. As to question (i), the first point which the CCJE identifies (repeating in substance a point made earlier in this opinion) is that it is incorrect to correlate breaches of proper professional standards with misconduct giving rise potentially to disciplinary sanctions. Professional standards, which have been the subject of the first part of this opinion, represent best practice, which all judges should aim to develop and towards which all judges should aspire. It would discourage the future development of such standards and misunderstand their purpose to equate them with misconduct justifying disciplinary proceedings. In order to justify disciplinary proceedings, misconduct must be serious and flagrant, in a way which cannot be posited simply because there has been a failure to observe professional standards set out in guidelines such as those discussed in the first part of this opinion.⁸

⁸ It was for these reasons that the CCJE Working Party, during and after its meeting with the United Nations Commissioner for Human Rights on 18th June 2002, qualified its otherwise substantially positive attitude to the
61. This is not to say that breach of the professional standards identified in this opinion may not be of considerable relevance, where it is alleged that there has been misconduct sufficient to justify and require disciplinary sanction. Some of the answers to questionnaires recognise this explicitly: for example, professional standards are described as having "a certain authority" in disciplinary proceedings in Lithuania and as constituting a way "of helping the judge hearing disciplinary proceedings by illuminating the provisions of the law on judges" in Estonia. They have also been used in disciplinary proceedings in Moldova. (On the other hand, the Ukrainian and Slovakian answers deny that there is any relationship between the two).

62. In some countries, separate systems have even been established to try to regulate or enforce professional standards. In Slovenia, failure to observe such standards may attract a sanction before a "Court of Honour" within the Judges' Association, and not before the judges' disciplinary body. In the Czech Republic, in a particularly serious situation of non-observance of the rules of professional conduct, a judge may be excluded from the "Judges' Union", which is the source of these principles.

63. The second point which the CCJE identifies is that it is for each State to specify by law what conduct may give rise to disciplinary action. The CCJE notes that in some countries attempts have been made to specify in detail all conduct that might give grounds for disciplinary proceedings leading to some form of sanction. Thus, the Turkish law on Judges and Prosecutors specifies gradations of offence (including for example staying away from work without excuse for various lengths of period) with matching gradations of sanction, ranging from a warning, through condemnation [i.e. reprimand], various effects on promotion to transfer and finally dismissal. Similarly, a recent 2002 law in Slovenia seeks to give effect to the general principle nulla poena sine lege by specifying 27 categories of disciplinary offence. It is, however, very noticeable in all such attempts that, ultimately, they all resort to general “catch-all” formulations which raise questions of judgment and degree. The CCJE does not itself consider that it is necessary (either by virtue of the principle nulla poena sine lege or on any other basis) or even possible to seek to specify in precise or detailed terms at a European level the nature of all misconduct that could lead to disciplinary proceedings and sanctions. The essence of disciplinary proceedings lies in conduct fundamentally contrary to that to be expected of a professional in the position of the person who has allegedly misconducted him or herself.

64. At first sight, Principle VI.2 of Recommendation No. R (94) 12 might be thought to suggest that precise grounds for disciplinary proceedings should always “be defined” in advance “in precise terms by the law”. The CCJE fully accepts that precise reasons must be given for any disciplinary action, as and when it is proposed to be or is brought. But, as it has said, it does not conceive it to be necessary or even possible at the European level to seek to define all such potential reasons in advance in other terms than the general formulations currently adopted in most European countries. In that respect therefore, the CCJE has concluded that the aim stated in paragraph 60 c) of its Opinion No. 1 (2001) cannot be pursued at a European level.

65. Further definition by individual member States by law of the precise reasons for disciplinary action as recommended by Recommended No. R (94) 12 appears, however, to be

Bangalore Code in its present draft form by disagreeing with the direct link which it drew between the principles of conduct which it stated and the subjects of complaints and discipline (see paragraph 2(iii) of Appendix V, doc. CCJEGT (2002) 7): see the CCJE-GT's comments No. 1 (2002) on the Bangalore draft.
desirable. At present, the grounds for disciplinary action are usually stated in terms of great
generality.

66. The CCJE next considers question (ii): by whom and how should disciplinary
proceedings be initiated? Disciplinary proceedings are in some countries brought by the Ministry
of Justice, in others they are instigated by or in conjunction with certain judges or councils of
judges or prosecutors, such as the First President of the Court of Appeal in France or the
General Public Prosecutor in Italy. In England, the initiator is the Lord Chancellor, but he has
agreed only to initiate disciplinary action with the concurrence of the Lord Chief Justice.

67. An important question is what if any steps can be taken by persons alleging that they
have suffered by reason of a judge's professional error. Such persons must have the right to
bring any complaint they have to the person or body responsible for initiating disciplinary action.
But they cannot have a right themselves to initiate or insist upon disciplinary action. There must
be a filter, or judges could often find themselves facing disciplinary proceedings, brought at the
instance of disappointed litigants.

68. The CCJE considers that the procedures leading to the initiation of disciplinary
action need greater formalisation. It proposes that countries should envisage introducing a
specific body or person in each country with responsibility for receiving complaints, for
obtaining the representations of the judge concerned upon them and for deciding in their light
whether or not there is a sufficient case against the judge to call for the initiation of disciplinary
action, in which case it would pass the matter to the disciplinary authority.

69. The next question (iii) is: by whom and how should disciplinary proceedings be
determined? A whole section of the United Nations Basic Principles is devoted to discipline,
suspension and removal. Article 17 recognises judges' "right to a fair hearing". Under Article 19,
"all disciplinary (...) proceedings shall be determined in accordance with established standards of
judicial conduct". Finally, Article 20 sets out the principle that "decisions in disciplinary,
suspension or removal proceedings should be subject to an independent review". At the
European level, guidance is provided in Principle VI of Recommendation No. R (94) 12, which
recommends that disciplinary measures should be dealt with by "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" and that judges should in this connection benefit, at the least, by
protections equivalent to those afforded under Article 6.1 of the Convention on Human Rights.
Further, the CCJE emphasises in this context that disciplinary measures include any measures
adversely affecting a judge's status or career, including transfer of court, loss of promotion rights
or pay.

70. The replies to the questionnaire show that, in some countries, discipline is ensured by
courts specialising in cases of this type: the disciplinary committee of the Supreme Court
(Estonia, Slovenia - where each level is represented). In Ukraine, there is a committee including
judges of the same level of jurisdiction as the judge concerned. In Slovakia, there are now two
tiers of committee, one of three judges, the second of five Supreme Court judges. In Lithuania,
there is a committee of judges from the various tiers of general jurisdiction and administrative
courts. In some countries, judgment is given by a Judicial Council, sitting as a disciplinary court
(Moldova, France, Portugal).9

9 In England, the Lord Chancellor is responsible for initiating and deciding disciplinary action. By agreement
71. The CCJE has already expressed the view that disciplinary proceedings against any judge should only be determined by an independent authority (or “tribunal”) operating procedures which guarantee full rights of defence - see para. 60(b) of CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges. It also considers that the body responsible for appointing such a tribunal can and should be the independent body (with substantial judicial representation chosen democratically by other judges) which, as the CCJE advocated in paragraph 46 of its first Opinion, should generally be responsible for appointing judges. That in no way excludes the inclusion in the membership of a disciplinary tribunal of persons other than judges (thus averting the risk of corporatism), always provided that such other persons are not members of the legislature, government or administration.

72. In some countries, the initial disciplinary body is the highest judicial body (the Supreme Court). The CCJE considers that the arrangements regarding disciplinary proceedings in each country should be such as to allow an appeal from the initial disciplinary body (whether that is itself an authority, tribunal or court) to a court.

73. The final question (iv) is: what sanctions should be available for misconduct established in disciplinary proceedings? The answers to questionnaire reveal wide differences, no doubt reflecting the different legal systems and exigencies. In common law systems, with small, homogeneous judiciaries composed of senior and experienced practitioners, the only formal sanction evidently found to be necessary (and then only as a remote back-up possibility) is the extreme measure of removal, but informal warnings or contact can prove very effective. In other countries, with larger, much more disparate and in some cases less experienced judiciaries, a gradation of formally expressed sanctions is found appropriate, sometimes even including financial penalties.

74. The European Charter on the Statute for Judges (Article 5.1) states that "the scale of sanctions which may be imposed is set out in the statute and must be subject to the principle of proportionality". Some examples of possible sanctions appear in Recommendation No. R (94) 12 (Principle VI.1). The CCJE endorses the need for each jurisdiction to identify the sanctions permissible under its own disciplinary system, and for such sanctions to be, both in principle and in application, proportionate. But it does not consider that any definitive list can or should be attempted at the European level.

5) Conclusions on liability

75. As regards criminal liability, the CCJE considers that:

i) judges should be criminally liable in ordinary law for offences committed outside their judicial office;

disciplinary action is initiated only with the concurrence of the Lord Chief Justice, and thereafter (unless the judge concerned waives this) another judge of appropriate standing, nominated by the Lord Chief Justice, is appointed to investigate the facts and to report, with recommendations. If the Lord Chief Justice concurs the Lord Chancellor may then refer the matter to Parliament (in the case of higher tier judges) or remove a lower tier judge from office, or take or authorise any other disciplinary action.
ii) criminal liability should not be imposed on judges for unintentional failings in the exercise of their functions.

76. As regards civil liability, the CCJE considers that, bearing in mind the principle of independence:

i) the remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals (whether with or without permission of the court);

ii) any remedy for other failings in the administration of justice (including for example excessive delay) lies only against the state;

iii) it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of willful default.

77. As regards disciplinary liability, the CCJE considers that:

i) in each country the statute or fundamental charter applicable to judges should define, as far as possible in specific terms, the failings that may give rise to disciplinary sanctions as well as the procedures to be followed;

ii) as regard the institution of disciplinary proceedings, countries should envisage introducing a specific body or person with responsibility for receiving complaints, for obtaining the representations of the judge and for considering in their light whether or not there is a sufficient case against the judge to call for the initiation of such proceedings;

iii) any disciplinary proceedings initiated should be determined by an independent authority or tribunal, operating a procedure guaranteeing full rights of defence;

iv) when such authority or tribunal is not itself a court, then its members should be appointed by the independent authority (with substantial judicial representation chosen democratically by other judges) advocated by the CCJE in paragraph 46 of its Opinion N° 1 (2001);

v) the arrangements regarding disciplinary proceedings in each country should be such as to allow an appeal from the initial disciplinary body (whether that is itself an authority, tribunal or court) to a court;

vi) the sanctions available to such authority in a case of a proven misconduct should be defined, as far as possible in specific terms, by the statute or fundamental charter of judges, and should be applied in a proportionate manner.
Appendix G

Republic of Estonia Courts Act
Republic of Estonia

Courts Act

Passed 19 June 2002, RT I 2002, 64, 390

Entered into force 29 July 2002

As amended by the following Acts:
28.06.2004, entered into force 01.03.2005 - RT I 2004, 56, 403;
07.04.2004, entered into force 01.05.2004 - RT I 2004, 27, 176;
29.01.2003, entered into force 15.03.2003 - RT I 2003, 21, 121.

Chapter 1
General Provisions

§ 1. Scope of application of Act

This Act provides the legal bases for courts administration and court service.

§ 2. Administration of justice and independence of court

(1) Justice shall be administered solely by the courts.

(2) No one has the right to interfere with the administration of justice.

(3) Acts which are directed at disturbing the administration of justice are prohibited in courts and in the vicinity thereof.

§ 3. Main guarantees for independence of judges

(1) Judges shall be appointed for life.

(2) Judges may be removed from office only by a court judgment.

(3) Criminal charges against a judge of a court of the first instance and a court of appeal may be brought during their term of office only on the proposal of the Supreme Court en banc with the consent of the President of the Republic.

(4) Criminal charges against a justice of the Supreme Court may be brought during his or her term of office only on the proposal of the Chancellor of Justice with the consent of the majority of the membership of the Riigikogu.

§ 4. Jurisdiction of court

(1) Jurisdiction of a court shall be provided by law.
(2) A case may be transferred from the jurisdiction of one court to the jurisdiction of another court only on the bases and pursuant to the procedure provided by law.

§ 5. Working language of courts

(1) Judicial proceedings and operations procedure in court shall be conducted in Estonian.

(2) The use of another language in judicial proceedings shall be provided by the Codes of procedure.

§ 6. Working hours of court

(1) Judges shall organise their working hours independently. A judge shall perform his or her duties within reasonable time, having regard to the terms for proceedings prescribed by law.

(2) Court sessions shall be held on working days during the period between 9 a.m. and 12 a.m. A court session may continue after such time if the court finds it justified in the interests of administration of justice.

(3) In order to decide the imposition of a punishment for a misdemeanour, or the grant of permission to apply a preventive measure or to take an administrative measure, a court session may also be held at another time.

§ 7. Judicial institution

(1) Courts are administrative agencies of the state.

(2) A court shall have its own budget and a seal bearing the small national coat of arms.

(3) A court shall be registered in the state register of state and local government agencies pursuant to the procedure provided for in the statutes of the register.

§ 8. Court service

(1) Court service is employment in a judicial institution. Judges and court officers are in court service.

(2) The Public Service Act applies to judges (RT I 1995, 16, 228; 1999, 7, 112; 10, 155; 16, 271 and 276; 2000, 25, 144 and 145; 28, 167; 102, 672; 2001, 7, 17 and 18; 17, 78; 19, correction notice; 42, 233; 47, 260; 2002, 21, 117; 62, 377; 110, 656; 2003, 4, 22; 13, 67; 69; 20, 116) only in cases which are not provided for in this Act.

(3) The Public Service Act applies to court officers unless otherwise prescribed by this Act.
Chapter 2
Courts of First Instance

Division 1
County and City Courts

§ 9. County and city courts

(1) County and city courts shall hear civil, criminal and misdemeanour matters as courts of first instance. County and city courts shall also perform other acts the performance of which is placed within the jurisdiction of the courts by law.

(2) The following are county and city courts:

1) Harju County Court;
2) Ida-Viru County Court;
3) Jõgeva County Court;
4) Järva County Court;
5) Lääne County Court;
6) Lääne-Viru County Court;
7) Põlva County Court;
8) Pärnu County Court;
9) Rapla County Court;
10) Saare County Court;
11) Tartu County Court;
12) Valga County Court;
13) Viljandi County Court;
14) Võru County Court;
15) Narva City Court;
16) Tallinn City Court.

(3) County and city courts shall be located in their territorial jurisdiction. The Minister of Justice shall determine the exact location of courts. If necessary, courts may hold court sessions outside the location of the courts.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The structure of county and city courts and the composition of the staff of court officers shall be determined by the director of administration, except in the field related to the performance of the function of administration of justice. In such field, the structure of the court and the composition of the staff of court officers shall be determined by the chairman of the court. In determination of the structure of a court and the composition of the staff of court officers, the provisions of § 43 of this Act shall be taken into consideration.

§ 10. Territorial jurisdiction of county and city courts

(1) The territorial jurisdiction of county and city courts shall be determined by the Minister of Justice.

(2) Courts which adjudicate matters of a particular type without considering the territorial jurisdiction may be provided by law.
§ 11. Number of county and city judges

The number of judges in each county or city court shall be determined by the Minister of Justice after having considered the opinions of the chairman of the county or city court and the chairman of the circuit court in whose territorial jurisdiction the court is located.

§ 12. Chairmen of county or city courts

(1) The chairman of a county or city court shall be appointed from among the judges of the court for five years. The chairman of a court is appointed by the Minister of Justice after having considered the opinion of the full court.

(2) The chairman of a county or city court shall represent and direct the judicial institution within the limits of his or her competence. The chairman of a court is responsible for administration of justice in the court pursuant to the established procedure.

(3) The chairmen of county and city courts shall:

1) organise activities in the area of administration of justice;
2) approve the draft budget of the court prepared by the director of administration;
3) exercise supervisory control prescribed by law;
4) prepare the draft of the training plan of judges and submit it for approval to the full court, organise and monitor compliance with the plan and present a review on compliance with the plan to the full court at least once a year;
5) perform other duties arising from law and the internal rules of the court.

(4) The Minister of Justice may release the chairman of a court prematurely:

1) at the request of the chairman;
2) if the chairman of the court has failed to perform his or her duties wrongfully to a material extent.

(5) In the case specified in clause (2) 4) of this section, the Minister of Justice shall consider the opinion of the full court and the opinion of the chairman of the circuit court in whose territorial jurisdiction the county or city court is located.

(6) In the absence of the chairman of a court, a judge designated by the chairman shall substitute for him or her. If the chairman of a court has not designated an acting chairman, a judge who is senior in office shall substitute for him or her, and where there is equal seniority in office, a judge who is senior in age shall substitute for him or her.

(7) If the chairman of a court is released from the office of judge, he or she shall also be released from the duties of the chairman of a court.

(8) Upon release of the chairman of a court from the duties of the chairman of a court, he or she shall retain the authority of a judge.

(9) No one shall be appointed as chairman of a court for two consecutive terms.
§ 13. Substitution of county and city judges

(1) If there are no judges in a county or city court, the full court of circuit court shall designate a county or city court from among the courts of the territorial jurisdiction of the circuit court which shall administer justice in the territorial jurisdiction of the court during the period when there are no judges.

(2) In the interests of administration of justice, the Minister of Justice may transfer a judge of a court of the first instance or a court of appeal, with the consent of the judge, temporarily to another county or city court after having previously considered the opinion of the chairman of the court where the judge permanently administers justice.

§ 14. Lay judges

The number of lay judges in each county or city court shall be determined by the Minister of Justice after having considered the opinion of the full court of the county or city court.

§ 15. Land registry department

(1) Each county and city court shall comprise a land registry department.

(2) A land register and marital property register shall be maintained in a land registry department.

(3) The Minister of Justice may determine that some county or city courts do not have a land registry department. In such case, the Minister of Justice shall determine which county or city court's land registry department performs the functions related to the maintenance of the register in the territorial jurisdiction of the court which does not have a land registry department.

(4) An assistant judge designated by the director of administration shall be the head of the land registry department. A land registry department shall be comprised of assistant judges and other court officers.

§ 16. Registration department

(1) Each county and city court shall comprise a registration department.

(2) A commercial register, Non-profit Associations and Foundations Register, commercial pledge register and ship register shall be maintained in a registration department.

(3) The Minister of Justice may determine that some county or city courts do not have a registration department. In such case, the Minister of Justice shall determine which county or city court's registration department performs the functions related to the maintenance of the register in the territorial jurisdiction of the court which does not have a registration department.
(4) An assistant judge designated by the director of administration shall be the head of the registration department. A registration department shall be comprised of assistant judges and other court officers.

§ 17. Probation supervision department

(1) Each county and city court shall comprise a probation supervision department.

(2) A probation supervision department shall monitor the behaviour of probationers and the performance of duties imposed on them by a court, and perform other functions provided by law.

(3) The Minister of Justice may determine that some county or city courts do not have a probation supervision department. In such case, the Minister of Justice shall determine which county or city court's probation supervision department performs the functions related to probation supervision in the territorial jurisdiction of the court which does not have a probation supervision department.

(4) A probation supervision department shall be comprised of probation officers and other court officers. The director of administration of a court shall appoint the head of a probation supervision department.

Division 2
Administrative Courts

§ 18. Administrative courts

(1) Administrative courts shall hear administrative matters placed within the jurisdiction thereof as courts of first instance. Administrative courts shall also perform other acts the performance of which is placed within the jurisdiction of the courts by law.

(2) The following are administrative courts:

1) Jõhvi Administrative Court;
2) Pärnu Administrative Court;
3) Tallinn Administrative Court;
4) Tartu Administrative Court.

(3) An administrative court shall be located in the territorial jurisdiction of the administrative court which shall be determined by the Minister of Justice. The Minister of Justice shall determine the exact location of administrative courts. If necessary, a courts may hold a court session outside the location of the court.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The structure of administrative courts and the composition of the staff of court officers shall be determined by the director of administration, except in the field related to the performance of the function of administration of justice. In such field, the structure of the court and the composition of the staff of court officers shall be determined by the chairman of the court. In determination of the structure of a court and the composition of the staff of court officers, the provisions of § 43 of this Act shall be taken into consideration.
§ 19. Number of administrative court judges

The number of judges in each administrative court shall be determined by the Minister of Justice after having considered the opinions of the chairman of the administrative court and the chairman of the circuit court in whose territorial jurisdiction the administrative court is located.

§ 20. Chairmen of administrative courts

(1) The chairman of an administrative court shall be appointed from among the judges of the court for five years. The chairman of a court is appointed by the Minister of Justice after having considered the opinion of the full court.

(2) The chairman of an administrative court shall represent and direct the judicial institution within the limits of his or her competence. The chairman of a court is responsible for administration of justice in the court pursuant to the established procedure.

(3) The chairmen of administrative courts shall:

1) organise activities in the area of administration of justice;
2) approve the draft budget of the court prepared by the director of administration;
3) exercise supervisory control prescribed by law;
4) prepare the draft of the training plan of judges and submit it for approval to the full court, organise and monitor compliance with the plan and present a review on compliance with the plan to the full court at least once a year;
5) perform other duties arising from law and the internal rules of the court.

(4) The Minister of Justice may release the chairman of a court prematurely:

1) at the request of the chairman;
2) if the chairman of the court has failed to perform his or her duties wrongfully to a material extent.

(5) In the case specified in clause (2) 4) of this section, the Minister of Justice shall consider the opinion of the full court and the opinion of the chairman of the circuit court in whose territorial jurisdiction the administrative court is located.

(6) If the chairman of a court is released from the office of judge, he or she shall also be released from the duties of the chairman of a court.

(7) Upon release of the chairman of a court from the duties of the chairman of a court, he or she shall retain the authority of a judge.

(8) In the absence of the chairman of a court, a judge designated by the chairman shall substitute for him or her. If the chairman of a court has not designated an acting chairman, a judge who is senior in office shall substitute for him or her, and where there is equal seniority in office, a judge who is senior in age shall substitute for him or her.

(9) No one shall be appointed as chairman of a court for two consecutive terms.
§ 21. Substitution of administrative court judges

In the interests of administration of justice, the Minister of Justice may transfer a judge of a court of the first instance or a court of appeal, with the consent of the judge, temporarily to an administrative court after having previously considered the opinion of the chairman of the court where the judge permanently administers justice.

Chapter 3
Courts of Appeal

§ 22. Circuit courts

(1) A circuit court is the court of appeal which reviews the decisions of county, city and administrative courts by way of appeal proceedings.

(2) Tallinn Circuit Court, Tartu Circuit Court and Viru Circuit Court are circuit courts.

(3) Harju County Court, Järva County Court, Lääne County Court, Pärnu County Court, Rapla County Court, Saare County Court and Tallinn City Court, Tallinn Administrative Court and Pärnu Administrative Court shall be in the jurisdiction of Tallinn Circuit Court.

(4) Jõgeva County Court, Põlva County Court, Tartu County Court, Valga County Court, Viljandi County Court, Võru County Court, and Tartu Administrative Court, Jõhvi Administrative Court shall be in the jurisdiction of Tartu Circuit Court.

(5) Ida-Viru County Court, Lääne-Viru County Court and Narva City Court shall be in the jurisdiction of Viru Circuit Court.

(6) Tallinn Circuit Court shall be located in Tallinn, Tartu Circuit Court shall be located in Tartu, Viru Circuit Court shall be located in Jõhvi. The Minister of Justice shall determine the exact location of circuit courts.

(7) The structure of circuit courts and the composition of the staff of court officers shall be determined by the director of administration, except in the field related to the performance of the function of administration of justice. In such field, the structure of the court and the composition of the staff of court officers shall be determined by the chairman of the court. In determination of the structure of a court and the composition of the staff of court officers, the provisions of § 43 of this Act shall be taken into consideration.

§ 23. Number of circuit court judges

The Minister of Justice shall determine the number of judges in each circuit court after having considered the opinion of the chairman of the circuit court.
§ 24. Chairmen of circuit courts

(1) The chairman of a circuit court shall be appointed from among the judges of the same court for seven years. The Minister of Justice shall appoint the chairman of a court after having considered the opinion of the full court of the circuit court.

(2) The chairman of a circuit court shall represent and direct the judicial institution within the limits of his or her competence. The chairman of a court is responsible for administration of justice in the court pursuant to the established procedure.

(3) Chairmen of circuit courts shall:

1) organise activities in the area of administration of justice;
2) approve the draft budget of the court prepared by the director of administration;
3) exercise supervisory control prescribed by law;
4) prepare the draft of the training plan of judges and submit it for approval to the full court, organise and monitor compliance with the plan and present a review on compliance with the plan to the full court at least once a year;
5) perform other duties arising from law and the internal rules of the court.

(4) The Minister of Justice may, with the approval of the Supreme Court en banc, release the chairman of a court from office prematurely:

1) at the request of the chairman of the court;
2) if the chairman of the court has failed to perform his or her duties wrongfully to a material extent.

(5) In the case provided for in clause (4) 2) of this section, the Minister of Justice shall consider the opinion of the full court.

(6) If the chairman of a court is released from the office of judge, he or she shall also be released from the duties of the chairman of a court.

(7) Upon release of the chairman of a court from the duties of the chairman of a court, he or she shall retain the authority of a judge.

(8) In the absence of the chairman of a court, a judge designated by the chairman shall substitute for him or her. If the chairman of a court has not designated an acting chairman, a judge who is senior in office shall substitute for him or her, and where there is equal seniority in office, a judge who is senior in age shall substitute for him or her.

(9) No one shall be appointed as chairman of a court for two consecutive terms.

Chapter 4
Supreme Court

§ 25. Supreme Court

(1) The Supreme Court is the highest court in the state.
The Supreme Court shall be located in Tartu.

The number of justices in the Supreme Court shall be nineteen.

§ 26. Jurisdiction of Supreme Court

(1) The Supreme Court shall review decisions by way of cassation proceedings. In the cases and pursuant to the procedure provided by law, the Supreme Court shall review decisions by way of proceedings for revision or proceedings for the correction of court error, and perform other duties arising from law.

(2) Acceptance for proceedings of matters which fall within the jurisdiction of the Supreme Court shall be decided by a panel of at least three members of the Supreme Court on the basis provided for in law regulating judicial procedure. A matter is accepted for proceedings if the hearing thereof is demanded at least by one justice of the Supreme Court.

(3) The Supreme Court shall also be the constitutional review court.

§ 27. Chief Justice of Supreme Court

(1) The Chief Justice of the Supreme Court shall be appointed by the Riigikogu on the proposal of the President of the Republic for nine years.

(2) The Chief Justice of the Supreme Court shall:

1) direct and represent the Supreme Court;
2) make a proposal to the Riigikogu to appoint the justices of the Supreme Court to office;
3) exercise supervisory control prescribed by law;
4) perform other duties arising from law and the internal rules of the court.

(3) Once a year, at the spring session of the Riigikogu, the Chief Justice of the Supreme Court shall present a review to the Riigikogu concerning courts administration, administration of justice and the uniform application of law.

(4) In the absence of the Chief Justice of the Supreme Court or upon the termination of his or her authority as the Chief Justice of the Supreme Court, a justice of the Supreme Court designated by the Chief Justice shall perform the duties of the Chief Justice of the Supreme Court. If the Chief Justice of the Supreme Court has not designated an acting Chief Justice, the chairman of the Chamber specified in § 28 of this Act who is senior in the office of judge shall substitute for him or her, and where there is equal seniority in office, a chairman of a Chamber who is senior in age shall substitute for him or her.

(5) On the proposal of the President of the Republic, the Riigikogu may release the Chief Justice of the Supreme Court prematurely at the request of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall notify the President of the Republic of his or her resignation from office at least four months in advance.

(29.01.2003 entered into force 15.03.2003 - RT I 2003, 21, 121)
(6) If the Chief Justice of the Supreme Court is unable to perform his or her duties for six consecutive months due to illness or for any other reason, the President of the Republic shall file a reasoned request with the Supreme Court to declare by a judgment that the Justice of the Supreme Court is unable to perform his or her duties. A judgment of the Supreme Court en banc shall release the Justice of the Supreme Court from office.

(7) If the Chief Justice of the Supreme Court is released from the office of judge, he or she shall also be released from the duties of the Chief Justice of the Supreme Court.

(8) Upon release of the Chief Justice of the Supreme Court from the duties of the Chief Justice of the Court, he or she shall retain the authority of a justice of the Supreme Court.

(9) No one shall be appointed as Chief Justice of the Supreme Court for two consecutive terms.

§ 28. Civil Chamber, Criminal Chamber and Administrative Chamber of Supreme Court

(1) The Supreme Court shall comprise the Civil Chamber, Criminal Chamber and Administrative Chamber.

(2) Each justice of the Supreme Court shall be a member of one Chamber. The Supreme Court en banc shall decide into which Chamber a justice of the Supreme Court belongs, as well as the procedure and terms for rotation between the Chambers.

3) The Chief Justice of the Supreme Court has the right to involve, pursuant to the procedure prescribed by the internal rules of the Supreme Court, justices from different Chambers in the panel of the Court which hears a matter.

(4) The Supreme Court en banc shall appoint the chairman of a Chamber from among the members of the Chamber.

(5) The chairman of a Chamber shall perform duties arising from the internal rules of the Supreme Court.

§ 29. Constitutional Review Chamber

(1) The Supreme Court shall comprise the Constitutional Review Chamber which is comprised of nine justices of the Supreme Court.

(2) The Chief Justice of the Supreme Court shall be the chairman of the Constitutional Review Chamber. Other members of the Chamber shall be appointed by the Supreme Court en banc.

(3) The internal rules of the Supreme Court shall provide for the term of authority of the members of the Constitutional Review Chamber and the procedure for the substitution of members of the Constitutional Review Chamber.
§ 30. Supreme Court en banc

(1) The Supreme Court shall comprise the Supreme Court en banc, which is comprised of all justices of the Supreme Court.

(2) The Supreme Court en banc shall:

1) review decisions on the bases provided by law;
2) make a proposal to the President of the Republic to appoint a judge to office or release a judge from office;
3) resolve appeals filed against the decisions of the judge’s examination committee;
4) resolve appeals filed against the decisions of the Disciplinary Chamber;
5) decide the commencement of disciplinary proceedings against the Chief Justice of the Supreme Court, and notify the Riigikogu thereof;
6) perform other duties arising from law and the internal rules of the Supreme Court.

(3) The Supreme Court en banc is convened and chaired by the Chief Justice of the Supreme Court. In order to commence disciplinary proceedings against the Chief Justice of the Supreme Court, a justice who is senior in office shall convene and chair the Supreme Court en banc, and where there is equal seniority in office, a justice who is senior in age shall convene and chair the Supreme Court en banc.

(4) The Supreme Court en banc has a quorum if at least eleven justices are present. The judgements of the Supreme Court en banc are adopted by the majority vote of the justices of the Supreme Court who are present. If the votes are divided equally, the Chief Justice of the Supreme Court shall cast the deciding vote.

(5) The Minister of Justice has the right to participate in the Supreme Court en banc, except in case where a court decision being reviewed. The Minister of Justice has the right to speak in the Supreme Court en banc. The Chief Justice of the Supreme Court may also invite to the Supreme Court en banc other persons to whom the Supreme Court en banc may grant the right to speak.

§ 31. Law clerk

(1) A law clerk is an official of the Supreme Court who generalises judicial practice and participates in the preparation of cases for proceeding.

(2) The specific duties of a law clerk shall be determined in the internal rules of the Supreme Court.

(3) A person who has fulfilled an accredited law curriculum of academic studies may be appointed as law clerk.
§ 32. Remuneration for work performed by officers of the Supreme Court

The salaries of the court officers of the Supreme Court, the procedure for payment of additional remuneration, bonuses and benefits shall be determined by the Chief Justice of the Supreme Court within the limits of the budget of the Supreme Court.

§ 33. Internal rules of Supreme Court

(1) The organisation of work of the Supreme Court shall be prescribed in the internal rules of the Supreme Court approved by the Supreme Court en banc.

(2) The internal rules shall not include provisions concerning rules of court procedure.

(3) The internal procedure rules of the Supreme Court shall be established pursuant to the Public Service Act.

§ 34. Register of court decisions

(1) The register of court decisions is maintained in order to collect and systemise decisions of circuit courts and the Supreme Court and make decisions available to courts and the public.

(2) The Chief Justice of the Supreme Court shall establish the register of court decisions as a state agency database with the approval of the Minister of Justice. The Supreme Court shall maintain the register of court decisions and process data contained therein.

(3) The following shall submit data to the register:

1) the Supreme Court which submits the decisions of the Supreme Court;
2) circuit courts which submit the decisions of the circuit courts.

(4) The procedure for the submission of decisions of circuit courts shall be established by a regulation of the Minister of Justice with the approval of the Supreme Court.

Chapter 5
Self-government and Division of Tasks of Judges

§ 35. Full court

(1) Every court shall comprise a full court which is comprised of all the judges of the court.

(2) A full court shall have a quorum if the majority of the judges are present.

(3) A full court is convened by the chairman of the court who is also the presiding judge of the full court.
The decisions of the full court shall be adopted by the majority vote of judges who are present. If the votes are divided equally, the chairman of the court shall cast the deciding vote.

The activities of the Supreme Court en banc is regulated by § 30 of this Act.

§ 36. Jurisdiction of full court

A full court shall:

1) approve the division of tasks plan of judges;
2) provide an opinion to the Minister of Justice on the appointment to office, and in cases provided by law, also on the release from office of the chairman of the court;
3) make recommendations to the chairman of the court concerning the preparation of the draft budget of the court and the use of budget funds, and also on other issues related to the organisation of work;
4) perform other duties arising from law and the internal rules of the court.

§ 37. Division of tasks between judges

(1) The division of tasks between judges of courts of the first instance and courts of appeal shall be prescribed in the division of tasks plan.

(2) Tasks shall be divided between judges on the basis of the following principles:

1) each matter received by the court for hearing shall be divided between judges according to the division of tasks plan;
2) matters shall be divided between judges at random and on bases determined in the division of tasks plan.

(3) The division of tasks plan shall prescribe the procedure for formation of court panels and for the substitution of judges.

(4) The division of tasks plan shall be approved for one calendar year. During a working year, the full court may amend the division of tasks plan only with good reason.

(5) Everyone can access the division of tasks plan in the court office.

§ 38. Court en banc

(1) The Court en banc is comprised of all Estonian judges.

(2) The Court en banc shall be convened every year on the second Friday of February. The extraordinary Court en banc may be convened by the Minister of Justice or the Chief Justice of the Supreme Court.

(3) Court en banc shall:
1) hear reports by the Chief Justice of the Supreme Court and the Minister of Justice concerning the development of the legal and court system;
2) discuss problems of administration of justice and other issues concerning courts and the work of judges;
3) elect, pursuant to subsection 40 (1) of this Act, members and alternate members of the Council for Administration of Courts who are judges;
4) elect five circuit court judges and five judges of courts of first instance to participate in the adjudication of disciplinary matters in the Disciplinary Chamber of the Supreme Court;
5) elect members and alternate members of the judge’s examination committee who are judges;
6) elect members and alternate members of the assistant judge’s examination committee who are judges;
7) elect members and alternate members of the training committee who are judges;
8) elect members and alternate members of the court of honour of the Estonian Bar Association, the advocates’ professional suitability assessment committee, prosecutors’ competition and evaluation committee who are judges;
9) approve the code of ethics of judges.

(4) The Court en banc shall be chaired by the Chief Justice of the Supreme Court unless the Court en banc decides otherwise.

(5) The procedure of the Court en banc shall be established by a majority of votes of the judges participating in the Court en banc.

(6) The Ministry of Justice shall organise the clerical support to the Court en banc.

(7) The materials of the Court en banc shall be published.

Chapter 6
Administration of Courts; Training and Supervisory Control

§ 39. Administration of courts

(1) Courts of the first instance and courts of appeal are administered in co-operation between the Council for Administration of Courts and the Ministry of Justice. Courts shall perform court administration duties if so provided by law.

(2) The Minister of Justice may transfer the court administration duties which fall within his or her competence to a court.

(3) The Minister of Justice has no right of command or disciplinary authority over the judges.

(4) Administration of courts shall ensure:

1) the possibility for independent administration of justice;
2) the working conditions necessary for administration of justice;
3) adequate training of court officers;
4) the availability of administration of justice.

§ 40. Council for Administration of Courts

(1) The Council for Administration of Courts (hereinafter Council) is comprised of the Chief Justice of the Supreme Court, five judges elected by the Court en banc for three years, two members of the Riigikogu, a sworn advocate appointed by the Board of the Bar Association, the Chief Public Prosecutor or a public prosecutor appointed by him or her, and the Chancellor of Justice or a representative appointed by him or her. The Minister of Justice or a representative appointed by him or her shall participate in the Council with the right to speak.

(2) Council sessions shall be convened by the Chief Justice of the Supreme Court or by the Minister of Justice. The person who convenes a session shall also determine the agenda thereof. The Council shall be chaired by the Chief Justice of the Supreme Court.

(3) The Council has a quorum if more than half of its members are present. Decisions of the Council shall be made by a majority vote of the members present. The Council shall approve its rules of procedure at the first session. The Ministry of Justice shall organise the clerical support to the Council.

§ 41. Competence of Council for Administration of Courts

(1) The council grants approval for:

1) the determination of the territorial jurisdiction of courts (subsection 10 (1), subsection 18 (3));
2) the determination of the structure of courts (subsection 9 (4); subsection 18 (4); subsection 22 (7));
3) the determination of the exact location of courts (subsection 9 (3); subsection 18 (3); subsection 22 (6));
4) the determination of the number of judges in courts (§ 11; § 19; § 23);
5) the appointment to office and premature release of chairmen of courts (subsections 12 (1) and (5), subsections 20 (1) and (5); subsections 24 (1) and (5));
6) the determination of the number of lay judges (§14);
7) the determination of the internal rules of courts (subsection 33 (1); subsection 42 (1));
8) the determination of the number of candidates for judicial office (subsection 61 (6));
9) the appointment to office of candidates for judicial office (subsection 61));
10) the payment of special additional remuneration to judges (subsection 76 (3)).

(2) The Council shall provide a preliminary opinion on the principles of the formation and amendment of annual budgets of courts.

(3) The Council shall:
1) provide an opinion on the candidates for a vacant position of a justice of the Supreme Court (subsection 55 (4));
2) provide an opinion on the release of a judge (clauses 99 (1) 4)-8));
3) deliberate, in advance, the review to be presented to the Riigikogu by the Chief Justice of the Supreme Court concerning courts administration, administration of justice and the uniform application of law (subsection 27 (3));
4) discuss other issues at the initiative of the Chief Justice of the Supreme Court or the Minister of Justice.

§ 42. Internal rules of courts

(1) The internal organisation of work of courts of the first instance and courts of appeal shall be prescribed in the internal rules of the courts. The internal rules of a court shall be established by the chairman of the court with the approval of the full court. The internal rules of land registry departments, registration departments, probation supervision departments and court offices of county or city courts shall be established by the Minister of Justice.

(2) The internal rules shall prescribe:

1) the duties of court officers;
2) the duties of the chairman of the court and other judges arising from the organisation of work of the court;
3) the operations procedure of the court;
4) other issues concerning the internal organisation of work of the court.

(3) The internal rules shall not include provisions concerning rules of court procedure.

(4) The internal procedure rules and job descriptions of judicial institutions shall be established pursuant to the Public Service Act.

§ 43. Budget of court

(1) The Minister of Justice shall approve the budgets of courts of the first instance or courts of appeal within two weeks after the state budget is passed as an Act, considering the opinion formulated by the Council for Administration of Courts (subsection 41 (2)).

(2) A budget of a county or city court shall set out the expenditure for the performance of the function of administration of justice separately from the expenditure of the land registry departments, registration departments and probation supervision departments.

(3) During a budgetary year, the Minister of Justice may amend the budget expenditure of a court only with good reason after having considered the opinion of the chairman of the court and pursuant to the principles formulated by the Council for Administration of Courts.

(4) The budget of the Supreme Court shall be passed pursuant to the procedure provided for in the State Budget Act (RT I 1999, 55, 584; 2002, 67, 405; 2003, 13, 69).
§ 44. Training of judges

(1) The Training Council is responsible for the training of judges. The term of the authority of members of the Training Council shall be three years. The Training Council shall be comprised of two judges of a court of the first instance, two judges of a court of appeal, two justices of the Supreme Court, and a representative of the Prosecutor’s Office, the Minister of Justice and the University of Tartu. The Training Council shall approve its rules of procedure and elect the chairman. Support services shall be provided to the Training Council by a foundation established for the training of judges (hereinafter foundation).

(2) Training of judges shall be based on the strategies for training of judges, annual training programs and the program for judge’s examination to be approved by the Training Council. The foundation shall ascertain the training needs of judges, prepare the strategies for training, annual training programs and the program for judge’s examination (§ 66), analyse training results, ensure the preparation of necessary study and methodological materials, assist in the preparation and selection of training providers, and prepare an annual review concerning the training of judges for the Training Council. The foundation shall submit an annual training program to the Training Council not later than by 15 August. Taking into consideration the training needs of judges and the state budget funds allocated for the training of judges, the Training Council shall approve the training program for judges not later than by 1 October.

(3) The Training Council shall annually determine a part of the training program, the completion of which to the extent determined by the Training Council is mandatory to judges.

(4) Judges participate in training on the basis of an annual training plan. The full court of a court shall approve the training plan for the court. Records of participation in training shall be kept concerning each judge in a court pursuant to the internal rules of the court. The chairman of a court shall monitor compliance with the training plan.

(5) The funds intended for the preparation of the training program of judges and organisation of training shall be allocated in the budget of the Supreme Court.

§ 45. Supervisory control

(1) Supervisory control over the administration of justice pursuant to the requirements and over the performance of duties by judges shall be exercised by the chairman of the court. The chairman of a court has the right to demand explanations from judges, inspect compliance with the operations procedure and collect other necessary information. Chairmen of circuit courts shall also exercise supervisory control over judges of the courts of the first instance.

(2) The Minister of Justice shall exercise supervisory control over the performance of the duties by the chairmen of courts of first instance and chairmen of courts of appeal. The Minister of Justice may demand explanations from the chairman of a court concerning the administration of justice in a court pursuant to the requirements.

(3) Supervisory control over the area of activity of land registry departments, registration departments and probation supervision departments shall be exercised by the directors of administration and the Minister of Justice. The Minister of Justice shall exercise supervisory control over directors of administration. The Minister of Justice has the right to
demand explanations from the employees of the departments mentioned above and from the
directors of administration, to inspect compliance with the operations procedure and the budget
and to collect other necessary information. The Minister of Justice shall establish the procedure
for supervisory control.

§ 46. Reporting of courts

Courts of the first instance and courts of appeal shall submit a statistical report on cases
to the Ministry of Justice. The Minister of Justice shall approve the standard format for reporting
and the term for submission thereof.

Chapter 7
Appointment as Judge

§ 47. Requirements for judges

(1) An Estonian citizen who has fulfilled an accredited law curriculum of academic
studies, has proficiency of the Estonian language at the advanced level, is of high moral character
and has the abilities and personal characteristics necessary for working as a judge may be
appointed as a judge.

(2) The following shall not be appointed as a judge:

1) a person who is convicted of a criminal offence;
2) a person who has been removed from the office of judge, notary or
bailiff;
3) a person expelled from the Estonian Bar Association;
4) a person who has been released from the public service for a disciplinary
offence;
5) a bankrupt.

§ 48. Judge’s age

The maximum age of a judge is 67 years.

§ 49. Restrictions on holding office of judge

(1) Judges shall not be employed other than in the office of judge, except for
teaching or research. A judge shall notify of his or her employment other than in the office to
the chairman of the court. Employment other than in the office of judge shall not damage the
performance of official duties of a judge or the independence of a judge upon administration of
justice.

(2) A judge shall not be:

1) a member of the Riigikogu or member of a rural municipality or city
council;
2) a member of a political party;
3) a founder, managing partner, member of the management board or
supervisory board of a company, or director of a branch of a foreign company;
4) a trustee in bankruptcy, member of a bankruptcy committee or compulsory administrator of immovable;
5) an arbitrator chosen by the parties to a dispute.

§ 50. Judge of court of first instance

A person who has undergone judge’s preparatory service or is exempted therefrom and has passed a judge’s examination may be appointed as a judge of a county or city court, or administrative court (county judge, city judge or administrative court judge).

§ 51. Judge of circuit court

A person who is an experienced and recognised lawyer and who has passed a judge’s examination may be appointed as a judge of a circuit court (circuit court judge). A person who worked as a judge directly before appointment shall be exempted from the judge’s examination.

§ 52. Justice of Supreme Court

A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court (Supreme Court justice).

§ 53. Public competition

(1) Judges shall be appointed to office on the basis of a public competition.

(2) The Minister of Justice shall announce a public competition for a vacant position of judge of a county or city court, administrative court and circuit court.

(3) A competition for a vacant position of judge shall be announced in the official publication Ametlikud Teadaanded. An application shall be submitted to the Chief Justice of the Supreme Court within one month after the publication of the notice concerning the competition.

(4) If the vacant position of judge is filled pursuant to the procedure provided for in § 57 or § 58 of this Act, a competition shall not be announced.

§ 54. Assessment of suitability of the personal characteristics

(1) The suitability of the personal characteristics of a candidate for judicial office shall be assessed on the basis of an interview. The judge’s examination committee may consider also other information concerning the candidate for judicial office which are important for the performance of the duties of a judge, make inquiries and ask for the opinion of the candidate’s supervisor.

(2) A candidate for judicial office must pass a security check before being appointed judge, for which he or she shall submit, through the judge’s examination committee, the form used to apply for an access permit to state secrets classified as top secret, and his or her consent for collection of information concerning him or her. The Security Police Board shall forward the information obtained as a result of the security check carried out pursuant to the State Secrets Act (RT I 1999, 16, 271; 82, 752; 2001, 7, 17; 93, 565; 100, 643; 2002, 53, 336; 57, 354; 63, 387; 2003, 13, 67) together with an opinion to the judge’s examination committee.
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(3) The judge’s examination committee shall forward its decision and the documents specified in subsection (2) of this section to the Supreme Court en banc and notify the examinee thereof.

§ 54. Security check of Chief Justice of Supreme Court

(1) The candidate for Chief Justice of Supreme Court shall pass a security check before being appointed the Chief Justice of Supreme Court, except if he or she has a valid access permit in order to access state secrets classified as “top secret”.

(2) A person acquires the status of the candidate for Chief Justice of Supreme Court after the President of the Republic has proposed to the person to apply for the office and the person agrees to it in writing.


(4) In order to pass the security check, the candidate for Chief Justice of Supreme Court shall submit a completed form for an applicant for a permit to access state secrets classified as “top secret” to the Security Police Board through the Office of the President of the Republic, and also written consent which permits the agency which performs security checks to obtain information concerning the person from natural and legal persons and state and local government agencies and bodies during the performance of the security check.

(5) The Security Police Board shall, within three months as of receipt of the documents specified in subsection (4) of this section, present the information collected as a result of the security check to the President of the Republic and shall provide an opinion concerning the compliance of the candidate for Chief Justice of Supreme Court with the conditions for the issue of a permit for access to state secrets.

(6) In the cases where the authority of the Chief Justice of Supreme Court have terminated prematurely, the security check of the candidate for Chief Justice of Supreme Court shall be performed within one month after receipt of the documents specified in subsection (4) of this section. With the permission of the Committee for the Protection of State Secrets, the term for performing the security check may be extended by one month if circumstances specified in clause 30 (2) 1) or 2) of the State Secrets Act arise or if it is possible that circumstances specified in clause 30 (2) 3) or 4) of the State Secrets Act may arise within one month.

(29.01.2003 entered into force 15.03.2003 - RT I 2003, 21, 121)

§ 55. Appointment as judge

(1) Judges of a court of the first instance and judges of a court of appeal shall be appointed by the President of the Republic on the proposal of the Supreme Court en banc. The Supreme Court en banc shall first consider the opinion of the full court of the court for which the person runs as a candidate.
If several persons run as candidates for the vacant position of judge, the Supreme Court en banc shall decide who to propose to the President of the Republic to be appointed to office as judge. The decision of the Supreme Court en banc shall be communicated to the candidate.

A judge of a court of the first instance or a judge of the court of appeal appointed to office by the President of the Republic shall be appointed to court service by the Supreme Court en banc.

Justices of the Supreme Court shall be appointed to office by the Riigikogu on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court en banc concerning a candidate.

§ 56. Judge’s oath of office

Upon assuming office, a judge shall take the following oath:

“I swear to remain faithful to the Republic of Estonia and its constitutional order. I swear to administer justice according to my conscience and in conformity with the Constitution of the Republic of Estonia and other Acts.”

Upon assuming office, the justices of the Supreme Court shall take the oath before the Riigikogu, and other judges shall take the oath before the President of the Republic.

§ 57. Transfer of judges

The Supreme Court en banc may appoint a judge to office to another court of the same or a lower level with the consent of the judge and on the proposal of the Minister of Justice.

§ 58. Employment of judges in Supreme Court and Ministry of Justice

A judge may be transferred to the service of the Supreme Court or the Ministry of Justice at his or her request and with the consent of the chairman of the court. During service in the Supreme Court or the Ministry of Justice, the authority of the judge shall be suspended. He or she shall however retain the judge’s salary and other guarantees during service in the Supreme Court or the Ministry of Justice.

A judge may return to the same court to a vacant position of judge by giving at least one month’s advance notice thereof. The Supreme Court en banc may appoint a judge who wishes to leave the service in the Supreme Court or the Ministry of Justice to another court of the same level or a lower level as a judge with his or her consent. If after leaving the service in the Supreme Court or the Ministry of Justice, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court, the judge shall retain the judge’s salary and other guarantees during one year.

§ 59. Service record of judge

A service record shall be maintained with regard to a judge which sets out:
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1) his or her name and personal identification code of the judge;
2) his or her date and place of birth;
3) his or her residence;
4) his or her marital status;
5) information concerning his or her education in law and academic degree;
6) the date on which he or she takes the oath of office;
7) his or her career;
8) his or her holidays;
9) decisions of the Disciplinary Chamber and the date of expiry of the punishment.

(2) The Minister of Justice shall organise the maintenance of service records of judges of county and city courts, administrative courts and circuit courts.

(3) The Chief Justice of the Supreme Court shall organise the maintenance of service records of justices of the Supreme Court.

(4) At the request of a judge who is leaving the service, he or she shall be given a copy of his or her service record.

§ 60. Personal file of judge

(1) A personal file shall be maintained with regard to a judge which contains:

1) a copy of the document certifying education in law and an academic degree;
2) the decision of the judge’s examination committee;
3) a copy of the identity card;
4) the decision of appointment as a judge;
5) decisions of the Disciplinary Chamber;
6) the decision of release or removal of judge from office.

(2) Other documents which reflect the professional activity of the judge may be added to the personal file.

(3) The Minister of Justice shall organise the maintenance of the personal files of judges of county and city courts, administrative courts and circuit courts.

(4) The Chief Justice of the Supreme Court shall organise the maintenance of the personal files of justices of the Supreme Court.

Chapter 8
Preparatory Service for Judges

§ 61. Candidate for judicial office

(1) A person who complies with the requirements set for judges may be appointed as a candidate for judicial office.
(2) The Minister of Justice shall announce a public competition for a position of a candidate for judicial office in the official publication Ametlikud Teadaanded. Applications shall be submitted to the Minister of Justice within one month after the publication of the notice concerning the competition.

(3) The Minister of Justice shall appoint the candidates for judicial office to office on the proposal of the judge’s examination committee with the approval of the Council for Administration of Courts. The judge’s examination committee shall assess the legal knowledge of the applicants beforehand and conduct an interview with the applicants.

(4) A candidate for judicial office shall undergo preparatory service.

(5) The salary of a candidate for judicial office shall be the salary rate at the highest level of the salary scale for state public servants multiplied by a coefficient of 0.8.

(6) The Minister of Justice shall determine the number of candidates for judicial office.

§ 62. Preparatory service

(1) During preparatory service, a candidate for judicial office shall be prepared for the office of judge.

(2) A candidate for judicial office shall undergo preparatory service in the court of first instance where the judge supervising the candidate for judicial office works. A part of the preparatory service shall be carried out in other courts so that the candidate for judicial office would have undergone preparatory service in a county or city court, an administrative court and a circuit court. A part of the preparatory service may also be carried out in the Supreme Court, the Prosecutor’s Office or the Bar Association, or in executive branch state agencies, or local government agencies.

(3) The Minister of justice shall approve the preparatory service plan of the candidate for judicial office on the proposal of the judge’s examination committee.

(4) The duration of preparatory service shall be two years.

(5) Upon expiry of the term of preparatory service of a candidate for judicial office, the service relationship of a candidate for judicial office shall be terminated.

(6) If a candidate for judicial office does not pass a judge’s examination during preparatory service, the preparatory service shall continue until the judge’s examination is passed or the service relationship is terminated pursuant to subsection 67 (3) of this Act.

§ 63. Organisation of preparatory service

(1) The Minister of Justice shall, on the proposal of the judge’s examination committee, appoint a judge who supervises the candidate for judicial office.

(2) The purpose of preparatory service is to provide a candidate for judicial office with the necessary knowledge and experience, and to determine whether the candidate for
judicial office is suited for the position of judge by his or her personal characteristics. A candidate for judicial office shall be involved in the preparation of cases and he or she may perform the duties of a clerk of a court session and of a law clerk.

(3) At the request of a candidate for judicial office, he or she shall be granted a paid study leave for thirty calendar days in order to prepare for the judge’s examination.

§ 64. Exemption from preparatory service and reduction of term thereof

(1) A person who has been employed as a judge or who, for at least two years immediately before running as a candidate, has worked as a sworn advocate or prosecutor may be exempted from preparatory service or the person’s term of service may be reduced by a reasoned decision of the judge’s examination committee.

(2) The judge’s examination committee may reduce the preparatory service of a person if the person has been employed for at least two years as a senior clerk or clerk of a sworn advocate, assistant prosecutor or in any other position which requires high qualification in law.

§ 65. Report of candidate for judicial office

(1) A candidate for judicial office shall, at the end of every six months of a year of preparatory service and at the end of preparatory service, submit a written report on the preparatory service to the chairman of the court and to the judge supervising the candidate.

(2) A judge supervising a candidate for judicial office shall, at the end of every six months of a year of preparatory service, and at the end of preparatory service, submit a written opinion on the results of preparatory service of a judge to the chairman of the court.

(3) The chairman of a court shall send the documents specified in subsections (1) and (2) of this section together with his or her opinion to the judge’s examination committee and the Ministry of Justice.

(4) The judge’s examination committee shall provide an opinion with regard to each candidate for judicial office on the continuation of the preparatory service or the completion of the preparatory service by the candidate. The Minister of Justice shall release a candidate for judicial office from office on the proposal of the judge’s examination committee.

§ 66. Judge’s examination

(1) A judge’s examination shall consist of an oral and a written part.

(2) The oral part of a judge’s examination means the assessment of the theoretical knowledge of a candidate for judicial office.

(3) The written part of a judge’s examination means case analysis.
§ 67. Taking of judge's examination

(1) A candidate for judicial office shall take a judge’s examination during preparatory service but not earlier than four months before the end of preparatory service. Persons who may be exempted from preparatory service pursuant to subsection 64 (1) of this Act may submit an application to this effect to the judge’s examination committee. If a person is exempted from preparatory service, the judge’s examination committee shall set a date for the examination.

(2) If a candidate for judicial office does not pass the examination during preparatory service, he or she shall take a re-examination. In such case, the preparatory service shall be extended until the re-examination but for not longer than six months.

(3) It is not allowed to re-take a re-examination. If a re-examination is not passed, the service relationship with a candidate for judicial office shall be terminated.

(4) The judge’s examination committee shall determine the time and place of a judge’s examination.

(5) If a person has not been appointed as a judge within five years after passing the judge’s examination, he or she shall re-pass the examination in order to be appointed as a judge. He or she is not required to undergo preparatory service anew.

§ 68. Assessment of examination results

(1) The results of the parts of a judge’s examination shall be evaluated with grades from zero to ten. The oral and written part of the examination shall be evaluated separately.

(2) The grade of the examination committee is the arithmetical average of the grades given by the committee members which is rounded to a whole number.

(3) The examination is deemed to be passed if the average grade for the oral as well as the written part of the examination is not lower than five.

§ 69. Judge’s examination committee

(1) The judge’s examination committee shall have ten members and be formed for five years.

(2) The judge’s examination committee shall be comprised of two judges of the court of first instance elected by the Court en banc, two circuit court judges, two justices of the Supreme Court, one jurist designated by the council of the Law Faculty of the University of Tartu, a representative of the Ministry of Justice designated by the Minister of Justice, a sworn advocate designated by the leadership of the Bar Association and a public prosecutor designated by the Chief Public Prosecutor.

(3) In order to hold the examination, the chairman of the judge’s examination committee shall form a panel comprising of at least five members, three of whom shall be judges.
(4) The judge’s examination committee shall approve the rules of procedure of the judge’s examination committee.

(5) The Supreme Court shall organise the clerical support to the judge’s examination committee.

**Chapter 9**

**Duties of Judges**

§ 70. General duties

(1) A judge shall perform his or her official duties in an impartial manner and without self-interest and shall comply with service interests also outside service.

(2) A judge shall behave impeccably in service and outside service and refrain from acts which may damage the reputation of court.

§ 71. Duty of confidentiality

(1) A judge shall not disclose information which becomes known to him or her at a court session held *in camera*.

(2) A judge may disclose facts to which the duty of confidentiality applies in judicial proceedings or pre-trial procedure in criminal matters only with the permission of the Supreme Court *en banc*.

(3) In order to obtain the permission specified in subsection (2) of this section, the court or investigative agency conducting the proceeding or a judge bound by the duty of confidentiality may address the Supreme Court *en banc*.

(4) The duty of confidentiality applies for an unspecified term and remains in force also after termination of the service relationship.

§ 72. Duty of confidentiality of deliberations

(1) A judge shall not disclose discussions which take place at the time the decision is made.

(2) The duty of confidentiality of deliberations applies for an unspecified term and remains in force also after termination of the service relationship.

§ 73. Duty to supervise

Judges shall supervise candidates for judicial office, candidates for assistant judge and university student trainees in preparatory service. No judge is required to supervise more than two candidates for judicial office or for assistant judge or university student trainees at a time.
§ 74. Professional development

A judge is required to develop knowledge and skills of his or her speciality on a regular basis and to participate in training.

Chapter 10
Social Guarantees for Judges

§ 75. Judge’s salary

A judge’s salary is provided by the Salaries of State Public Servants Appointed by Riigikogu or President of the Republic Act (RT I 1996, 81, 1448; 1999, 29, 406; 2000, 55, 359; 2002, 21, 117; 64, 390).

§ 76. Additional remuneration of judges

(1) In addition to a salary, judges shall receive additional remuneration for years of service as follows:

1) as of the fifth year in employment as a judge – 5 per cent of the salary;
2) as of the tenth year in employment as a judge – 10 per cent of the salary;
3) as of the fifteenth year in employment as a judge – 15 per cent of the salary.

(2) A chairman of the court of the first instance or court of appeal shall receive additional remuneration in the amount of 15 per cent of his or her salary for the performance of the duties of chairman of the court. If at least fifteen judges are employed in a court of the first instance, the amount of remuneration received by the chairman of the court shall be 25 per cent of his or her salary.

(3) The Minister of Justice may grant additional remuneration to a judge who is appointed to service to another geographical area in the interests of administration of justice in the amount of 15 per cent of the salary of a judge.

(4) Judges supervising candidates for judicial office, candidates for assistant judge or university student trainees shall receive additional remuneration for supervision equal to 5 per cent of the salary for each supervised person during supervision.

(5) The salary of a judge together with the additional remuneration prescribed in subsection (1) of this section shall not be higher than the salary of a judge of a higher court. The salary of a justice of the Supreme Court together with the additional remuneration prescribed in subsection (1) of this section shall not be higher than the salary of the Chief Justice of the Supreme Court.

§ 77. Judge’s pension

(1) The following are judge’s pensions:

1) judge’s old-age pension;
2) judge’s superannuated pension;
3) judge’s pension for incapacity for work;
4) survivor’s pension for judge’s family members.

(2) A judge’s pension shall not be paid during employment as a judge. If a retired judge is employed elsewhere, he or she shall receive the judge’s pension in full regardless of the amount of the earnings.

(3) A judge’s pension shall not be granted to a person who has been removed from office for a disciplinary offence or who has been convicted of an intentionally committed criminal offence. A judge’s pension shall be withdrawn from a person who is convicted of a criminal offence directed against the administration of justice.

(4) A judge’s pension shall not be increased on the bases provided for in the Public Service Act.

(5) In cases not provided for in this Act, the provisions concerning state pensions provided by law apply to judge’s pension. The portion of a judge’s pension which exceeds state pension or is not covered by state pension shall be paid from additional state budget funds.

§ 78. Judge’s old-age pension

(1) A person who has been employed as a judge for at least fifteen years has the right to receive a judge’s old-age pension when he or she attains the pensionable age.

(2) The right to receive a judge’s old-age pension arises for a person who after fifteen years of employment as a judge loses his or her capacity for work if the percentage of the loss of his or her capacity for work is 100, 90 or 80, also if he or she has not attained the pensionable age. The right to receive a judge’s old-age pension arises to a person who has attained the pensionable age and loses his or her capacity for work after ten years of employment as a judge if the percentage of the loss of his or her capacity for work is 100, 90 or 80.

(3) The amount of a judge’s old-age pension shall be 75 per cent of his or her last salary.

(4) The Chief Justice of the Supreme Court or a person who has worked as the Chief Justice of the Supreme Court has the right, after attaining the pensionable age, to receive a judge’s old age pension in the amount of 75 per cent of the salary of the Chief Justice of the Supreme Court if the person has worked as the Chief Justice of the Supreme Court for at least seven years, and in the amount of 50 per cent of the salary of the Chief Justice of the Supreme Court if the person has worked as the Chief Justice of the Supreme Court for less than seven years.

(5) If a judge attains pensionable age after leaving the office of judge, his or her judge’s pension shall be calculated from the judge’s salary in the court instance where the person was last employed as a judge valid at the time of grant of the pension.

§ 79. Judge’s superannuated pension

The right to receive a superannuated pension arises for a judge who has been employed as judge for at least 30 years, in the amount of 75 per cent of his or her last salary.

§ 80. Judge’s pension for incapacity for work
(1) A judge who becomes permanently incapacitated for work during his or her employment as judge has the right to receive a judge’s pension for incapacity for work.

(2) The amount of a judge’s pension for incapacity for work is:

1) 75 per cent of the last salary of the judge in the case of a 100 per cent loss of capacity for work;
2) 70 per cent of the last salary of the judge in the case of a 80 or 90 per cent loss of capacity for work;
3) 30 per cent of the last salary of the judge in the case of a 40 to 70 per cent loss of capacity for work.

§ 81. Survivor’s pension for judge’s family member

Upon the death of a judge, each family member of the judge who has the right to receive survivor's pension shall receive a survivor’s pension in the amount of 30 per cent of the judge’s last salary but not for more than a total of 70 per cent of the judge’s last salary.

§ 82. Change in amount of pension

(1) A judge’s pension shall be recalculated upon a change in the amount of the salary payable for the position according to which the judge’s pension has been calculated.

(2) In the case specified in subsection (1) of this section, a pension shall be recalculated as of the date on which the amount of the salary of a judge changes.

§ 83. Allowance upon death of judge

If a judge is killed as a result of a criminal attack while he or she is performing his or her duties of service, the family members of the judge who were maintained by him or her shall be paid a one-time benefit to the extent of five years’ salary of the deceased judge.

§ 84. Judge’s holiday

(1) Judges have the right to receive an annual holiday.

(2) The duration of a holiday of a judge of the court of the first instance or a court of appeal is forty nine calendar days and the duration of a holiday of a justice of the Supreme Court is fifty six calendar days.

(3) A judge has no right to the additional holiday provided for in the Public Service Act.

(4) The chairman of the court shall approve the holiday schedule of judges.

(5) An extraordinary holiday for up to one year without pay may be granted to a justice of the Supreme Court by the Chief Justice of the Supreme Court, and to a judge of a court of first instance or a court of appeal by the Minister of Justice with the consent of the full court of the court where the judge is employed.
§ 85. Official attire of judge

(1) Judges shall wear robes as official attire at court sessions.

(2) The state shall give the robes to judges without charge.

(3) The Minister of Justice shall approve the description of the robes.

§ 86. Other social guarantees

(1) A judge who is released from office due to liquidation of the court or reduction of the number of judges shall be paid the six months' salary of his or her last position.

(2) The chairman of a court who after being released from the position of the chairman of the court resumes work as a judge shall not be paid compensation.

(3) If a judge of a higher court is appointed, due to liquidation of the court or reduction of the number of judges, as a judge of a lower court with his or her consent, he or she shall retain the salary of the previous position together with additional remuneration during one year.

(4) The Commander of the Defence Forces shall concord the conscription of judges into active service in the defence forces and the calling up of judges for training exercises of the defence forces with the Council for Administration of Courts.

Chapter 11
Disciplinary Liability of Judges

§ 87. Bases for imposing disciplinary punishment

(1) A disciplinary punishment may be imposed on a judge for a disciplinary offence.

(2) A disciplinary offence is a wrongful act of a judge which consists of failure to perform or inappropriate performance of official duties. An indecent act of a judge is also a disciplinary offence.

§ 88. Disciplinary punishments

(1) The following are disciplinary punishments:

1) a reprimand;
2) a fine in an amount of up to one month’s salary;
3) a reduction in salary;
4) removal from office.

(2) If a retired judge does not comply with the duty of confidentiality or the duty of confidentiality of deliberations, his or her judge’s pension may be reduced by not more than 25 per cent as a disciplinary punishment. The pension shall not be reduced for longer than one year.
(3) Only one disciplinary punishment may be imposed on a judge for one and the same offence. A criminal punishment or a punishment for a misdemeanour imposed for the same act does not preclude the imposition of disciplinary punishment.

(4) Upon imposition of disciplinary punishment, the nature, gravity and consequences of the disciplinary offence, also the personal characteristics of the judge and other circumstances related to the offence shall be considered.

(5) A disciplinary punishment imposed on a judge shall be entered on his or her service record.

(6) A disciplinary sanction shall expire if the judge does not commit a new disciplinary offence within one year after the entry into force of the decision of the Disciplinary Chamber. The Disciplinary Chamber may also cancel a disciplinary punishment before the prescribed time.

§ 89. Reduction of salary

As a disciplinary punishment, a judge’s salary may be reduced by not more than 30 per cent. The salary shall not be reduced for longer than one year.

§ 90. Expiry of disciplinary offence

(1) Disciplinary proceedings shall not be commenced if more than one year has passed from the commission of the disciplinary offence or more than six months have passed from the discovery thereof.

(2) The term provided for in subsection (1) of this section shall be suspended:

1) until the termination of the criminal proceedings commenced against an act of a judge;
2) during the time that the judge is temporarily incapacitated for work and during the holidays of the judge.

§ 91. Commencement of disciplinary proceedings

(1) Disciplinary proceedings shall be commenced if elements of a disciplinary offence become evident. Disciplinary proceedings are commenced by preparation of disciplinary charges.

(2) The following have the right to commence disciplinary proceedings:

1) the Chief Justice of the Supreme Court, against all judges;
2) the Chancellor of Justice, against all judges;
3) the chairman of a circuit court, against judges of courts of first instance in his territorial jurisdiction.
4) the chairman of a court, against the judges of the same court;
5) the Supreme Court en banc against the Chief Justice of the Supreme Court.
(3) A person who commences a disciplinary proceeding may gather evidence and demand explanations which are necessary to adjudicate the disciplinary matter.

§ 92. Disciplinary charge

(1) A disciplinary charge is a written document, which sets out:

1) the name and position of the accused;
2) the description and time of commission of the offence;
3) the evidence proving commission of the offence;
4) the name of the person who commences a disciplinary proceeding, and the date and place of the preparation of the charge.

(2) The person who commences a disciplinary procedure shall forward the disciplinary charges and the related material to the Disciplinary Chamber, which shall immediately notify the judge against whom the disciplinary proceeding is commenced thereof.

(3) A judge against whom a disciplinary proceeding is commenced shall be served the disciplinary charges at least ten days before the session of the Disciplinary Chamber. The judge or his or her representative has the right to examine the materials of the disciplinary charge.

§ 93. Disciplinary Chamber

(1) For the adjudication of disciplinary matters of judges, the Supreme Court shall comprise the Disciplinary Chamber which is comprised of five justices of the Supreme Court, five circuit court judges and five judges of courts of the first instance.

(2) The Supreme Court en banc shall appoint, for the term of three years, the chairman of the Disciplinary Chamber and other members of the Disciplinary Chamber who are justices of the Supreme Court.

(3) The internal rules of the Supreme Court shall prescribe the procedure for the substitution of members of the Disciplinary Chamber who are justices of the Supreme Court.

(4) Pursuant to the internal rules, the Supreme Court shall involve judges of courts of the first instance and judges of courts of appeal elected on the basis of clause 38 (3) 4) of this Act in the adjudication of disciplinary matters.

(5) For the adjudication of a disciplinary matter of a judge, the chairman of the Disciplinary Chamber shall form a five-member panel consisting of three members of the Disciplinary Chamber who are justices of the Supreme Court, one judge of a circuit court and one judge of a court of first instance.

§ 94. Hearing of disciplinary matter

(1) The Disciplinary Chamber of the Supreme Court shall hear matters of disciplinary offences of judges and impose disciplinary punishments to judges.
(2) A five-member panel of the Disciplinary Chamber shall hear a disciplinary matter at a court session.

(3) Upon hearing of a disciplinary matter, the chairman of the Disciplinary Chamber is the presiding judge. If the chairman of the Disciplinary Chamber does not participate in the hearing of a matter, he or she shall appoint a member of the Chamber as the presiding judge.

§ 95. Temporary removal from service

(1) The Disciplinary Chamber may remove a judge from service during the hearing of a disciplinary matter by a ruling of which the Chamber shall immediately notify the judge. Upon deciding the removal from service, the Chamber shall consider the nature and gravity of the disciplinary offence of which a judge is accused.

(2) If circumstances related to a judge exist which significantly damage the reputation of the court, the Disciplinary Chamber may remove the judge from service until the commencement of disciplinary proceedings is decided. If it is established that no basis exists for the commencement of disciplinary proceedings against the judge, the judge may resume service on a decision of the Disciplinary Chamber.

(3) The Disciplinary Chamber may decide the removal of a judge from service without holding a court session.

(4) If the Disciplinary Chamber removes a judge from service during the hearing of a disciplinary matter, the Chamber may reduce the judge’s salary for such period. The salary shall be reduced by not more than a half.

(5) The chairman of the court may assign duties other than the administration of justice to a judge who is temporarily removed from service.

(6) A judge may file an appeal to the Supreme Court en banc against a ruling by which the judge is temporarily removed from service or his or her salary is reduced within ten days after the judge becomes aware of the ruling.

§ 96. Session of Disciplinary Chamber

(1) The judge whose disciplinary offence is heard shall be summoned to the session of the Disciplinary Chamber. The judge may have a representative. If necessary, witnesses and other persons may be summoned to the session.

(2) At the session of the Disciplinary Chamber, the presiding judge shall make a report on the offence in which he or she introduces the disciplinary charge.

(3) The judge, against whom the disciplinary charge is brought, shall give statements with regard to the matter, and the statements from witnesses and other persons present at the session shall be heard. Members of the Disciplinary Chamber may question the judge against whom the charge is brought, the witnesses and other persons summoned to the session.

(4) After examination of the evidence, the judge whose disciplinary matter is heard has the right to express his or her opinion with regard to the matter.
(5) Minutes shall be taken of sessions of the Disciplinary Chamber.

§ 97. Decisions of Disciplinary Chamber

(1) If the culpability of a judge is proved, the Disciplinary Chamber shall make a decision by which the judge is convicted of the commission of a disciplinary offence and a disciplinary punishment is imposed on the judge.

(2) If the judge has not committed a disciplinary offence, the Disciplinary Chamber shall make a decision by which the judge is acquitted of the disciplinary charge.

(3) A judge on whom a disciplinary punishment is imposed may file an appeal to the Supreme Court *en banc* within thirty days after the decision is pronounced.

(4) If the judge has not filed an appeal to the Supreme Court *en banc*, the decision of the Disciplinary Chamber shall enter into force after the expiry of the term specified in subsection (3) of this section. If an appeal is filed, the decision of the Disciplinary Chamber shall enter into force after the decision of the Supreme Court *en banc* is pronounced.

§ 98. Reimbursement of reduced portion of salary

(1) If a judge is acquitted of a disciplinary charge, the reduced portion of salary related to the temporary removal from service and the interest provided by law shall be paid to the judge.

(2) If the Disciplinary Chamber convicts a judge of the commission of a disciplinary offence which is considerably less serious than the act against which charge was brought against the judge and for which he or she was temporarily removed from service, the Chamber may decide that the reduced portion of salary shall be reimbursed to the judge in part or in full.

(3) On the bases specified in subsections (1) and (2) of this section, the reduced portion of salary shall be paid to the judge within one month after termination of the disciplinary proceedings or entry into force of the decision of the Disciplinary Chamber.

Chapter 12
Release and Removal of Judges from Office

§ 99. Release of judges from office

(1) A judge shall be released from office:

1) at the request of the judge;
2) if the judge has attained 68 years of age;
3) due to unsuitability for office – within three years after appointment to office;
4) due to health reasons which hinders work as a judge;
5) upon liquidation of the court or reduction of the number of judges;
6) if after leaving the service in the Supreme Court or the Ministry of Justice, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court;
7) if a judge is appointed or elected to the position or office which is not in accordance with the restrictions on services of judges;
8) if facts become evident which according to law preclude the appointment of the person as a judge.

(2) Judges of a court of the first instance and judges of a court of appeal shall be released from office by the President of the Republic, on the proposal of the Chief Justice of the Supreme Court.

(3) The Chief justice of the Supreme Court shall be released from office by the Riigikogu on the proposal of the President of the Republic except in the case provided in subsection 27 (6) of this Act. The other justices of the Supreme Court shall be released from office by the Riigikogu on the proposal of the Chief Justice of the Supreme Court.

§ 100. Release from office due to unsuitability

(1) A person may be released from the office of judge due to unsuitability for office only within three years after appointment to office if the judge has been declared unsuitable for office by a decision of the Supreme Court *en banc*.

(2) Once a year, chairmen of courts shall submit their opinion concerning judges of less than three years length of service employed in the corresponding courts to the judge’s examination committee. The standard format for submission of opinion shall be established by the judge’s examination committee.

(3) Upon assessment of suitability for the office of judge, the Supreme Court *en banc* shall consider the proposal of a person or body entitled to commence disciplinary proceedings, the opinion of the judge’s examination committee and other information characterising the work of the judge.

(4) The judge’s examination committee shall hold a session where the judge whose suitability is assessed is heard.

(5) At least ten days before the suitability of a judge is discussed at a session of the Supreme Court *en banc*, a reasoned proposal of a person or body entitled to commence disciplinary proceedings to release the judge from office and the opinion of the judge’s examination committee shall be presented to the judge whose suitability for office is assessed, and he or she is allowed to examine the gathered materials.

§ 101. Removal of judges from office

A judge in respect of whom a conviction by a court for a criminal offence or a decision of the Disciplinary Chamber of the Supreme Court to remove the judge from office has entered into force, is deemed to be removed from office as of the date on which the conviction or decision enters into force.
Chapter 13
Lay Judges

§ 102. Participation of lay judges in administration of justice

(1) Lay judges shall participate in the administration of justice in county and city courts on the bases and pursuant to the procedure provided by the Codes of procedure.

(2) In administration of justice, a lay judge has equal rights with a judge.

§ 103. Requirements for lay judges

(1) An Estonian citizen with active legal capacity from 25 to 70 years of age who resides in Estonia, has proficiency of the Estonian language at the advanced level, and is of suitable moral character for the activity of a lay judge may be appointed as a lay judge.

(2) The following shall not be appointed as a lay judge:

1) a person who is convicted of a criminal offence;
2) a bankrupt;
3) a person who is not suited due to his or her state of health;
4) a person who has permanent residence, that is the residence the address details of which have been entered in the population register, of less than one year within the territory of the local government which presents the person as a candidate for lay judge;
5) a person who is in service in a court, prosecutor’s office or the police;
6) a person who is in service in the armed forces;
7) an advocate, a notary or a bailiff;
8) a member of the Government of the Republic;
9) a member of a rural municipality or city government;
10) the President of the Republic;
11) a member of the Riigikogu;
12) a county governor.

(3) A person who is accused of a criminal offence shall not be appointed as a lay judge during the criminal proceedings.

§ 104. Term of authority of lay judge

(1) Lay judges shall be appointed for four years.

(2) A person shall not be appointed as lay judge for more than two consecutive terms.

(3) The chairman of a county or city court shall notify the local government council of the termination of the term of the authority of a lay judge for at least four months before the termination of the authority.

(4) If the authority of a lay judge terminates during a judicial proceeding, he or she shall continue the performance his or her duties until the adjudication of the matter in the court.
§ 105. Premature termination of authority of lay judge

(1) The authority of a lay judge shall be terminated if a fact specified in subsection 103 (2) of this Act becomes evident. The authority of a lay judge may be terminated on the basis of his or her request with good reason.

(2) The committee specified in § 108 of this Act shall decide the premature termination of authority of a lay judge on the proposal of the chairman of a county or city court.

§ 106. Procedure for election of candidate for lay judge

(1) Each member of a local government council may present candidates for lay judge.

(2) A local government council shall elect the candidates for lay judge.

(3) The chairman of a county or city court shall determine how many candidates for lay judge each local government council within the territorial jurisdiction of the court shall present. The number of candidates for lay judge shall be proportional to the ratio of the number of residents in the territory of the local government and the number of residents in the territorial jurisdiction of the court.

§ 107. List of candidates for lay judge

(1) A local government council shall submit a list of candidates for lay judges to a county or city court at least two months before termination of the authority of lay judges. The list shall set out the name, personal identification code, address, place of employment and position or area of activity of a candidate for lay judge.

(2) The list of candidates for lay judge shall be published in the official publication Ametlikud Teadaanded at least two months before termination of the authority of lay judges appointed earlier. A local government council shall submit the list for publication.

(3) The name, place of employment, and position or area of activity of a candidate for lay judge shall be published.

(4) Everyone has the right to contest the appointment of a candidate for lay judge as a lay judge in the committee for appointment of lay judges of a county or city court.

(5) A notice concerning the right and procedure for contestation shall be published together with the list of candidates for lay judge in the official publication Ametlikud Teadaanded.

§ 108. Appointment of lay judges

(1) Lay judges shall be appointed to office from among candidates for lay judges by the committee for appointment of candidates for lay judge, the membership of which shall be approved by the chairman of the court.
The committee for appointment of candidates for lay judge shall comprise the chairman of the county or city court, one judge elected by the full court and one member of the local government council elected by the council from each local government of the territorial jurisdiction of the court. The chairman of the court shall be the chairman of the committee.

The committee has a quorum if over one-half of the committee members are present, including the chairman of the committee. The committee shall make a decision by a majority of votes of the members who are present.

The committee shall appoint as lay judges a specified number of persons determined for such court from among the candidates for lay judges.

Upon appointment of lay judges, the committee shall consider the suitability of a candidate, the reasoned objections filed against a candidate, and follow the principle that lay judges shall be persons of different sex and age, from different social groups and operating in different areas of activity.

§ 109. Lay judge's oath of office

A lay judge shall take the following oath before the full court:

“I swear to remain faithful to the Republic of Estonia and its constitutional order. I swear to administer justice according to my conscience and in conformity with the Constitution of the Republic of Estonia and other Acts.”

§ 110. Participation of lay judges in administration of justice

Lay judges shall be involved in courts to participate in the administration of justice such that lay judges participate in the administration of justice equally to the extent possible.

If a lay judge cannot participate in a court session, another lay judge shall be involved in the session.

§ 111. Duties of lay judges

A lay judge involved in the administration of justice is required to appear at the court session.

If a lay judge cannot participate in the court session with good reason, he or she shall immediately notify the court thereof.

The duties listed in §§ 70–72 of this Act apply to lay judges.

Criminal charges may be brought against a lay judge during his or her term of office only with the consent of the chairman of the county or city court of his or her territorial jurisdiction.
§ 112. Payment of remuneration to lay judges

(1) The remuneration of a lay judge per each day on which the lay judge participates in the administration of justice shall be the salary rate at the highest level of the salary scale for state public servants multiplied by a coefficient of 0.024.

(2) The expenses related to participation in the administration of justice shall be reimbursed to lay judges.

(3) An employer shall exempt a lay judge from work for the time of his or her participation in the administration of justice.

(4) The Minister of Justice shall establish a procedure for payment of remuneration to lay judges.

§ 113. Pension of lay judges

(1) If a person becomes disabled during the performance of the duties of a lay judge as a result of a criminal attack, his or her state disability pension shall be increased by 20 per cent in the case of a 100 per cent loss of capacity for work, by 15 per cent in the case of a 80 or 90 per cent loss of capacity for work and by 10 per cent in the case of a 40–70 per cent loss of capacity for work.

(2) If a person is killed in the performance of the duties of a lay judge as a result of a criminal attack against him or her, the state survivor’s pension paid to each family member who is incapacitated for work and was maintained by the lay judge shall be increased by 20 per cent.

(3) The portion of a lay judge’s pension which exceeds state pension or is not covered by state pension shall be paid from additional state budget funds.

Chapter 14
Assistant Judges

§ 114. Legal status of assistant judges

(1) An assistant judge is a court official who performs the duties specified by law.

(2) Upon performance of his or her duties, an assistant judge is independent but shall comply with the instructions of a judge to the extent prescribed by law.

§ 115. Requirements for assistant judges

(1) An Estonian citizen who has attained at least 21 years of age, resides in Estonia, who has fulfilled an accredited law curriculum of academic studies or who has acquired the professional education of assistant judge at an institution of applied higher education, has proficiency of the Estonian language at the advanced level and has undergone assistant judge’s preparatory service and passed an assistant judge’s examination may be appointed as an assistant judge.
(2) A person who has not undergone assistant judge’s preparatory service, but who has undergone judge’s preparatory service or is exempted therefrom and has passed an assistant judge’s or judge’s examination may also be appointed as an assistant judge.

(3) The following shall not be appointed as an assistant judge:

1) a person who is convicted of a criminal offence;
2) a person who has been removed from the office of judge, notary or bailiff;
3) a person expelled from the Estonian Bar Association;
4) a person who has been released from the public service for a disciplinary offence;
5) a bankrupt.

§ 116. Restrictions on services of assistant judges

The restrictions on services of judges apply to assistant judges.

§ 117. Preparatory service of candidates for assistant judge

(1) In preparatory service, a candidate for assistant judge shall receive training for the office of assistant judge. Preparatory service shall ascertain whether a candidate for assistant judge is suited to be an assistant judge by his or her personal characteristics.

(2) A candidate for assistant judge shall undergo preparatory service in the court of first instance where the assistant judge or judge supervising the candidate for assistant judge works.

(3) The preparatory service plan of a candidate for assistant judge shall be approved by the Minister of Justice who shall designate the place of service and supervisor of the candidate for assistant judge.

(4) Assistant judge’s preparatory service shall continue for one year and terminate with an assistant judge’s examination. If a candidate for assistant judge does not pass the assistant judge’s examination during this period, preparatory service shall continue until passing a re-examination.

(5) If a candidate for assistant judge does not pass an assistant judge’s examination during preparatory service, he or she shall take a re-examination. In such case, preparatory service shall be extended until re-examination but for not longer than three months.

(6) It is not allowed to re-take a re-examination. If a re-examination is not passed, the service relationship of a candidate for assistant judge shall terminate.

(7) The remuneration paid to a candidate for assistant judge during preparatory service shall be a half of assistant judge’s salary.

(8) Preparatory service is also deemed to be concluded upon graduation form an institution of applied higher education which provides special education for assistant judges. The Minister of Justice shall determine the place where the practical training is conducted, and
appoint the supervisors. Subsection 122 (2) of this Act applies to supervision. The assistant judge’s examination committee may also administer the final exam of an institution of applied higher education in which case such exam is deemed to be an assistant judge’s examination.

§ 118. Report of candidates for assistant judge

(1) A candidate for assistant judge shall submit to the Minister of Justice a written semi-annual report on preparatory service and an annual report at the end of preparatory service.

(2) The supervisor of a candidate for assistant judge shall submit a written opinion on the results of preparatory service of the candidate for assistant judge to the Minister of Justice at the end of preparatory service.

(3) The Minister of Justice shall submit, together with his or her position, the report of a candidate for assistant judge and the opinion of his or her supervisor to the assistant judge’s examination committee.

§ 119. Assistant judge’s examination committee

(1) The assistant judge’s examination committee shall be formed for a term of five years and shall consist of seven members.

(2) The assistant judge’s examination committee shall be comprised of two judges of a court of the first instance and one judge of a circuit court elected by the Court en banc, two assistant judges and one representative of the Ministry of Justice designated by the Minister of Justice and a lecturer designated by a rector of an institution of applied higher education which provides special education for assistant judges.

(3) The assistant judge’s examination committee has a quorum if at least five members are present.

(4) The Minister of Justice shall approve the rules of procedure of the assistant judge’s examination committee.

§ 120. Running as candidate for position of assistant judge

(1) Assistant judges shall be appointed to office by way of a public competition.

(2) The Minister of Justice shall announce a public competition for a vacant position of an assistant judge in the official publication Ametlikud Teadaanded.

(3) Persons who comply with the requirements established for assistant judges may run as candidates for the position of assistant judge.

(4) On the basis of examination results, the assistant judge’s examination committee shall select candidates from among the persons who passed the assistant judge’s examination and make a proposal to the Minister of Justice to appoint such candidates to office as assistant judges.
(5) Assistant judges shall be appointed to office by the Minister of Justice on the proposal of the assistant judge’s examination committee.

§ 121. Assistant judge's oath of office

Upon assuming office, an assistant judge shall take the following oath before the Minister of Justice:

“I swear to remain faithful to the Republic of Estonia and its constitutional order. I swear to perform my functions according to my conscience and in conformity with the Constitution of the Republic of Estonia and other Acts.”

§ 122. Assistant judge's salary and additional remuneration for supervision

(1) The salary of an assistant judge shall be the salary rate at the highest level of the salary scale for state public servants multiplied by a coefficient of 1.12.

(2) An assistant judge supervising a candidate for assistant judge shall receive additional remuneration equal to 5 per cent of the salary for each supervised person during supervision.

§ 123. Social guarantees for assistant judges

If an assistant judge is released from service due to lay-off, he or she shall be paid assistant judge’s salary until assuming new position, but for not longer than six months.

§ 124. Employment of assistant judges in Ministry of Justice and institutions of higher education

An assistant judge may be transferred to the service of the Ministry of Justice or be employed as a lecturer of an institution of applied higher education which provides special education for assistant judges at the request of the assistant judge and with the consent of the chairman of the court. The provisions of § 58 of this Act apply otherwise.

Chapter 15
Court Officers

§ 125. Director of administration

(1) The director of administration shall:

1) organise the administrating of affairs of the judicial institution;
2) organise the use of the assets of the judicial institution;
3) prepare, with the approval of the chairman of the court, the draft budget of the judicial institution and submit the draft budget to the Minister of Justice;
4) control the budgetary funds of the judicial institution;
5) be responsible for the organisation of accounting of the judicial institution;
6) appoint court officers to office and release them from office;
7) perform other duties assigned to him or her by the internal rules of the court.
(2) The Minister of Justice may give directives to organise issues within the area of activity of directors of administration.

(3) A director of administration must have completed higher education. Directors of administration of courts of the first instance and courts of appeal shall be appointed to office by the Minister of Justice.

(4) The Minister of Justice may decide that several judicial institutions have one director of administration.

§ 126. Court security guards

(1) A court security guard is a court official whose duty is to maintain order in the court, serve notices and summons to persons and perform other duties related to the functions of a court security guard determined by the internal rules of the court. Court security guards shall have the same rights as assistant police officers pursuant to clauses 5 1), 2), 4), 5) and 13) of the Assistant Police Officer Act (RT I 1994, 34, 533; 1997, 73, 1201; 2002, 56, 350; 61, 375; 99, 578).

(2) Additional remuneration shall be paid to court security guards for serving summons and notices. The Minister of Justice shall establish the rates of additional remuneration.

(3) Court security guards shall be reimbursed for expenses incurred for the use of public transportation related to the performance of duties.

(4) On the basis of an administration contract, the performance of the duties specified in subsection (1) of this section may be transferred to a company.

§ 127. Other court officers

The duties of court officials not specified in this Chapter, and the duties of the support staff shall be determined in the internal rules of a court.

Chapter 16
Implementing Provisions

§ 128. Entry into force of Act

(1) This Act enters into force on the tenth day following the date of publication of this Act in the Riigi Teataja.

(2) Subsections 61 (5), 76 (1) and (5) and §§ 122, 134 and 146 of this Act shall be implemented as of 1 July 2002.

§ 129. Formation of Constitutional Review Chamber of Supreme Court

Pursuant to this Act, the Constitutional Review Chamber of Supreme Court shall be formed by 1 January 2003.
§ 130. Formation of Disciplinary Chamber

(1) For the formation of the Disciplinary Chamber, the Court en banc shall elect two judges of a circuit court and two judges of a court of the first instance for a term of two years, and three judges of a circuit court and three judges of a court of the first instance for a term of three years.

(2) Until the formation of the Disciplinary Chamber pursuant to this Act, the functions of the Disciplinary Chamber shall be performed by the current Disciplinary Committee. The Disciplinary Chamber shall be formed pursuant to this Act not later than by 1 January 2003.

§ 131. Authority of chairmen of courts and directors of administration

(1) The term of authority of the chairmen of courts in office at the time of entry into force of this Act shall commence as of the date of entry into force of this Act.

(2) Directors of administration of courts shall be appointed to office by way of a public competition not later than by 1 January 2003. Until the appointment of a director of administration by way of a public competition, the duties of the director of administration provided in subsections 15 (4), 16 (4), 17 (4) and § 125 of this Act shall be performed by the chairman of the court.

§ 132. Formation of judge’s examination committee

(1) The judge’s examination committee shall be formed pursuant to this Act not later than by 1 January 2003.

(2) Until the formation of the judge’s examination committee pursuant to this Act, the functions of the committee shall be performed by the current judge’s examination committee.

(3) The service of persons who are in preparatory service at the time of the entry into force of this Act shall continue pursuant to the current plan until the bringing thereof into conformity with this Act. The period of the service of the persons who are in preparatory service at the time of the entry into force of this Act may be reduced, but for not more than one year.

§ 133. Payment of judge’s pension

(1) The time of employment as a judge before entry into force of this Act shall also be included in the length of service necessary to receive a judge’s old-age pension.

(2) For judges who are appointed to office until the entry into force of this Act, employment in the position of lecturer of law with a research degree of an Estonian institution of higher education, sworn advocate, prosecutor, the Chancellor of Justice or in any other position which requires high qualification in law shall also be included in the length of pensionable service as judge. The provisions of this subsection do not extend to the calculation of the length of service necessary to receive the superannuated pension (§ 79).
Within one year as of the entry into force of this Act, the judge’s examination committee shall decide on the determination of the years of pensionable service of all judges, taking into consideration the provisions of this section.

Sections 77-81 of this Act also apply to persons who are not employed as judges at the time of the entry into force of this Act but have held the office of judge after 31 December 1991.

Within five years as of the entry into force of this Act, the right to receive judge’s old-age pension also arises for a person after his or her employment as a judge for five years if the person has held the office of judge after 31 December 1991, attained the pensionable age, and has been employed for at least ten years in positions which the judge’s examination committee has deemed to be equal to holding the office of judge.

Judges who attain the pensionable age within five years as of the entry into force of this Act and who have not completed five years of pensionable service as a judge, have the right to remain in the office of judge until completion of the years of pensionable service on the condition that they, on the date of entry into force of this Act, held the office of judge and have been employed for at least ten years in positions which the judge’s examination committee has deemed to be equal to holding the office of judge.

A judge who is at least 55 years of age and who at least during the last ten years has worked as a judge has the right to receive the judge’s old age pension after he or she leaves the office of judge. The decision to leave office in order to use such right shall be made by 1 January 2003. In the case the judge continues work in public service, the amount of his or her pension plus his or her remuneration received in public service shall not exceed the amount received by him in the position of a judge.

§ 134. Retention of salary

A judge’s salary shall not be reduced due to changes in the salary administration. Any difference in salaries due to reduction thereof shall be compensated from the state budget.

§ 135. Competence of lay judges

Lay judges elected before the entry into force of this Act have the authority of lay judges until the end of the term of their authority.

§ 136. Authority of assistant judge’s examination committee

The assistant judge’s examination committee shall be formed pursuant to this Act not later than by 1 January 2003.

Until the formation of the assistant judge’s examination committee pursuant to this Act, the functions of the committee shall be performed by the current assistant judge’s examination committee.
§ 137. Transitional provisions concerning organisation of judges’ training

(1) Until the year 2004, the judges’ training program shall also include follow-up training.

(2) The Ministry of Justice shall transfer the information and contracts necessary for the preparation of the judges’ training program to a foundation pursuant to the procedure approved by the Minister of Justice, and the foundation shall begin the preparation of the judges’ training program for the year 2003 not later than 1 September 2002.

(3) Until the formation of the Training Council pursuant to this Act, the functions of the Training Council shall be performed by the current Training Council.

§ 138. Merger of courts

(1) The Kohtla-Järve City Court and the Ida-Viru County Court shall be merged not later than by 1 January 2003. Until such date, the Kohtla-Järve City Court shall operate as a separate judicial institution.

(2) The Hiiu County Court and the Lääne County Court shall be merged not later than by 1 January 2003. Until such date, the Hiiu County Court shall operate as a separate judicial institution. After the merger of the courts, at least one judge of the Lääne County Court shall stay at Hiiumaa to resume permanent employment as judge.

§ 139. Repeal of Courts Act


§ 140. Repeal of Status of Judges Act


§ 141. Repeal of Act of Republic of Estonia Specifying Number of Courts and their Staff and Number of Lay Judges in County and City Courts

The Act of the Republic of Estonia Specifying the Number of Courts and their Staff and the Number of Lay Judges in County and City Courts (RT 1993, 1, 1; RT I 1993, 24, 429; 43, 622; 65, 922; 76, 1131; 1994, 81, 1382; 1995, 29, 358; 97, 1664; 1996, 31, 631; 42, 811; 1999, 88, 809; 2000, 102, 678) is repealed.

§ 142. Amendment of Code of Criminal Procedure

The Code of Criminal Procedure (ENSV ÜT 1961, 1, 4 and Annex; RT I 2000, 56, 369; 75, correction notice; 84, 533; 86, 542; 2001, 3, 9; 53, 306 and 313; 56, 333; 65, 378; 100, 645; 102, 676; 2002, 29, 174) is amended as follows:
1) in the Act, the word “lay judge” [kohtukaasistuja] is substituted by the word “lay judge” [rahvakohtunik] in the appropriate case form.

2) section 121 is amended and worded as follows:
“§ 121. Right of Chancellor of Justice, President of the Republic and Supreme Court to examine contents of files
(1) The Public Prosecutor shall notify the Chancellor of Justice, the President of the Republic or the Supreme Court of an order on bringing criminal charges against the President of the Republic, a member of the Government of the Republic, member of the Riigikogu, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court, a justice of the Supreme Court or a judge prepared by a preliminary investigator.
(2) The Chancellor of Justice, the President of the Republic and the Supreme Court have the right to examine the materials relating to the criminal matter.”;

3) Subsection 124 (1) is amended and worded as follows:
“(1) Charges against the President of the Republic, a member of the Government of the Republic, member of the Riigikogu, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court, a justice of the Supreme Court or a judge shall be brought not later than within forty-eight hours after the Riigikogu or the President of the Republic has consented to the bringing of criminal charges against such official.”

§ 143. Amendment of Criminal Code

§ 144. Amendment of Local Government Organisation Act
Clause 22 (1) 26) of the Local Government Organisation Act (RT I 1993, 37, 558; 1999, 82, 755; 2000, 51, 322; 2001, 82, 489; 100, 642; 2002, 29, 174; 36, 220; 50, 313; 53, 336; 58, 362; 61, 375; 63, 387; 64, 390; 393; 82, 480; 96, 565; 99, 579; 2003, 1, 1; 4, 22) is amended and worded as follows:
“26) the selection of candidates for lay judge.”;

§ 145. Amendment of Procedure for Bringing Criminal Charges against Member of Riigikogu, Auditor General, Chancellor of Justice, Chief Justice of Supreme Court and Justice of Supreme Court Act
The Procedure for Bringing Criminal Charges against Member of Riigikogu, Auditor General, Chancellor of Justice, Chief Justice of Supreme Court and Justice of Supreme Court Act (RT I 1995, 83, 1440; 1998, 41/42, 625; 2002, 64, 390) is amended and worded as follows.

1) the title of the Act is amended and worded as follows:
Procedure for Bringing Criminal Charges against Member of Riigikogu, Auditor General, Chancellor of Justice and Judge Act”;

2) section 1 is amended and worded as follows:
“§ 1.
(1) Criminal charges may be brought against a member of the Riigikogu, the Auditor General, the Chancellor of Justice, the Chief Justice of Supreme Court or a justice of Supreme Court only with the consent of the majority of the membership of the Riigikogu.
(2) Criminal charges may be brought against a judge of a court of the first instance or a judge of a court of appeal only with the consent of the President of the Republic.”;

3) Sections 4-9 are amended and worded as follows:

“§ 4.
(1) Detention, searching, seizure, seizure of property, inspection and examination, preventive measures and compelled attendance may be imposed on a person specified in subsection 1 (1) of this Act only after the Riigikogu grants consent thereto, and on a person specified in subsection 1 (2) of this Act only after the President of the Republic grants consent to bringing criminal charges against the person.
(2) A person specified in § 1 of this Act may be detained as a suspect pursuant to the corresponding provisions of the law of criminal procedure without the consent of the Riigikogu if the person was apprehended in the act of commission of a criminal offence in the first degree. In such case, the person may be searched, examined and his or her things may be seized and inspected without the consent of the Riigikogu. The Chief Public Prosecutor shall be immediately informed of the detention of such person and of any acts performed.

§ 5.
The Chancellor of Justice may make a proposal to the Riigikogu to bring criminal charges against a member of Riigikogu, the Auditor General, the Chief Justice of Supreme Court or a justice of Supreme Court. The President of the Republic may make a proposal to the Riigikogu to bring criminal charges against the Chancellor of Justice. The Supreme Court en banc may make a proposal to the President of the Republic to bring criminal charges against a judge of a court of the first instance or a judge of a court of appeal.

§ 6.
(1) A body specified in § 5 of this Act may make a proposal to the Riigikogu or the President of the Republic to bring criminal charges against a person specified in § 1 of this Act at the request of the Chief Public Prosecutor.
(2) A copy of the order on charging a person specified in § 1 of this Act with a criminal offence shall be attached to the request of the Chief Public Prosecutor.

§ 7.
(1) The Chancellor of Justice, the President of the Republic or the Supreme Court en banc shall verify the compliance of the order on charging a person with a criminal offence and the compliance of conducted proceedings with the corresponding provisions of the law of criminal procedure, without verifying and evaluating evidence.
(2) A body specified in subsection (1) of this section has the right to examine the materials of the criminal matter.
(3) If the order on charging with criminal offence and the conducted proceedings are in compliance with the corresponding provisions of the law of criminal procedure, the Chancellor of Justice or the President of the Republic shall submit a written proposal to grant consent to bring criminal charges against the person specified in the request of the Chief Public Prosecutor to the Riigikogu, or the Supreme Court en banc shall submit such a proposal to the President of the Republic.

(4) If the order on charging with criminal offence and the conducted proceedings are not in compliance with the corresponding provisions of the law of criminal procedure, the Chancellor of Justice, the President of the Republic or the Supreme Court en banc shall return the request together with a reasoned explanation to the person who submitted the request within ten days as of the receipt thereof.

§ 8.

(1) A proposal to the Riigikogu or the President of the Republic to grant consent to bring criminal charges against the person specified in § 1 of this Act shall be submitted in writing and it shall contain the reasoned opinion of the Chancellor of Justice, the President of the Republic or the Supreme Court en banc which shall set out the facts specified in the order on charging with criminal offence and other circumstances on which the request is based. In their proposal, the Chancellor of Justice, the President of the Republic or the Supreme Court en banc have no right to exceed the limits of the charges.

(2) A proposal made by the Chancellor of Justice or the President of the Republic to the Riigikogu or a proposal made by the Supreme Court en banc to the President of the Republic shall contain information concerning the person against whom they wish to bring charges and for the purposes of which the consent of the Riigikogu or the President of the Republic is sought, and shall also contain information on the criminal offence with the commission of which the person is charged and the legal assessment of the criminal offence.

(3) The documents specified in § 6 of this Act submitted by the Chief Public Prosecutor which are the basis for the proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court en banc shall be attached to the proposal.

§ 9.

The report of the Chancellor of Justice or the President of the Republic to the Riigikogu for the bringing of criminal charges against the person specified in § 1 of this Act shall set out the information contained in the proposal and the documents attached thereto, taking into consideration the requirements provided in §§7 and 8 of this Act.”;

4) sections 12-14 are amended and worded as follows:

“§ 12.

(1) The decision of the Riigikogu or the President of the Republic concerning grant of consent for the bringing criminal charges against the person specified in § 1 of this Act shall enter into force as of the adoption thereof. The decision shall be immediately sent to the person who made the proposal, to the Chief Public Prosecutor and to the person whom it concerns.”
(2) The consent granted to bring criminal charges against a person specified in § 1 of this Act, except for a member of the Riigikogu, shall result in suspension of the performance of his or her official duties until the entry into force of a court judgment.

§ 13.
(1) If the Riigikogu or the President of the Republic has granted consent to bring criminal charges against the person specified in § 1 of this Act by a decision, the further proceedings in the matter shall be conducted pursuant to the corresponding provisions of the law of criminal procedure.
(2) A person specified in § 1 of this Act may be interrogated as an accused only after the Riigikogu or the President of the Republic has granted consent to bring criminal charges against the person.

§ 14.
(1) For the bringing of criminal charges against a person specified in § 1 of this Act for another act not provided for in the proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court en banc, a new consent of the Riigikogu or the President of the Republic is necessary. Such consent shall be granted by a decision of the Riigikogu or the President of the Republic based on a new proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court en banc pursuant to the procedure of this Act.
(2) Amendment of the legal assessment of the committed criminal offence, amendment of charges or the bringing of new charges shall not result in a new request for grant of consent.”

§ 146. Amendment of Salaries of State Public Servants Appointed by Riigikogu or President of the Republic Act

The Salaries of State Public Servants Appointed by Riigikogu or President of the Republic Act (RT I 1996, 81, 1448; 1999, 29, 406; 2000, 55, 359; 2002, 21, 117; 64, 390) is amended as follows:

1) Subsection 1 (1) is amended and worded as follows:
“(1) The salary of the Prime Minister, ministers, the Auditor General, the Chancellor of Justice, the Chief Justice and the justices of the Supreme Court, the judges of circuit, county, city and administrative court judges shall be the average wages in Estonia multiplied by an appropriate factor established by this Act. The salary of the Chief Justice and the justices of the Supreme Court, the judges of circuit, county, city and administrative court judges shall be adjusted at the beginning of each year on the basis of the average wages in Estonia of the previous year.”;

2) section 7 is amended and worded as follows:
“§ 7.
The factor for the salary of the Chief Justice of the Supreme Court shall be 6.0.”;

3) section 8 is amended and worded as follows:
“§ 8.
The factor for the salary of a justice of the Supreme Court shall be 5.5.”;
4) sections 9 and 11 are repealed;

5) section 10 is amended and worded as follows:
   “§ 10.
The factor for the salary of a judge of a circuit court shall be 4.5.”;

6) section 12 is amended and worded as follows:
   “§ 12.
The factor for the salary of a judge of a county, city and administrative court shall be 4.0.”;

7) Section 14 is added to the Act worded as follows:
   “§ 14.
Until 31 December 2002, subsection 1 (1) and §§ 7, 8, 10 and 12 are in force in the following wording:
   “§ 1.
(1) The salary of the Prime Minister, ministers, the Chief Justice of the Supreme Court, the Auditor General and the Chancellor of Justice shall be the average wages in Estonia multiplied by an appropriate factor established by this Act.”;
   “§ 7.
The factor for the salary of the Chief Justice of the Supreme Court shall be 6.0.
§ 8.
The factor for the salary of a justice of the Supreme Court shall be 2.3.”;
   “§ 10.
The factor for the salary of a judge of the circuit court shall be 1.8.”;
   “§ 12.
The factor for the salary of a judge of a court of the first instance justice shall be 1.6.”

§ 147. Amendment of Probation Supervision Act

The Probation Supervision Act (RT I 1998, 4, 62; 2002, 82, 478) is amended as follows:

1) subsection 5 (6) is amended and worded as follows:
   “(6) Directors of administration of courts and the Minister of Justice exercise supervisory control over the work of probation supervision departments.”;

2) in subsection 6 (1) the word “chairman” is substituted by the words “director of administration”;

3) in subsection 7 (1) the word “chairman” is substituted by the words “director of administration”;

4) section 12 is amended and worded as follows:
   “§ 12. Reporting
Heads of probation supervision departments shall organise the forwarding of regular statistical reports to the Ministry of Justice.”;
5) in subsection 14 (2) the word “chairman” is substituted by the words “director of administration”;

6) subsection 18 (1) is amended and worded as follows:
“(1) Any person who is entered in a list of voluntary probation workers by the head of the probation supervision department may act as a voluntary probation worker.”;

7) in subsection 18 (2) the words “chairman of the court” are substituted by the words “the head of the probation supervision department”;

8) subsection 18 (5) is repealed.

§ 148. Amendment of Code of Civil Procedure


§ 149. Amendment of Notaries Act

Section 26 of the Notaries Act (RT I 2000, 104, 684; 2001, 93, 565; 2002, 57, 357; 61, 375; 64, 390; 102, 600; 2003, 18, 100) shall be amended and worded as follows:
“During candidate service, a notary candidate shall receive monthly remuneration from the Chamber of Notaries in an amount equal to at least four times the minimum monthly wage established by the Government of the Republic. The Chamber of Notaries may increase the amount of remuneration.”

§ 150. Amendment of Penal Code

In §§ 302–304 of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 105, 612; 2003, 4, 22), the word “lay judge” [kohtukaasistuja] is substituted by the word “lay judge” [rahvakohtunik] in the appropriate case form.

§ 151. Amendment of Courts Act, Bank of Estonia Act, Peace-Time National Defence Act, Riigikogu Administration Act and State Audit Office Amendment Act

Section 1 of the Amendment of Courts Act, Bank of Estonia Act, Peace-Time National Defence Act, Riigikogu Administration Act and State Audit Office Amendment Act passed by the Riigikogu on 12 June 2002 is repealed.

RT = Riigi Teataja = State Gazette
Riigikogu = the parliament of Estonia
Ametlikud Teadaanded = Official Notices
ENSV ÜT = ESSR Supreme Council Gazette
Appendix H

Latvian Judicial Training Center

2003 Annual Report
Latvian Judicial Training Centre (LJTC) is a non-profit organization, which was established in April 1995 by the Latvia Judges Association, United Nations Development Program, Soros Foundation Latvia and the Central and Eastern Europe Law Initiative/American Bar Association. The Centre was established with the aim of providing continuing legal education and training, as well as improving the level of professional knowledge and ethics for all judges, court employees, bailiffs and other legal professionals in Latvia. The first international conference and the first seminars were organized in 1995. In 1996, besides judges, also court employees and public notaries were involved in the learning process. In years 1997 and 1998 judges were trained in national law and international legal matters, and a number of conferences and seminars on topical issues were held in cooperation with various international institutions. Along with training, the LJTC was actively involved in publications; it even had a separate publication department. In 1997 the LJTC together with the Supreme Court started publishing the SC Senate decisions, and until 1999 it published also the Lawyers’ Journal (in total 10 issues) and the LJTC newspaper. The Centre changed its location to a new address in Petersalas Street in September 1998.

In mid-1999 the regular judicial training was practically interrupted due to the lack of financing, and only in the second half several international conferences were organized. In view of the fact that virtually no judicial training took place during that time a new Board of the LJTC was elected and a competition for the post of the LJTC executive director announced at the end of 1999.

Since 2000 the LJTC implements its aim on the basis of a four-year agreement with the LJTC and the Ministry of Justice according to which the Ministry of Justice delegates and the Latvian Judicial Training Centre undertakes to perform the following function: to organize professional training of judges and employees of regional and district (city) courts using resources allocated by the Ministry of Justice and financing attracted from other organizations. In the beginning of 2000 the board approved Mr. Roberts Rusis as the Executive director of the LJTC. The LJTC resumed active operation: for the first time it received funding from the State in the amount of 40,000 LVL and whole staff of the LJTC was replaced. In March 2000 a new Program drafting committee was established consisting of the Supreme Court Judge Mrs. Ludmila Polakova and Riga Regional Court Judge Mrs. Inara Ose, later joined by the Supreme Court Judge Mrs. Edite Vernuša. A three-year training program of the LJTC was developed for the first time.

In 2001 the LJTC activities became more systematic: the Centre intensively organized courses for judges, and increased participation of the LJTC in various international projects, as
well as growing number of partners were witnessed. Several LJTC board members and employees had the opportunity to improve their proficiency in study trips abroad. In Spring 2001 the LJTC moved to a new office in Alberta Street – in the premises of Riga Graduate School of Law. According to an agreement between the LJTC and Riga Graduate School of Law, the LJTC could utilize one classroom and the library free of charge, and the office space of the Centre was provided by the Soros Foundation-Latvia.

In 2002 Riga Graduate School of Law became the shareholder of the non-profit organization limited liability company Latvian Judicial Training Centre, and the members elected a new LJTC board. This year also the name of the Centre was changed in Latvian – the previous Latvijas Tiesnesīšu apmacības centrs was replaced by the grammatically correct Latvijas Tiesnešu macibu centrs. In 2002 the LJTC received State financing already in the amount of 60,000 LVL.

The contract with Mr. Roberts Rusis as the executive director was extended until May 2003, when the LJTC board started to search for a new manager of the Centre. After an open competition, Mrs. Solvita Kalnina on 1 August started to work as the new executive director of the LJTC. The board, founding-members and sponsors advanced the following priorities: development of a strategic plan, effective use of existing funding, attraction of additional financing for the implementation of training programs and development of new training programs.

The new management had to deal not only with financial issues and content of the training programs, but also with problems concerning the rent of offices. The agreement with Soros Foundation-Latvia on gratis use of office space expired in October 2003, but the agreement with Riga Graduate School of Law on free of charge use of a classroom for the seminars for judges and court employees expired in February 2004. Having made financial projections and with the board’s acceptance, the management of the Centre decided to sign a new agreement with Riga Graduate School of Law concerning the rent of a larger office space in the same building and the use of a classroom for seminars.

The State funding in 2003 remained in the amount of 60,000 LVL, in accordance with the agreement with the Ministry of Justice concluded in 2000. As planned, the budget of the Centre was significantly increased with income from commercial activities, which were later utilized for developing new programs and organization of seminars, as well as with funding from other projects. However, in 2004, due to legislative changes the Centre had to stand procurement tender procedures in order to obtain the right to provide training to judges and court employees and to receive full State funding in the amount of 80,000 LVL (~121,000 euros).

Albeit the procurement procedures notably delayed the educational plans in the beginning of 2004, and regular training could resume only in mid-April, during the period from January until April the LJTC ensured training for assistants of administrative judges, administrative court hearing recorders, started the training program for the candidates of administrative judges, as well as prepared and organized seminars for employees of the State social insurance agency and Riga municipal police officers on the new Law on administrative procedure. Within the framework of UN Development Program project “Support to Court System” several seminars took place for the enlarged Curricula Development Working Group, where the discussion concerned the role of continuing legal education in the professional career of judges, improvement of seminar evaluation system, division of tasks and coordination between LJTC program development officers, members of the Curricula Development Working
Group and lecturers, with the aim to develop and ensure quality programs for different groups of judges.

EXECUTIVE REPORT ON THE ACTIVITIES OF THE LATVIAN JUDICIAL TRAINING CENTRE IN 2003

The Board of the LJTC

The Articles of incorporation provide the Board members of the Centre are elected for a period of three years, and may be re-elected upon expiration of the term. Until November 2004 the Board is comprised as follows:

- Mrs. Valda Eilande – Senator of the Supreme Court Senate Criminal Matters department, Chairperson of the Board;
- Mr. Andris Gulans – Chief Judge of the Supreme Court, Member of the Board;
- Mr. Aivars Endzīns – Chief Judge of the Constitutional Court, Member of the Board;
- Mr. Peteris Dzalbe – Chief Judge of Zemgale Regional Court, Member of the Board;
- Mrs. Linda Freimane – Prorector in Academic Matters of Riga Graduate School of Law, Member of the Board;
- Mrs. Ilze Strazdina – Acting Executive Director in Program Matters of the Soros Foundation-Latvia, Member of the Board;
- Mrs. Inita Paulovica – UNDP Assistant Resident Representative (Programme);
- Mr. Kaspars Balodis – Dean of the Law Faculty of the University of Latvia, Member of the Board.

To ensure effective and immediate information exchange between the LJTC and the Ministry of Justice, the responsible staff of the Ministry is invited to every Board meeting. In 2003 those were: Maija Sauluna, Deputy State Secretary; Veronika Krumina, Deputy State Secretary in Judicial Matters; Ieva Mieze, State Secretary deputy assistant in judicial matters; Anita Šteinberga, Specialist, Judicial department.

Organization of the LJTC administrative work

The number of employees in 2003 remained constant 4 – two program development officers, deputy executive director in financial matters and executive director. Though in the first half of 2003 there was both management (new executive director Solvita Kalnina assumed the post starting 1 August) and employee changes, it did not hinder the continuation of the training according to the approved program schedule, thereby ensuring training of groups of judges and court employees, namely district (city) court judges and court employees, and regional court judges and court employees, as it was provided under the assignment terms of the Ministry of Justice functions.

Changes were introduced also in division of program responsibility areas. Having regard to the establishment of a new institution – the Administrative courts, the Centre had to assume additional amount of work already at the end of 2003, when the training of the first candidates to the administrative judge’s posts took place. Therefore, the responsibility areas between the two LJTC program development officers were set as follows:
(1) Administrative law, and Civil law;

(2) International law (EU law and Human Rights), and Criminal law.

A new agreement was concluded at the end of 2003 concerning the rent of new offices and use of classrooms in the premises of Riga Graduate School of Law. The previous agreement with Soros Foundation-Latvia concerning the use of office space expired in October 2003, but the agreement with Riga Graduate School of Law on gratis use of classrooms expired in the beginning of 2004.

Development and evaluation of training programs

At the end of 2003 a new approach was taken in the development of training programs, and more attention was devoted to the evaluation of regular and thematic seminars. The participants were asked to fill an evaluation form at the end of each seminar, where each judge or court employee could express their suggestions or critique on any of the subjects, lecturers, training materials or organization of the seminar as a whole. The LJTC staff uses such feedback information as a basis for evaluation of the relevance of study subjects and quality of lecturers in order to assess, which subjects should be examined more thoroughly and what could be possible new subjects.

Until August 2003 there were three judges responsible for the development of training programs – Inara Ose (Riga Regional Court), Valerijans Jonikans (Supreme Court) and Ludmila Polakova (Supreme Court). Taking into account the immense amount of work and responsibility, the LJTC management decided to enlarge the task force for program development by involving also university professors and lecturers. So at the end of 2003 the LJTC task force for training program development was approved in the following composition:

- Mr. Valerijans Jonikans, Supreme Court judge,
- Mr. Aldis Lavinš, Riga Regional Court judge,
- Mrs. Inara Ose, Riga Regional Court Criminal Matters Department Chairperson,
- Mrs. Ludmila Polakova, Supreme Court judge,
- Mrs. Kristine Strada-Rozenberga, University of Latvia, vice-dean, associate professor,
- Mrs. Iveta Andžane, Bauska district court Chief Judge,
- Mrs. Linda Freimane, Riga Graduate School of Law, prorector in academic matters,
- Mrs. Veronika Krumina, Ministry of Justice, Deputy State Secretary in judicial matters,
- Mrs. Jautrite Briede, University of Latvia, lecturer.

However, already in the beginning of 2004, as a result of introducing administrative courts, the LJTC had to make changes in the task force for training program development. Detailed information on current membership in the task force is available in section 3.7. Existing and planned changes in 2004.

Training of different groups of judges and court employees in 2003

A judge in Latvia can raise his professional qualification by way of self-education, by keeping up with legislative changes, as well as by attending seminars offered by the LJTC. Although seminar attendance is not compulsory for judges, a judge has the right and obligation to improve his professional skills and follow up legal developments, as it is stipulated both in code of ethics for judges and other international instruments.
The training of judges was divided in regular and thematic (subject-matter) seminars as in the previous years. Judges are assigned for regular seminars by an order of the Minister, whereas each judge decides freely on subject-matter seminars. A judge must agree on participation in thematic seminars with the Chief Judge of his court.

In 2003 total 60 seminars were prepared and organized, the total number of training days was 126 (including 27 thematic seminars on 17 different subjects). By comparison with previous years – in 2002 the LJTC organized 55 thematic seminars on 17 different subjects; in 2001 – 33 thematic seminars on 16 subjects and in 2000 there were 15 thematic seminars on 8 different subjects.

**Training in regular seminars was organized for the following groups of judges and court employees:**

- 114 Regional court judges;
- 234 district court judges;
- 7 new district court judges;
- 10 candidates for district court judge’s posts;
- 76 Land Register judges;
- 35 candidates to administrative court judge’s posts;

424 judges and 42 candidates were trained

- new district court judge’s assistants;
- Land Register judge’s assistants;
- Regional court hearing recorders;
- District court hearings recorders;
- Court interpreters.

LJTC’s regular seminars in 2003 provided discussions on topical issues of civil and criminal law, as well as EU law and Human Rights matters. Within reasonable limits time was allocated also for other subjects necessary for judge’s work (e.g., relationship psychology). At the end of November the LJTC in addition to already planned work-load realized one of the three courses in the training seminar for the candidates of the administrative court judge’s posts.

The following topics were provided in regular seminars:

**REGIONAL COURT JUDGES**

**Criminal Matters Division (4 days)**

- Relevance, admissibility and validity of evidence in criminal cases;
- Analysis of reversed judgments;
- Qualification problems and jurisprudence in cases related to crimes against chastity and inviolability of sex;
- Investigation experiment;
- Reasoning in judgments (including determination of punishment);
- Conclusions on compliance with judge’s ethics and rules of deontology according to the Latvian jurisprudence and materials of the disciplinary division.

**Civil Matters Division (4 days)**

- Characteristic flaws in the application of Civil procedure;
• Insurance regulation in Latvia;
• Forensic psychology in cases of determining legal capacity of persons;
• The role of good faith principle and its application in jurisprudence;
• EU employment law and its influence on Latvian employment legislation, and its application in practice;
• Conclusions on compliance with judge’s ethics and rules of deontology according to the Latvian jurisprudence and materials of the disciplinary division.

DISTRICT (CITY) COURT JUDGES (in total 8 training days)

Criminal law and procedure
• Moot criminal procedure and resolution of a case;
• Sanction policy in criminal cases;
• Application of criminal procedure enforcement measures in criminal cases and hearing complaints;
• Reasoning in judgments;
• Reasons for reversal of court decisions at appeals level. Court jurisprudence;
• Determining sanctions;
• Reasons for reversal of court decisions at cassation level. Court jurisprudence;
• Relevance, admissibility and sufficiency of evidence;
• Jurisprudence in criminal cases in cases related to crimes against morals and inviolability of sex;
• Determination of robbery and differentiation from other forms of theft;
• Forensic psychology in cases of determining legal capacity of persons.

Civil law and procedure
• Amendments in the Law on civil procedure;
• Issues related to settlement of court expenses;
• Legal regulation of insurance;
• Reasons for acceptance of complaints in the European Court of Human Rights;
• The role of good faith principle in modern Latvian human rights;
• Administrative offences;
• Pledge;
• Translation of legal texts;
• Legal principles; their role and meaning in administration of justice; collision of law and legal principles;
• The influence of Constitutional Court decisions on the process of administration of justice.

EU law and Human Rights
• EU institutions and their function;
• Harmonization of Latvian legislation in the context of Community law. Agreement establishing Association between Latvian and the European Union;
• Disarray in legislation; filling the gaps in laws and legal development;
• Sources of Community law;
• Direct and indirect effect of Community law. Supremacy of EU law;
• Preliminary ruling procedure;
• Legal remedies – the role of a national judge in the implementation of EU law;
• Enforcement of Human rights priority in judicial procedure.
Ethics in court’s activities
- Ethics of judges. Conclusions on compliance with judge’s ethics and rules of deontology according to the Latvian jurisprudence and materials of the disciplinary division;
- Rules of ethics for judges and their relation to public conceptions;
- The status of a judge;
- Relationship psychology.

NEW JUDGES (5 days in criminal law and 5 days in civil law)

Criminal law and procedure
- Preparation of criminal cases for court hearings. Court hearing records;
- Application of procedural enforcement measures in pretrial investigation;
- The status of the defendant;
- Judgment in a criminal case (practical studies);
- Language in judicial documents;
- Hearing a criminal case, analysis;
- Decisions and appeals;
- Circumstances exempting from criminal cases;
- Compliance with human rights law;
- Determination of sanctions;
- Summary procedure;
- International criminal cooperation within the framework of agreements and conventions;
- Indictment in legal proceedings;
- Preparation of criminal cases for appeals and cassation;
- Analysis of judgments.

Civil law and civil procedure
- General legal principles, interpretation of law and legal development;
- Law of obligations;
- Amendments in the Law on civil procedure;
- Review of complaints related to application of administrative sanctions;
- Parental rights and disputes on determination of residence of children;
- Secured claim;
- Legal proceedings in civil cases in the 1st instance;
- Drafting judgments in civil cases;
- Selected issues in hearing divorce claims and disputes related to personal and material relationships between parents and children, and guardianship in relation to amendments in Civil Law;
- Hearing legal proceedings in the Supreme Court;
- Issues related to settlement of court expenses;
- Findings of legal facts in cases;
- Relationship psychology.

DISTRICT (CITY) COURT JUDGE’S CANDIDATES (5 days in criminal law, 5 days in civil law, and 5 days in EU law, legal theory and ethics of judges)

Criminal law and procedure
- Determination of the sanction;
- Relevance, admissibility and validity of evidence in criminal cases;
- Summary procedure;
- Topical issues concerning the Criminal procedure code;
- Moot criminal procedure;
• Judgment in a criminal case;
• Preparation of a criminal case for court hearing. Court hearing records;
• Diversity of crimes;
• Application of procedural enforcement measures in pretrial investigation;
• Private indictment in court proceedings;
• Various decisions during the criminal procedure and their appeal;
• Legal problems related to interrogation of juvenile defendants, victims and witnesses;
• Analysis of a judgment.

Civil law and procedure
• Principles of civil procedure, the role of the courts in hearing cases;
• Secured claim;
• Legal proceedings in civil cases in the 1st instance;
• Hearing cases related with family matters;
• Hearing cases arising from rent matters;
• Legal proceedings in cases concerning finding of legal facts;
• Types and possibilities of expert examination;
• The culture of language in procedural documents;
• International legal cooperation within the framework of agreements and conventions;
• Review of case-studies and determination of main guidelines for drafting court judgments;
• Hearing court case in the Supreme court;
• Topical issues in the law of obligations;
• Analysis of actual court judgments;
• Structure of judgments and practical issues in drafting judgments;
• Application of legal norms concerning litigation expenses.

LAND REGISTER DIVISION JUDGES (6 days)
• Law on administrative procedure
• Commercial register
• Summary of experience in the Land Register divisions
• Draft instructions on recordkeeping in the Land Register divisions
• Concerning pre-emptive rights of purchase
• Concerning the enforcement of arbitration decisions
• Personal data protection
• Amendments in the Law on notaries
• Aspects of State administration
• Concerning the provision of information from cadastre register and topical issues in construction
• Municipal decisions, their types, challenge and appeals procedures
• Employment law. Employee protection
• Main aspects of EU law
• Implementation of EU law in Latvia
• European Community law and principles. Application of EC law. Preliminary rulings
• General issues on cyber space. Crimes in cyber space (networks)
• Tax issues
CANDIDATES TO THE POSITION OF ADMINISTRATIVE COURT JUDGE  (28 academic hours)

Course “Administrative procedure in courts”
- Principles of administrative legal proceedings
- Evidence
- Application in the court
- Comparative proceedings
- Hearing cases
- Court decision and by-decision
- Appeals and cassation
- ECHR Article 6 application in administrative cases
- ECHR application in court judgments

ASSISTANTS TO DISTRICT (CITY) COURT JUDGES (2 repeated 2-day seminars)
- The status and obligations of judge’s assistant
- Preparation of administrative cases for hearing
- Preparation of draft decisions and draft judgments. Supplementary judgments
- Preparation of criminal cases for hearing. Court hearing records
- Languages in legal documents
- Acceptance of claims. Preparation of civil cases for hearings. Secured claims
- Relationship psychology

ASSISTANTS TO LAND REGISTER DIVISION JUDGES (one 1-day seminar)
- Archiving, inventory, maintenance and use
- Legal acts on archives
- Archive foundation of a legal person
- Psychology of telephone conversations
- Work stress management
- Relationship psychology

COURT HEARING RECORDERS IN DISTRICT (CITY) COURTS (2 repeated 2-day seminars)
- Preparation of civil cases for hearings. Court hearing records
- Language culture in procedural documents
- Preparation of criminal cases for court hearings. Court records
- New instructions on court recordkeeping
- Enforcement of Latvian court judgments abroad. Preparation and drafting documents. Invitation of witnesses from abroad.
- Relationship psychology

COURT INTERPRETERS (2 repeated 2-days seminars)
- Legal terminology
- Practical aspects of translators’ work
- Language culture in procedural documents
- Ethics of translators
- Relationship psychology

In cooperation with Ms. Inga Reine (Representative of the Cabinet of Ministers in International Human Rights Institutions), the IJTC initiated discussion series on Latvian judgments that are appealed to the European Human Rights Court in Strasbourg, by highlighting
the main flaws found in Latvian judicial system on different levels which are the main reason for challenging such judgments in international tribunals.

In addition to regular seminars in 2003, the LJTC ensured an opportunity for judges to apply and attend the following thematic seminars, which form an important part of the training programs:

- Amendments in Civil Law and Civil Procedure (4 repeated 1-day seminars);
- Argumentation in court decision in criminal matters (one 2-day seminar);
- Argumentation in court decisions in civil matters (one 2-day seminar);
- Law of obligations;
- Crimes against road safety (three repeated 2-day seminars);
- Crimes against morals and inviolability of sex (two repeated 2 day seminars);
- Use of forensic evidence (one 2-day seminar);
- Ethics of judges (one 2-day seminar);
- Customs law (one 2-day seminar).

The following thematic seminars were organized with the help of various international partners/donors:

- Indemnification of losses in Civil procedure (one 2-day seminar in cooperation with German foundation for international legal cooperation);
- Preliminary ruling procedure (one 2-day seminar in cooperation with German foundation for international legal cooperation);
- Teachings of the legal methodology (one 2-day seminar in cooperation with German foundation for international legal cooperation);
- Refugee and asylum seeker law (one 2-day seminar with PHARE funding);
- Software copyrights. TRIPS. (one 1-day seminar in Tallinn, Baltic Software Alliance);
- EU procedural law (two repeated 2-day seminars in cooperation with Danish European Law Institute and support from the Danish Foreign Affairs Ministry);
- Court employee training (continued seminars, 2 days, the Netherlands Judicial training and study centre).

**Study methodology**

The LJTC lecturers in delivering seminars employ moot courts, analysis of judgments, as well as lecture and engage in discussions. However, the teaching methodology in training seminars depends both on the subject matter and on the length of service of the judge. For example, in training course for candidates to judge’s posts mostly the form of lectures and moot courts is utilized, but training district (city) court judges depends on judges length of service – seminars for judges with more experience takes place in the form of discussions.

In the planning work of the training programs the LJTC focuses increasingly on the raising of the judge-lecturer capacity. In 2003 there was organized one 2-day seminar for judges-lecturers in Human Rights and one 3-day seminar for judges-lecturers in EU law.

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1 Length of service divisions and number of judges in October 2003: 63 district court judges with length of service above 10 years, 48 district court judges with length of service from 3 to 6 years, 30 district court judges with length of service from 1 to 3 years.
A survey conducted in 2003 with the support from the UN Development Program (within the framework of the Ministry of Justice and UN Development Program project “Support to the Court System”) included a section with questions for judges’ continuing professional education. A survey on judicial powers indicate that some 88% of respondents are “satisfied” and “rather satisfied” with training programs offered by the LJTC and 74% think that the Centre must ensure training for judges and court employees in the future.2

Foreign language programs

Since 2002 the LJTC, in cooperation with Association of English language instructors and Riga Graduate School of Law, offers judges the possibility to improve their English language proficiency, by conducting literary English and legal English language courses. Also in 2003 several groups of judges were given the opportunity to improve foreign language proficiency. In cooperation with the Association of English language instructors 37 judges, who passed a test, were included in an English language course and took classes with an English language private teacher in the amount of 60 study hours according to an individually developed study program. Some of the aforementioned continued to pursue learning of English language in a new project that was prepared in cooperation with the USA Embassy and USA State Department administered project International School of Education Scholarship Program. Within the framework of this project judges from Riga, Jelgava, Tukums, Aizkraukle, Bauska, Jurmala, and Sigulda could master the minimum of 10 week (60 hours) program, as well as depending on their choice continue learning in the next level. During the period from September 2003 until the end of February 2004 52 judges from various courts received certificates of participation or completion of the English course. In both projects the participants were provided with the necessary material for studies – study books, journals/newspaper articles, tapes. To ensure dynamic study process both video and audio materials were utilized.

Cooperation with international organizations in providing training seminars

Many of the above mentioned seminars could not take place without the support from our foreign donors and partners with whom the Centre continues its cooperation also in 2004. These are:

- Soros Foundation Latvia,
- UN Development Program,
- German Foundation for International Legal Cooperation,
- US Embassy,
- German Embassy,
- French Embassy,
- EU Law Academy in Trier,
- European University Institute, Robert Schuman Study Centre in Florence,
- Danish Ministry of Foreign Affairs,
- Dutch Judicial Training Center.

Increasingly greater role in the continuing education of Latvian judges in international aspect is assumed by the European Judicial Training Network, which unites all EU Member State institutions that are responsible for continuing professional training of judges and prosecutors on national level. The network organizations ensure the possibility for EU Member

2 http://www.tm.gov.lv/str/1125_HR4_Nr3_2.doc?PHPSESSID=fde5764a10ebca9a384689d742b9548d.
State judges to take part in seminars organized by the responsible State institutions. At the end of 2004 the LJTC plans to become a full-fledged member of this network.

Existing and planned activities for the year 2004

Several projects that have commenced and ideas that have crystallized in concrete steps will be continued in 2004. Although the procurement procedure significantly delayed the training plans of the LJTC in the beginning of 2004 and regular training could be resumed only in mid-April, in the period from January to April the Centre ensured training of new assistants to administrative judges, registrars of administrative court hearings, as well as started the training program for the candidates of the new administrative court judges. In the beginning of 2004 (January and February) the LJTC provided training seminars for employees of the State social insurance agency and Riga Municipal police officers on the new Administrative procedure law.

The new Curricula Development Working Group was approved in the beginning of 2004, this group took part in several seminars on the role of continuing education in the professional career of judges, on the possibilities of improving seminar evaluation system, and division of tasks and coordination between the LJTC program directors and members of the Curricula Development Working Group. As of January 2004 the training program task force is comprised as follows:

Criminal law subdivision:
- Mrs. Inara Ose, Riga Regional Court Criminal Matters Department Chairperson,
- Mr. Peteris Dzalbe, Zemgale Regional Court Chief Judge,
- Mrs. Kristine Strada-Rozenberga, University of Latvia, Vice-Dean, Associate Professor.

Civil law subdivision:
- Mrs. Iveta Andžane, Bauska District Court Chief Judge,
- Mrs. Daiga Vilsone, Riga Regional Court Judge.

International law subdivision:
- Mrs. Linda Freimane, Riga Graduate School of Law, Prorector in Academic Matters,
- Mrs. Inara Garda, Zemgale Regional Court Judge,
- Mrs. Kristine Kruma, Riga Graduate School of Law Lecturer.

Administrative law subdivision:
- Mrs. Veronika Krumina, Ministry of Justice, Deputy State Secretary,
- Mrs. Jautrite Briede, Supreme Court Senator.

Within the framework of the Ministry of Justice and UN Development Program project “Support to the Court System” in 2004 many important LJTC activities will be continued that will help to improve the administrative capacity and sustainability of the Centre, establish a new data base for storage of information, as well as developing new programs that later upon evaluation of topical issues and needs may be included in the regular or thematic seminars. Under the project it is also scheduled to develop a long-term strategic plan, remuneration of the curricula development working group is ensured, development of a new seminar evaluation system, preparation and implementation of new training programs (for Chief Judges on the special court management; for judges on the methodology of drafting judgments; for judges on the ethics and deontology), and other activities.

In 2004 along with the membership in the European Union, the LJTC especially will devote greater attention to EU law and Human Rights. The subdivision on International law of the new curricula development working group has already included EU law and Human Rights both in the regular seminars and a number of separate thematic seminars. In 2004 the
Centre organizes five thematic seminars on EU law in cooperation with the **German Foundation for International Legal Cooperation**, which is our cooperation partner over many years. These seminars will deal both with general questions, such as “Division of Competencies between EU and its Member States”; “The Role of National Courts in EU Legal System”; “The Four Fundamental Freedoms in EC Law”; as well as specific ones, for example, “Family Law/Brussels II Convention” and “Intellectual Property Law in Community Law Context”. In autumn 2004 with the support of the **Soros Foundation Latvia**, the LJTC will organize a series of thematic seminars on Human Rights – “Right to Property as a Human Rights Issue”; “Gender Equality Issues”; “Legal Aspects of Extradition of Persons”; “Injury to Personal Honor and Dignity in Relation to Racial and Ethnic Discrimination Issues”.

In 2003 the LJTC initiated **intensive English language courses** for judges on three different proficiency levels. In 2004 the Centre continues English language courses for judges in Liepaja, and additional 16 hour intensive courses will be offered on legal terminology for judges in Riga at the end of May and beginning of June. It must be mentioned that the Centre works also on development of a **German language program** in cooperation with German and Austrian colleagues.

Information on seminars this year for judges is readily available in Internet portal www.tiesas.lv. The LJTC plans to simplify application forms procedures for seminars by offering updated information in the portal and by encouraging the judges to use more electronic means of communication. The seminar schedule for 2005 the LJTC plans to publish not later than by September 2004.

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3 The training program was implemented in cooperation with US Embassy, International School of Education Scholarship Program for English Language Teachers
Appendix I

Draft Judicial Code for the Republic of Armenia
REPUBLIC OF ARMENIA

JUDICIAL CODE

Chapter COURT FORMATION

GENERAL PROVISIONS

Article 1. Judicial power
1. Judicial power shall be exercised by courts in accordance with the Constitution and laws.

Article 2. Scope
1. This Code regulates matters related to the organization and functioning of the judicial power, to the extent they do not pertain to the Constitutional Court.

Article 3. Courts
1. The highest judicial instance of the Republic of Armenia, with the exception of constitutional justice matters, is the Cassation Court of the Republic of Armenia, which is called to ensure the uniform application of law.
2. First instance and appellate courts, too, shall function in the Republic of Armenia.
3. The following are the first instance courts:
   1) Universal jurisdiction courts;
   2) The insolvency court; and
   3) The administrative court.
4. The following are the appellate courts:
   1) The criminal appellate court; and
   2) The civil appellate court.

Article 4. Judge
1. An person appointed to either of the positions of the Cassation Court Chairman, Chamber Chairmen, judges, or first instance or appellate court judges or chairmen in accordance with the procedure defined by law is a judge.
2. Any judge is vested with the authority to administer justice.
3. A judge shall exercise his authority on permanent grounds.
Article 5. Limits of court jurisdiction
1. Whether a court has jurisdiction over any matter shall be determined by the court on the basis of law.

Article 6. Duty to respect the court
1. Everyone shall be obliged to respect the court.
2. Practicing contempt of court or of the judge in relation to the administration of justice shall trigger a procedural sanction and other liability prescribed by law.

Article 7. Right to judicial protection
1. Everyone has the right to judicial protection of his rights and freedoms.
2. No one may be deprived of the right to have his case examined by a competent, independent, and impartial court in accordance with all the requirements of justice and law.

Article 8. Equality before the law and court
1. Everyone is equal before the law and court.
2. Discrimination of rights, freedoms, and responsibilities based on sex, race, skin color, ethnic or social origin, genetic feature, language, religion, worldview, political or other view, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.
3. In the examination of his case, everyone may invoke, as a legal argument, a res-judicata judicial act of a Republic of Armenia court or the European Court of Human Rights in another case, and request that an identical approach be adopted in respect of him.
4. The reasoning of a higher-instance court or the European Court of Human Rights (including the construal of law) in a case with certain factual circumstances shall be binding for the court in the review of a case with the same factual circumstances, with the exception of the case when court, relying on lofty circumstances, justifies that they are not applicable to the factual circumstances at hand.

Article 9. Principle of adversarial proceedings
1. Court proceedings, with the exception of cases provided by law, shall be adversarial.

PRINCIPLES OF COMPOSITION AND OPERATION OF JUDICIAL AUTHORITY SYSTEM

Article 10. Justice Fulfillment in Conformity with the Law

Article 11. Self-Governance of Judicial Authority
1. Judicial authority is autonomous.
2. Self-governance of judicial autonomy is fulfilled through self-governance bodies as defined by the present law.

**Article 12. Above Politics Position of the Judge**

1. The Judge may not be a member of any political party or perform political activity otherwise. The Judge is obliged to demonstrate political restraint in any circumstance.

2. In elections of public or local self-governance bodies the Judge may participate solely as elector. The Judge may not participate in pre-election campaign.

3. While fulfilling his activities in electoral commissions, the Judge is obliged to ensure that no doubt is cast upon his political neutrality.

4. Professional discussions or conclusions on draft legal acts regulating the activities of judiciary authority, discussions and announcements, including public, on normal operations of judicial authority by judges or professional unions of judges or by self-governance bodies of judges, are not violation of above politics principle.

**Article 13. Independence of the Judge and Autonomy of the Court**

1. While discharging justice and other authorities envisaged by the law, the Judge is independent.

2. While discharging justice and other authorities envisaged by law the Judge is not accountable on that before anybody, including he is not obliged to give any explanation, unless envisaged by the law.

3. Unforeseen by the law intervention with the Judge’s activities is prohibited. Such action is prosecuted by the law. If such intervention is made by public servants, it shall result in disciplinary action upon them—up to removal from office or dismissal.

4. The Judge is obliged to immediately inform the Ethics Commission of Council of Justice about any interference in his judiciary or other authorities envisaged by the law.

5. Both while holding his position and after suspension of his authorities the Judge may not be interrogated as a witness with regard to any case heard by him.

**Article 14. Limiting the Judge to Certain Types of Activities**

1. The Judge may not carry out entrepreneurial activities, may not hold any position not related to his responsibilities in any public or local self-governance body, may not hold any position in commercial organizations, perform any other paid job except for scientific, pedagogical and creative jobs.

2. The order and authorities of Judge’s activity in electoral commissions are defined by the Election Code.

3. Within a week period the Judge shall be obliged to inform the chairman of his court about other activities discharged by him apart from duties of Judge.

**Article 15. Immunity of the Judge**

1. The Judge is immune.
2. Prosecutor General only may take criminal proceedings upon the Judge, and Prosecutor General implements control over lawfulness of the given case investigation.

3. Prosecutor General immediately informs RA President, the Minister of Justice, Chairman of Cassation Court on taking criminal proceedings upon the Judge or on arresting him, and within 24 hours sends to them the decision about taking criminal proceedings or arresting him.

4. Without the permission given by RA President based on recommendation of Judicial Council the Judge may not be taken into custody, may not be involved as a defendant or imposed upon administrative action in judicial order.

5. The Judge may not be arrested except for those cases where he is arrested in the process of committing a crime or immediately after that. The arresting bodies or officials are obliged to provide unhindered access of Chairman of RA Cassation Court or his authorized person into the premises where the arrested Judge is kept and provide a meeting with the Judge.

6. The Judge may not be subjected to bringing to court. After clarification of the status of the Judge subjected to bringing to court without documents the authorized public body must immediately release him.

7. Criminal proceedings with regard to an evident unfair sentence, decision or other judicial act brought in by the Judge for selfish ends or other private reasons may be instituted upon the Judge only when his authorities have been suspended ahead of time in connection of that.

8. The residential or service buildings where the Judge lives or works, as well as his personal and office cars are also immune. Entering them, searching or observing or confiscating documents or belongings from them is allowed only in case of taking criminal proceedings upon the Judge as defined by the law, through notifying the chairman of Cassation Court.

9. The Judge may not be called to account for expressing his position, voting or other act or for idleness, including after concluding his authorities if there are no criminal traits present there.

10. Announcing of military or extraordinary situation does not revoke the immunity guarantees ratified in the present article.

**Article 16. Life Tenure for Judges**

1. Judge has the life tenure.

2. The Judge serves on the bench till he reaches retirement age of 65 years. Authorities of the Judge, who has reached the retirement age, shall stop on the next day of reaching the age of 65 years.

3. If a case cannot be heard in a given court as a consequence of insufficiency of number of Judges caused by satisfying the waiver notified to Judges or the Judges’ self-waivers or for some other reasons, by resolution of the chairman of Cassation Court a Judge of other court of the same jurisdiction, may be sent on an assignment to that court for up to 6 months by either suspending or continuing his main authorities. The same Judge may not be sent on an assignment for the second time for a period of one year since the completion of the last assignment.
4. If a case cannot be heard in a given court as a consequence of insufficiency of number of Judges caused by satisfying the waiver notified to Judges or the Judges’ self-waivers or for some other reasons, by resolution of the Chairman of Cassation Court, the Judge envisaged by clause 7 of the present article (of the same or higher jurisdiction), may be sent on an assignment to the given court. The same Judge may not be sent for an assignment for the second time for a period of one year since the start of previous assignment.

5. In the event that the volume of cases heard in a given court is smaller than the number of Judges, the Judge of that court may be sent on assignment to another court by decision of the chairman of Cassation Court for the period of 6 months, by suspending the discharge of his main authorities. The same Judge may not be sent on an assignment for the second time for a period of one year since the completion of previous assignment.

6. In case of reduction of number of Judges in a court, the priority for continuing serving on the bench is given to first of all the chairman, and secondly, the elder Judges. The authorities of reduced Judges are not suspended and the mentioned Judges continue to hold their positions. And their status, including the right for salary and bonus; the right to be involved or to continue being involved in the list of professional advancement is maintained till the Judge reaches the retirement age as defined by the RA Constitution, unless otherwise envisaged by the present law.

7. If amendments bring to abolishment of the given court the Judges of the given court are considered to be reserve. And their status, including the right for salary and bonus, the right to be involved or to continue being involved in the list of professional advancement is maintained till the Judge reaches the retirement age as defined by the RA Constitution, unless otherwise envisaged by the present law.

8. In cases envisaged by parts 6 and 7 of the present article, in accordance with the order defined by present law, when offering a Judge a lower position than the previously held one, he maintains the salary of the previous position, including the bonuses (with exception of bonuses for position of chairman of the court). And in case of increase of salary of Judges, his salary increases proportionally.

**Article 17. Principles of Effective Justice Enforcement**

1. To provide effective hearing of the case in court, a preparatory stage of hearing of the case is implemented.

2. Hearing of a case in court, as a rule, must be completed within one court session.

3. Preparation of the case court hearing and the key hearing of a case must be implemented within reasonable dates.

4. Hearing of civil and criminal cases in court of general jurisdiction is implemented based on principle of Judge’s specialization.

**Article 18. Individual or Collective Case Hearing**

1. In the Court of First Instance cases are heard solely by the Judge—individually. When hearing the case individually, the Judge appears as the court.
2. In the Court of Appeal the appeals against the judicial act virtually resolving the case are heard collectively— in composition of three Judges; and with appeals brought against other judicial acts—are heard individually.

3. All insolvency cases are heard individually in the Court of Bankruptcy.

4. Decisions on issues subject to court of insolvency are also made individually, including the cases, where the given issue is reconsidered by a higher court jurisdiction after the judicial act virtually resolving the given case has been overruled.

5. When heard for the first time, administrative cases are heard in Administrative court in individual manner, except for the cases, where the brought in judicial act virtually resolving the case is not subject to appeal. Administrative cases overruled by Cassation Court decisions are heard in Administrative Court collectively, in composition of three Judges.

6. Cassation Court resolves the issue of acceptance of cassation appeal collectively in composition of chairman of the chamber of Cassation Court and two Judges - unanimously; and in case of absence of unanimous decision - in composition of Cassation Court.

7. Cassation appeals taken into proceedings are heard by Cassation Court collectively in composition of Cassation Court.

**Article 19. Trial Language**

1. In Republic of Armenia trial is enforced in Armenian.

2. Persons participating in the case are entitled to appear in language preferable to them, by providing Armenian translation.

3. Persons participating in hearing of a criminal case and not speaking Armenian are entitled to receive service of Armenian translation at the expense of Republic of Armenia. The government defines the order of designation of translators.

4. Persons participating in civil or administrative cases are entitled to receive complementary service of translation at the expense of Republic of Armenia, if they do not speak Armenian and prove that they do not possess sufficient resources to provide paid translation.

**Article 20. Publicity of Case Hearing**

1. In Republic of Armenia the cases are heard openly.

2. Behind closed doors court hearing may be carried on only by court decision, in cases and order stipulated by the law, with purpose of protection of public norms, public order, state security, protection of private life of litigants and justice interests.

3. Conclusive part of judicial act that virtually resolves the case, is published at an open session of the court.

4. The conclusive part of judicial act virtually resolving the case of adoption may be published by consent of adopter only.
5. Every person is entitled to familiarizing himself with court case, with which the judicial act virtually resolving the case has come into force. Meanwhile, a person may familiarize himself with cases heard in behind the door sessions – only by court that has brought in the judicial act.

**Article 21. Private Decision of the Court**

1. When grounds available, the court of criminal and administrative cases adopts a private decision in parallel with court judgment, verdict or resolution, in order to draw attention of respective officials to violations made during administrative proceedings, as well as during investigation or pre-investigation.

2. The private decision of the court must be substantiated. Private decision is signed by all Judges and, at discretion of the court, may be proclaimed during the court hearing.

3. Private decision is sent to supervisor of the official who has made the violation, and in case of absence of such- to the person who has made the violation. And within a month period, the latter is obliged to inform the court in written form about the initiated measures.

4. Private decision may be appealed.

**UNIVERSAL COURT**

**Article 22. Competence of universal court**

1. A universal court shall have jurisdiction over all cases, with the exception of cases, jurisdiction over which has been reserved to courts examining administrative and insolvency cases.

2. In accordance with the procedure laid down in the procedural legislation, a first instance court shall conduct supervision of the pre-trial stage of criminal proceedings.

3. A first instance universal court shall exercise other powers vested in it by law.

4. The judicial precinct of a universal court shall be the territory of the relevant administrative-territorial unit or units.

**Article 23. Coming into force of judicial acts of universal courts**

1. A judicial act of a universal court, which solves the case in substantive terms, shall come into legal force one month after promulgation. The law may prescribe another term of coming into force of such acts.

2. The procedural legislation shall define the time during which a judicial act of a universal court, which does not solve the case in substance, i.e. an interim judicial act, shall come into legal force.

**Article 24. Universal courts, number of judges, and residence**

1. The courts of the City of Yerevan shall function as follows:

   1) The Universal Court of the Erebouni and Nubarashen communities, with a court chairman and six (6) judges;
2) The Universal Court of the Kentron and Nork-Marash communities, with a court chairman and eight (8) judges;

3) The Universal Court of the Ajapniak and Davtashen communities, with a court chairman and three (3) judges;

4) The Universal Court of the Avan and Nor Nork communities, with a court chairman and five (5) judges;

5) The Universal Court of the Arabkir and Kanaker-Zeytun communities, with a court chairman and five (5) judges;

6) The Universal Court of the Shengavit community, with a court chairman and five (5) judges; and

7) The Universal Court of the Malatia-Sebastia community, with a court chairman and five (5) judges;

2. The regional (“marz”) courts shall function as follows:

1) The Universal Court of the Kotayk Marz, with a court chairman and seven (7) judges;

2) The Universal Court of the Ararat Marz, with a court chairman and six (6) judges;

3) The Universal Court of the Armavir Marz, with a court chairman and six (6) judges;

4) The Universal Court of the Aragatsotn Marz, with a court chairman and four (4) judges;

5) The Universal Court of the Shirak Marz, with a court chairman and eleven (11) judges;

6) The Universal Court of the Lori Marz, with a court chairman and eleven (11) judges;

7) The Universal Court of the Tavush Marz, with a court chairman and four (4) judges;

8) The Universal Court of the Gegharkunik Marz, with a court chairman and seven (7) judges;

9) The Universal Court of the Vayotz Dzor Marz, with a court chairman and one (1) judge; and

10) The Universal Court of the Syunik Marz, with a court chairman and seven (7) judges;

3. The residence of universal courts of community/communities shall be within the territory of the respective community (one of the communities).
4. The headquarters of a regional (marz) universal court shall be within the administrative territory of the region (marz). A regional (marz) universal court may have other residences within the administrative territory of the same region (marz).

**Article 25. Universal court chairman**

1. The chairman of a universal court is a judge.

2. The chairman of a universal court shall:
   1) Oversee work discipline of judges;
   2) Oversee judges’ compliance with case review timelines;
   3) Report violations of the Code of Ethics by judges to the Judicial Council Ethics Committee;
   4) Grant leave to judges in accordance with the procedure set by law;
   5) Oversee the performance of court staff;
   6) Represent the court in dealings with other bodies; and
   7) Exercise other powers vested in him by law, decisions of the General Assembly of Judges, and decisions of the Judicial Council.

**CHAPTER VI. ADMINISTRATIVE COURT**

**Article 26. Authorities of Administrative Court**

1. Administrative Court hears all administrative cases per se.

2. Decisions of Administrative Court may be appealed only through cassation order.

3. Court area of Administrative Court is the territory of Republic of Armenia.

**Article 27. Judicial Acts of Administrative Court Coming into Force**

1. Judicial acts virtually resolving the case of administrative court come into legal force in one month after promulgation. The law may envisage other date for those acts to come into force.

2. Dates for coming into legal force of intermediary judicial acts of administrative court are defined by judicial legislation.

**Article 28. Administrative Court Composition and Headquarters**

1. Administrative Court operates in composition of court chairman and 15 Judges.

2. Administrative Court headquarters is located in Yerevan.

3. Administrative Court may have headquarters throughout marzes.
Article 29. Chairman of Administrative Court

1. Chairman of Administrative Court is a Judge.

2. Chairman of Administrative Court possesses authorities of chairman of court of general jurisdiction.

INSOLVENCY COURT

Article 30. Competence of insolvency court

1. The insolvency court shall administer insolvency cases. The insolvency court shall review the merits of issues subject to its jurisdiction in insolvency cases and, based on a decision of the Civil Appellate Court or the Cassation Court on quashing a judicial act, review in substance the issue regarding which the judicial act was quashed.

2. Insolvency court acts that solve the case in substance may be appealed only by cassation proceedings.

3. The insolvency court shall have jurisdiction over the territory of the Republic of Armenia.

Article 31. Coming into force of insolvency court judicial acts

1. Insolvency court acts that solve the case in substance shall come into legal force from the moment of their promulgation.

Article 32. Number and residence of insolvency court judges

1. The insolvency court shall function with a court chairman and six (6) judges.

2. The headquarters of the insolvency court shall be in the City of Yerevan.

3. The insolvency court may have other residences in the regions (marzes).

Article 33. Chairman of insolvency court

1. The insolvency court chairman is a judge.

2. The insolvency court chairman shall have the powers of a universal court chairman.

APPELLATE COURT

Article 34. Competence of appellate court

1. Within the limits of its competence, an appellate court shall review judicial acts of universal and insolvency courts, which solve the case in substance.

2. An appellate court shall review interim judicial acts only in exceptional cases prescribed by law.

3. An appellate court shall review a judicial act within the limits of the appeal.

4. An appellate court shall have jurisdiction over the whole territory of the Republic of Armenia.
Article 35. **Coming into force of appellate court judicial acts**

1. Judicial acts of the appellate court shall come into legal force from the moment of their promulgation.

Article 36. **Appellate courts, number of judges, and residence**

1. Two appellate courts shall function in the Republic of Armenia, including:
   
   1) The Civil Appellate Court; and
   
   2) The Criminal Appellate Court.

2. The Civil Appellate Court shall function with a court chairman and nine (9) judges.

3. The Criminal Appellate Court shall function with a court chairman and nineteen (15) judges.

4. The residence of the appellate court shall be in the City of Yerevan.

Article 37. **Period of lodging an appeal**

1. An appeal against a judicial act that solves the case in substance may be lodged before the end of the period set for such act to come into legal force.

2. Persons that did not take part in the case examination, but had their rights and responsibilities affected by the judicial act taken to solve the case in substance, shall have the right to lodge an appeal within a one-month period of the moment when they found out or could have found out about such act. Such an appeal may not be lodged, if 20 years have passed since the judicial act coming into legal force.

3. An appeal against an interim judicial act may be lodged within a three-day period, unless the law provides otherwise.

4. An appeal based on newly-emerged circumstances may be lodged within three (3) months of the moment when the appellant found out or could have found out about their emergence. An appeal based on newly-emerged circumstances may not be lodged after 20 years of the judicial act coming into legal force.

Article 38. **Right to lodge an appeal**

1. The following shall have the right to lodge an appeal against first instance court judicial acts, with the exception of acts over which the law does not allow an appeal:

   1) Parties to the case;

   2) Non-parties to the case, whose rights and responsibilities were affected by the judicial act; and

   3) The prosecutor—in cases prescribed by law.

Article 39. **Grounds for lodging an appeal**

1. An appeal may be lodged on the ground of a judicial error or a newly-emerged circumstance.
Article 40. Limitations on lodging appeals in civil cases
1. If the parties have concluded an agreement on waiving the right of appeal, then the appeal of a party/parties that concluded such agreement may be admitted by the appellate court, only if the other party/parties to such agreement consent to the court’s admitting such appeal.

2. Appeal of a civil case regarding a property claim shall be permissible, only if the value of the disputed property exceeds 50-fold the minimal salary.

3. An appeal lodged by a party to the case on the ground of a judicial error shall be subject to review, only if such party expresses his position on the disputed issue during the first instance court’s examination of the case.

4. Procedural law may prescribe additional limitations on lodging an appeal.

Article 41. Requisite data in an appeal
1. In addition to the requisite data prescribed the procedural law, the appeal shall justify the existence of a judicial error.

Article 42. Response to an appeal
1. A party to the case shall have the right to present to the appellate court a response to the appeal in the period and procedure defined by law.

Article 43. Peculiarities of appellate proceedings
1. In the review of the appeal in the appellate court, factual circumstances deemed established in the first instance court may not be changed, unless:
   1) The parties have reached written agreement on any such fact, or
   2) The factual circumstances of the case may be changed on the basis of evidence examined in the first instance court.

2. As a rule, the appellate court shall examine the case by means of written correspondence.

Article 44. Competence of appellate court
1. As a result of reviewing judicial acts solving the case in substance, the appellate court exercises all the powers of the cassation court, with the exception of the power set forth in Article 58(1)(7).

2. As a result of reviewing appeals against interim judicial acts, the appellate court adopts a new judicial act, which shall come into legal force from the moment of its adoption.

Article 45. Chairman of appellate court
1. The appellate court chairman is a judge.

2. The appellate court chairman shall have the powers of a universal court chairman.
CHAPTER I: CASSATION COURT

Article 46. Cassation Court Authorities and Operation Objectives

1. The operation objective of Cassation Court is to provide accurate interpretation of law and help develop rights.

2. The Cassation Court takes the appeal into proceedings if:

   1) judicial act brought in for a given case may essentially impact the judicial practice, or

   2) reconsidered judicial act contradicts to decision previously adopted by the Cassation Court, or

   3) As a result of judicial or material right violation by subordinate court, possible judicial mistake may cause grave consequences.

3. Within its authorities, Cassation Court reviews judicial acts virtually resolving cases of subordinate courts, and decisions adopted after the review of intermediary judicial acts of Court of Appeal.

4. While case hearing in cassation order, the Cassation Court checks the legality of judicial act of a case only within cassation appeal grounds, and only upon persons who have brought the appeal.

5. Judicial territory of Cassation Court is the territory of Republic of Armenia.

Article 47. Promulgation and Coming into Force of Judicial Acts of Cassation Court

1. Act of Cassation Court comes into legal force at the moment of its promulgation; it is final and not subject to appeal.

2. Acts of Cassation Court are subject to be officially published in “Official Reference Book of Republic of Armenia”.

Article 48. Cassation Court Structure, Number of Judges and Headquarters

1. Cassation Court consists of chairman of Cassation Court, chairmen of chambers and six Judges.

2. Cassation Court has three chambers. Each Chamber consists of chairman of chamber and two Judges of chamber.

3. Compositions of Chambers are not stable.

4. Authorities of chairman of one of chambers are officially discharged by Chairman of Cassation Court.

5. Headquarters of Cassation Court is located in Yerevan.
Article 49. Small Chambers of Cassation Court

1. To clarify the conformity of cassation appeals submitted to Cassation Court with ratification conditions defined by article 55 of the present legislation and to resolve the issue of accepting for hearing, the chairman of Cassation Court formulates small chambers consisting of chairman of chamber and two Judges of cassation court. Those decisions of the chamber are made unanimously and are not subject to appeal. In case of even one Judge’s dissimilar opinion, the issue of acceptance of cassation appeal for hearing is subject to being resolved by full composition of the Cassation Court.

2. In cases stipulated by the law the case is heard in one of the chambers for the first time. Decisions of that chamber are brought in by the majority of votes and are not subject to appeal.

Article 50. The Order of Bringing in Decisions in Cassation Court When Hearing an Appeal

1. The Cassation Court hears the appeal in full composition. The session of Cassation Court is law competent, if minimum seven Judges participate in it. Cassation Court brings in the judicial act virtually resolving the case by minimum of five votes. If during the Judges’ conference no proposal receives five votes, the appeal is considered to be rejected.

Article 51. Term for Bringing Cassation Appeal

1. Cassation appeal may be brought into the Cassation Court within three months period after promulgation of the judicial act virtually resolving the case by subordinate court.

2. Cassation appeal with newly revealed circumstances may be presented within one month period after the revelation of those circumstances.

3. Persons who did not participate in the case, but whose rights and obligations were decided by virtually case resolving judicial act are entitled to submitting a cassation appeal within three months period after the moment they learned or might have learned of such act. Such an appeal may not be submitted if twenty years have passed since the judicial act has come into legal force.

Article 52. The Right to Bring Cassation Appeal

1. Judicial act virtually resolving the legally effective case may be appealed in Cassation Court by:

   1) Persons participating in the case,
   2) Persons who have not participated in the case, but whose rights and obligations have been decided in virtually case resolving judicial act,
   3) RA Prosecutor General and his deputies in cases stipulated by the law.

2. Persons envisaged by clauses 1) and 2) of part 1 of the present article may bring appeal to Cassation Court by certified attorneys.

Article 53. Grounds for Bringing Cassation Appeal

1. A judicial mistake is a ground for bringing a cassation appeal.
Article 54. Limitations for Bringing Cassation Appeal

1. A person may not appeal a judicial act virtually resolving the case subject to appeal by order of re-hearing in Cassation Court, if the latter has not appealed the judicial act in Court of Appeal by the same grounds.

Article 55. Ratification Conditions of Cassation Appeal

1. The cassation appeal must substantiate the presence of judicial error, along with ratification conditions stipulated by the trial law.

2. Person who brings the cassation appeal is obliged to substantiate, the importance of the review of given judicial act by cassation order from the view of objectives envisaged by article 92 of Constitution and part 1 of article 46 of the present law.

Article 56. Response to Cassation Appeal

1. Person participating in the case is entitled to submit the response to cassation appeal at the Cassation Court in dates and order stipulated by the law.

Article 57. Proceedings in the Cassation Court.

1. In Cassation Court the proceedings of review of judicial act is implemented by canons of re-hearing.

2. In cases stipulated by the law when virtually hearing the case for the first time the chamber appears as Cassation Court and brings in a judicial act virtually resolving the case by canons of first instance jurisdiction. It comes into force at the moment of promulgation and is not subject to appeal.

Article 58. Authorities of Cassation Court

1. As a result of review of judicial acts virtually resolving the case, the Cassation Court shall:

1) Reject the cassation appeal and leave the judicial act in legal force.

2) Satisfy the cassation appeal either fully or partially, respectively, by overruling the judicial act either fully or partially. The case with overruled part is sent to respective subordinate court for new hearing in a new composition. The judicial act with no overruled part comes into force.

3) Fully or partially overrule the judicial act and approve the reconciliation agreement of the litigants.

4) Substantiates the virtually correctly resolving but insufficiently substantiated, wrongly substantiated or unsubstantiated judicial acts brought in by Court of First Instance, Administrative Court, Court of Bankruptcy and Court of Appeal.

5) Overrule the judicial act of subordinate court, and bring in new judicial act virtually resolving the case, if the factual circumstances approved by the subordinate court allow bringing in such a new act and that derives from interests of justice effectiveness.
6) Cut the legal proceeding fully or partially or leave the case without hearing fully or partially, if grounds for cutting the proceeding or leaving the request without hearing were revealed in the subordinate court during the case hearing.

7) In cases of bringing in a new judicial act, amending the judicial act, it shall give legal force to one of judicial acts of either First Instance Court or Court of Appeal, and, in the meantime substantiating it or without such clarification.

2. As a result of virtually hearing the case for the first time, the Cassation Court brings in a judicial act virtually resolving the case, which comes into force at the moment of its promulgation and is not subject to appeal.

Article 59. Chairman of Cassation Court

1. The Chairman of Cassation Court heads the Cassation Court.

2. Chairman of Cassation Court discharges all authorities specified by the law for chairman and Judge of Chamber of Cassation Court.

3. The Chairman of Cassation Court shall:
   1) ensure smooth operation of the Cassation Court;
   2) invite and preside over the sessions of Cassation Court;
   3) Represent the Court in relations with other bodies
   4) Send Cassation Court decisions for publishing in RA official reference book;
   5) provide vacation to Judges of Cassation Court as defined by the law;
   6) monitor the operation of staff of Cassation Court;
   7) represent the Cassation Court in relations with other bodies,
   8) discharge other authorities specified for him by the law, by decisions of General Meeting of Judges, decisions of Council of Judges.

4. The Chairman of Cassation Court as Chairman of RA Council of Judges shall:
   1) provide smooth operation of courts;
   2) designate one Judge from among Judges of Cassation Court for involvement in Qualifying Commission of Chamber of Attorneys;
   3) monitor the work discipline of Judges of all courts, their maintaining the dates of case hearing and maintaining the requirements of Conduct Code of Judge;
   4) chair General Meetings of RA Judges, Council of Judges, chair the sessions of Council of Justice;
   5) designate and remove the head of Judicial Department, monitor operation of Judicial Department;
designate an acting chairman of Court of First Instance or Court of Appeal in case of vacancy of such;

7) in cases stipulated by the law and order, institutes disciplinary proceedings upon the Judge;

8) when revealing an infringement of requirements of Conduct Code, which does not entail disciplinary action, present a respective notice on that to Committee of Ethics of Council of Judges,

9) represent the court authority in relations with other bodies,

10) discharge other authorities vested in him by the law, by decisions of General Meeting of Judges, by decisions of Council of Judges.

Article 60. Chairman of Cassation Court Chamber

1. Chairman of Cassation Court Chamber is a Judge.

2. Chairman of Cassation Court Chamber shall:

   1) organize operations of the chamber;

   2) chair the chamber session, when the Cassation Court hears the case for the first time in cases stipulated by the law;

   3) in absence of chairman of Cassation Court, with his authorization temporarily discharge the authorities of the latter.

SAFEGUARDS OF NORMAL FUNCTIONING OF COURTS

Article 61. Sanctions applied by court

1. In case of contempt of court, obstruction of the normal course of a court session, abuse of procedural rights, disrespectful or improper performance of procedural obligations, a defense attorney’s or prosecutor’s lodging a manifestly unfounded claim or appeal, the court may apply the following sanctions in respect of parties to the proceedings, parties to the case, and others present at the court session:

   1) Warning;

   2) Removal from the courtroom;

   3) Judicial fine; or

   4) Filing a request with the Prosecutor General or the Chamber of Advocates, respectively, concerning punishment.

2. A sanction must be proportionate with the gravity of the act and pursue the aim of safeguarding the normal functioning of the court.

3. An act of warning and removal from the courtroom shall be recorded in the court session minutes.
4. If a decision on removal from the courtroom is not immediately voluntarily complied with, compulsory removal shall be performed through the judicial police.

5. A judicial fine may be applied in respect of parties to the proceedings and parties to the case. A judicial fine may be applied in the amount of up to one million drams. The amount of the judicial fine shall be determined by the court at its sole discretion; however, in addition to the gravity of the act, the personal characteristics of the perpetrator of the act must be taken into account. A judicial fine shall be applied by means of a court decision. A decision on applying a judicial fine shall be subject to compulsory execution in accordance with the procedure set forth in the Law on Compulsory Execution of Judicial Acts.

6. If the sanction prescribed in Paragraph 1(2) of this article may be applied in respect of the accused in a criminal case, the session shall be postponed for a period of up to two weeks. For persons on remand, the postponement period shall not be included as served punishment time.

7. The sanction prescribed in Paragraph 1(4) of this article may be applied in respect of a prosecutor involved in the examination of the case or an advocate taking part in the examination of the case as a representative or a defense attorney. A request may be filed with the Prosecutor General or the Chamber of Advocates by decision of the court. A judicial sanction shall necessarily trigger the instigation of disciplinary proceedings against the prosecutor or advocate in question.

8. A court decision on applying a judicial sanction shall be final and not subject to an appeal.

Article 62. Court budgeting and financing

1. Financing for each court of the Republic of Armenia shall be reflected in the budgetary application and incorporated as a separate line in the state budget.

2. Each court’s budget shall be drafted by the staff of that court.

3. The budgetary application of courts and the medium-term expenditure framework shall be prepared by the Judicial Department, the head of which shall submit it to the Judicial Council for approval. The approved budgetary application and the medium-term expenditure framework shall be submitted to the Government of Armenia for incorporation in the draft state budget during the period specified by a decision on starting the next year’s budgetary process.

4. If the Government accepts the budgetary application of courts, the application shall be incorporated in the draft state budget; if it is not accepted, it shall be submitted to the National Assembly alongside the draft state budget. In the latter case, the Government shall present to the National Assembly and the Judicial Council detailed justification for rejecting the budgetary application.

5. The budgetary application of courts shall contain all the expenditures necessary for ensuring the normal functioning of courts.

6. The position of courts on the budgetary application and the medium-term expenditure framework shall be presented before the National Assembly by the Head of the Judicial Department.
7. A judicial reserve fund shall be prescribed to finance unplanned expenditures needed to ensure the normal functioning of courts. The judicial reserve fund shall be presented as a separate line of the budget. The size of the reserve fund shall be equal to 2% of the judicial expenditures prescribed under the current year’s state budget law. Allocations from the reserve fund shall be made by decision of the Judicial Council upon presentation by the Judicial Department.

8. If the judicial reserve fund is inadequate to safeguard the normal functioning of courts, the Government shall be obliged to fill the gap from the Government’s Reserve Fund.

**Article 63. Seal of judge and court**

1. Each judge shall have a numbered seal containing the coat of arms of the Republic of Armenia and the name of the court, as well as stamps prescribed by the Judicial Council. Each judge shall have the right to use electronic digital signature in accordance with the procedure defined by law.

2. The Cassation Court shall have a seal containing the coat of arms of the Republic of Armenia and its name.

**Article 64. Use of state symbols in court**

1. The Republic of Armenia flag shall be raised on the buildings or at the main entrance of all residences of courts.

2. The coat of arms of the Republic of Armenia and the Republic of Armenia flag shall be present in the courtroom and the office of each judge.

**Article 65. Official website of the judiciary**

1. The judiciary shall have its official website, which shall be administered by the Judicial Department. The information required by this Code shall be posted on the website in a way that is accessible for the public. The structure of the site, its maintenance procedure, and other information posted on the site shall be defined by the Judicial Council.

**Article 66. Publication of judicial acts**

1. Judicial acts of the Cassation Court, which solve the case in substance, must be published in the official bulletin of the Republic of Armenia.

2. Judicial acts of the cassation, appellate, and first instance courts, which solve the case in substance, shall be published in the official website of the Armenian judiciary.

**Article 67. Material and technical support of court activities**

1. Material and technical support of court activities shall be provided by the Judicial Department.

**SELF GOVERNANCE OF THE JUDICIAL AUTHORITY SYSTEM AND UNIONS OF JUDGES**

**Article 68. Self-Governance Bodies of Judicial Authority System**

1. In Republic of Armenia judicial authority operates on principle of self-governance.
2. Self governance bodies of judicial authority are General Meeting of RA Judges and Council of RA Judges.

3. Operation of self-governance bodies of judicial authority may not infringe the principle of independence of the Judge.

**Article 69. General Meeting of RA Judges**

1. General Meeting of RA Judges is the supreme self-governance body of judicial authority. The Meeting consists of all Judges of Republic of Armenia.

2. Regular general meeting of RA Judges is invited at least twice a year by Chairman of the RA Cassation Court. Special general meeting of RA Judges may be invited by at least 1/3 of Judges, Chairman of Council of Judges or Chairman of Cassation Court.

3. General Meeting of RA Judges shall:

   1) Discuss any issue related to provision of smooth operation of judicial authority, including any issue vested in Council of Judges’ authorities, adopt decisions on those issues, promulgate messages,

   2) Approve its statute,

   3) Select one by one member of RA Council of Judges from among the number of Judges of each court.

   4) Listen to annual reports of Council of Judges.

4. The Meeting is law competent, if more than ½ of total number of Judges participate in it. Decisions in Meeting are adopted by simple majority of votes of Judges participating in the voting through open voting. In cases specified by meeting statute, closed voting may be implemented.

5. The General Meeting of RA Judges is chaired by Chairman of the Cassation Court of RA, and when he is absent – by person defined by the statute.

**Article 70. Council of Judges**

1. The Council of Judges is a permanently operating self-governance body of judicial authority. The Council of Judges has a seal of RA emblem with note of “RA Council of Judges”.

2. Members of the Council of Judges are elected on principle of rotation - through three years rating – one Judge from each court.

3. Half of first composition of members of Council of Judges determined through ballot is considered to be elected for a period of one and a half years. The Judge may not be elected more than twice without a break. The vote papers are prepared by courts, at that all Judges of the given court are listed in the vote paper, except for members of Council of Justice and chairman of Cassation Court.

4. Chairman of the Council is officially the Chairman of the Cassation Court of RA.

5. Council of Judges shall:
1) approve the statute of the Council,

2) implement the self-governance of RA Court authority; discuss any issue related to provision of smooth operation of RA Court authority, including those vested in Council of Judges and its Commissions authority.

3) develop measures and recommendations directed at improvement of court operations,

4) present recommendations on improving the laws and legal acts to authorized public bodies;

5) approve the court staff units,

6) approve operation canons of courts,

7) bring in decisions of mandatory discharge for court department,

8) approve the Judge’s cloak description, list of standard furnishing of Judge’s office,

9) approve passports of judicial service positions,

10) define the norm of specialization of Judges in court of general jurisdiction,

11) define the framework of service responsibilities of employees of court personnel,

12) approve the budgetary bid prepared by Court Department

13) distribute reserve fund resources of courts,

14) work out plan of interim expenditures based on bids presented by courts,

15) coordinate international links of RA court authority,

16) work out and approve the principles of collaboration of court authority with mass media and publicity means,

17) approve statute, staff list of RA court department (hereinafter – the Department), through presentation of Chairman of Cassation Court, designate and calls back the head of Court Department,

18) define headquarters of courts and approve the norm of distribution of Judges by headquarters

19) define the norm of sending the Judge on assignment to a court of other jurisdiction,

20) with introduction of head of the Judicial Department, designate and dismiss chief of judicial police,

21) approve the list of separated departments of judicial police,
22) within state budget allocations, approve the list of staff of judicial police;

23) define types and forms of encouragement badges awarded to judicial police,

24) with introduction of head of judicial police, define the norm of allocating and wearing judicial police uniform,

25) apply types of encouragement and disciplinary penalties upon head of judicial police as defined by the present legislation,

26) discharge other authorities vested in him by the law.

6. Council sessions are summoned due to necessity, but not less frequently than once per quarter. The Council is law competent if more than the half of total number of Council members is present at the session. Decisions of the Council are adopted by simple majority of votes of Judges participating in the voting. Council vote is open. In cases specified by the Council statute closed vote may be fulfilled.

Article 71. Commissions of Council of Judges
1. The following commissions are formulated from the Council of Judges, Commissions of:
   1.) Ethical matters,
   2.) Learning matters,
   3.) Budgetary and economic-financial matters.

2. Council of Judges may create other commissions too.

3. Commissions discharge authorities vested in them by the present legislation and decision of Council of Judges.

4. Each commission is chaired by a member elected by commission from its composition.

5. Number of Commission members is defined by Council of Judges,


MATERIAL, SOCIAL, AND OTHER SAFEGUARDS OF THE ACTIVITIES OF A JUDGE

Article 72. Judge salaries and supplements
1. The salary of a judge shall comprise the official pay rate and supplements.

2. The official pay rate of a judge shall be prescribed by law, provided that:
   1) The official pay rates of judges in the same instance and court chairmen of the same instance shall be equal;
2) The official pay rate of appellate court judges (including appellate court chairmen) shall exceed the first instance court judge official pay rate by 20%;

3) The official pay rate of the cassation court judges (including the cassation court chamber chairmen and the cassation court chairman) shall exceed the first instance court judge official pay rate by 50%;

4) A court chairman shall receive a monetary supplement in the amount of one quarter of the official pay rate. Supplement shall be paid to each judge for the number of years worked as a judge: 2% for each of the first five years (a total of 10%), and 5% for each of the 6th and following years.

3. A judge’s salary and supplements may not be reduced during his term of office.

**Article 73. Judge’s pension entitlement**

1. A person that worked as a judge, whose powers terminated on the grounds specified in sub-paragraphs (1), (2), (3), and (9) of Article 159 of this Code, shall have the right to receive a retirement pension in the amount of 75% of the sum of the official pay rate and supplement received by the judge at his most recent office. If the judges’ official pay rate or supplement change, the pensions shall be revised on a pro-rata basis, but shall not be reduced.

2. In all other cases, judges of the Republic of Armenia shall receive pensions on the general grounds prescribed in the Republic of Armenia legislation.

3. If the powers of a judge terminate in the cases prescribed in Article 159(1)(2) of this Code, a one-time allowance shall be paid to the judge, equal to the remuneration received by the judge during the last two years.

4. The pension entitlement prescribed in Paragraph 1 of this article shall be granted also to former Supreme Court judges, former state arbitrage arbiters, and former people’s judges, which retired from the position of a judge.

5. When calculating the pension of a judge that was formerly a Supreme Court judge, the official pay rate established for Cassation Court judges (excluding the career supplement) shall be used as a basis.

6. When calculating the pension of a former state arbitrage arbiter, the official pay rate established for Economic Court judges (excluding the career supplement) shall be used as a basis.

7. When calculating the pension of a former people’s judge, the official pay rate established for first instance court judges (excluding the career supplement) shall be used.

8. If the official pay rate of judges is increased, the pensions shall be increased on a pro-rata basis.

**Article 74. Leave for judges**

1. Judges shall be entitled to an annual paid leave prescribed in the labor legislation.
2. The annual paid leave of a judge shall be granted in such a way as to not hinder the normal functioning of the court. The procedure of granting annual paid leave to judges shall be defined by the Judicial Council of the Republic of Armenia.

3. In some cases, due to personal or family circumstances, the court chairman may grant a judge an additional unpaid leave for up to 28 calendar days.

4. For the purpose of obtaining a scientific degree, a judge shall be granted an additional unpaid leave for up to 28 calendar days.

5. Disputes related to the granting of leave shall be resolved by the Ethics Committee of the Judicial Council.

Article 75. Right of judge to participate in educational programs

1. In addition to taking part in compulsory training programs, a judge is entitled to participate in other educational and training programs, conferences, and other professional gatherings of lawyers.

2. Participation in such events, which implies absence from work during work hours for up to two (2) days, shall require authorization by the court chairman. To obtain authorization for a longer period, the judge shall apply to the Educational Committee of the Judicial Council.

3. If a judge has obtained the authorization of the court chairman or the Educational Committee of the Judicial Council, respectively, the judge’s absence due to participation in such events shall be considered excused, and the judge shall retain his salary.

Article 76. Judge’s personal file

1. A personal file shall be prepared and maintained for each judge. A judge’s personal file shall be maintained by the Judicial Department. A Judge’s personal file shall contain the following information:

1) Information on the judge’s name, surname, birth date, permanent residence address, education, and knowledge of foreign languages;

2) A copy of the act on the appointment of the judge;

3) Information on the academic excellence of the judge while studying in the Magistrates School and on the judge’s trial period in courts;

4) Information on the training courses attended by the judge since taking the office of a judge (including the number of training hours);

5) Information on cases when the judge protracted case examination;

6) Copies of Justice Council decisions on applying disciplinary sanctions against the judge or suspending disciplinary proceedings against him;

7) Information on violations of work discipline by the judge; and

8) Other information as prescribed by the Justice Council.
2. Information in the personal file of a judge shall not be published. In addition to the judge, his personal file shall be accessible to the court chairman, the party that has the right to instigate disciplinary proceedings against the judge, members of the Justice Council, and members of the Ethics Committee of the Judicial Council.

**Article 77. Judge staff**

1. The staff of first instance court judges shall comprise the judge’s assistant and the court session secretary.

2. Each appellate court judge shall be granted one assistant, and each chamber of judges shall be entitled to one court session secretary.

3. The Cassation Court chamber judges and chamber chairmen shall be entitled to two assistants each, and each chamber shall be entitled to one court session secretary.

4. Appointment of individuals to the supporting staff positions granted to each judge by law shall be made upon presentation by the judge.

**Article 78. Judge clothing during court session**

1. Each judge shall participate in the court session wearing a gown of the established form, which shall be availed to the judge at no cost.

2. The description of the gown shall be approved by the Judicial Council.

**Article 79. Judge office**

1. A separate office room shall be allocated to each judge.

2. The coat of arms of the Republic of Armenia shall be present in the judge’s office; the flag of the Republic of Armenia shall be placed near the judge’s desk.

**Article 80. Military conscription of judges**

1. Throughout the term of their powers, judges shall be exempt of regular military draft for a term, other conscription, and drills.

**Article 81. Judge ID card and entitlement to diplomatic passport**

1. For the whole term of their office, judges shall receive official ID cards issued by the President of Armenia.

2. Chairmen of Armenian courts, as well as judges representing Armenia in inter-state and international organizations under international treaties of Armenia shall have the right to receive diplomatic passports.

**Article 82. Judge security and personal protective means**

1. Judges shall have the right to possess and carry registered arms and special protective means. Registered arms and special protective means shall be allocated to judges by the body authorized for such purpose by the Government.

2. A judge and his family members shall enjoy the special protection of the state. In the event of the threat of an illegitimate encroachment upon the privacy of a judge or his family
members, or of the residential and office space occupied by a judge, if the judge or court so request, the competent state authorities shall be obliged to immediately undertake all the necessary measures to ensure the security of the judge and his family members, and of the residential and office space occupied by the judge.

Article 83. Provision of official housing to a judge
1. When transferred temporarily to a place away from his permanent residence to perform the duties of a judge of another court, official trip costs shall be reimbursed to the judge in the amount and procedure defined by the Government.

Article 84. Judge’s entitlement to immediate reception
1. A judge shall be entitled to immediate reception by the President of Armenia, the Minister of Justice of Armenia, and the Cassation Court Chairman of Armenia.

Article 85. Other safeguards of judge’s activities
1. Other safeguards of the normal functioning of judges and their staffs may be provided by law and by decisions of the General Assembly of Judges and the Judicial Council.

**JUDICIAL CODE OF ETHICS**

Article 86. Judicial Code of Ethics
1. The Judicial Code of Ethics prescribed in this chapter is not exhaustive. The General Assembly of Judges may prescribe additional rules and commentaries to the ethics rules prescribed in this Chapter.

2. The Judicial Code of Ethics shall be binding for all judges.

3. The judicial ethics rules prescribed in Paragraphs 1-6 and 9-11 of Article 89, in Article 92, in Article 93, paragraphs 1 and 2 of Article 94, Article 95, and Article 96 shall be mandatory for all persons short-listed as judge candidates to the extent that they are effectively applicable to them.

Article 87. Purpose of Code of Ethics
1. With his activities and behavior, a judge must aspire to contribute to building respect for and confidence in the impartiality and independence of the judiciary. The interpretation and application of the Code of Ethics shall facilitate the achievement of this goal.

Article 88. Duty to comply with Code of Ethics
1. A judge must contribute to building high standards of behavior both by personally following such rules of ethics and by pursuing compliance among his colleagues.

2. A judge that has learnt about a violation of the code of ethics by another judge or has reasonable suspicion that such violation has taken place is obliged to report it to the Ethics Committee of the Judicial Council, if such violation is incompatible with the office of the judge.

3. Action taken by a judge in respect of his obligations under this Article shall be immune against civil claims.
Article 89. Behavior of a person holding the office of a judge

1. The requirements of this article concern the everyday behavior of a person that holds the office of a judge, including both in the court and outside the court.

2. A judge must respect and abide by the law.

3. In any activity anywhere, a judge must avoid practicing indecent behavior or leaving the impression of such behavior.

4. A judge must not allow his family, social, or other relationship to influence his exercise of powers in court in any way.

5. A judge must not allow giving the impression that another person can influence the judge by virtue of his family, social, official, or other position.

6. A judge must not use the reputation of judicial office for his or another person’s benefit.

7. A judge may not issue a personal guarantee under the Criminal Procedure Code in favor of any person.

8. A judge may not issue a description of anyone’s personal characteristics in the frameworks of any civil, administrative, or criminal proceedings.

9. A judge may not be a member of organizations that instill animosity and discrimination on the ground of race, sex, national origin, faith, or other feature, or of organizations that carry out activities forbidden by law.

10. Membership in religious organizations or fellow countrymen’s unions per se is not considered a breach of this provision.

11. A judge may not in any way take part in fundraising for social, charitable, cultural, educational, or other projects of public benefit. Moreover, a judge may not allow the reputation of his office to be used for such purpose. This provision does not limit the judge’s right to make donations for such projects.

12. A judge has the right to propose to grant-making organizations to allocate funds to projects related to law, legislation, and the administration of justice, provided that the judge’s court or a lower-instance court does not examine or expect a case that would be reasonably connected with the interests of such organization.

Article 90. Proper behavior of judge acting in official capacity

1. The requirements in this article are concerned with the behavior of the judge acting in his official capacity.

2. The judge’s duties when acting in his official capacity shall prevail over other activities of the judge.

3. When exercising judicial authority, a judge must:

1) Examine and solve matters reserved for his authority by law, unless there are grounds for a self-challenge of the judge from a case;
2) Remain loyal to the requirements of law, and ensure proper level of professional competence;

3) Not allow vested interests, public dissatisfaction, or the fear of being criticized to influence him;

4) Require all those that are present to respect order and the rules of ethics;

5) Display a patient, dignified, and gentle attitude towards the parties to proceedings, attorneys, witnesses, and other persons with whom the judge comes into contact in his official capacity. A judge must require such attitude from the court staff and other persons that are under the judge’s management or supervision;

6) Carry out his duties in an impartial manner. When acting in his official capacity, a judge must abstain from displaying bias with words or actions and from leaving such an impression. Such bias includes bias regarding certain individuals and bias based on race, sex, faith, national belonging, physical handicap, age, social status, and other similar features. This paragraph does not hinder the court to address race, sex, faith, national belonging, physical handicap, age, social status, and other similar features, if they are the subject of judicial review;

7) Monitor, and not allow any bias on the part of, the court staff and other persons under the judge’s management or supervision;

8) Carry out the examination of issues effectively, avoiding unnecessary expenses and decision-making delays;

9) Not approve judicial costs the amount of which does not correspond to their reasonable value;

10) Abstain from publicly expressing an opinion on any case examined or expected in any court, if it can be reasonably assumed to influence the outcome of the case or cast doubt on the impartiality of case examination. A judge must further abstain from expressing his opinion non-publicly, if it can significantly influence the examination of the case. A judge must require such behavior of the court staff and others under the judge’s management or supervision. This paragraph does not prohibit a judge from making public statements regarding his official duties or informing the public of the procedure of case examination in court. This paragraph shall not apply, if the judge acts as a party to a case; and

11) Beyond the exercise of judicial authority, not publicize and not use non-public information that became known to him as a result of performing his official duties, unless the law provides otherwise.

4. A judge must give any person with an interest in the outcome of the case or his lawyer the possibility to exercise his right to be heard by court, as prescribed by law. A judge must not initiate, permit, or take into account communications with one party or his attorney made without the presence of the other party or his attorney (hereinafter, “ex parte communications”). A judge is obliged to not take into account his communications with any other person without the participation of the parties to proceedings, if such communications are concerned with a case
examined by the judge. Exceptions from this rule shall be permissible only in the following cases:

1) When circumstances make ex parte communications necessary for logistical purposes, such as reaching agreement on the date and time of the session, for instance, or other similar emergencies, provided that the communications do not concern the substance of the case, do not place one party at a procedural or other advantage over another, and provided that the judge immediately communicates the substance of such communications to the other party—allowing the latter to respond;

2) When the judge asks an expert that does not have an interest in the outcome of the case to determine the applicable law, provided that the parties are notified of the expert’s identity and view, and have the possibility to express their opinions on the expert’s view;

3) When the judge consults with other judges or court staff that have the function of helping the judge in the exercise of judicial authority. If the ex parte communication takes place between judges of different judicial instances hearing the same case, the substance of such communication shall be notified to the parties;

4) When the judge separately meets with each of the parties or their attorneys upon the prior consent of the parties, trying to bring the parties to peaceful settlement; or

5) When such ex parte communication by the judge is directly prescribed by law.

The restrictions prescribed in this paragraph shall apply to both oral and written communications.

A judge must oversee compliance with these restrictions on the part of court staff and other persons under the judge’s management or supervision.

5. When performing logistical functions, the court chairman and each judge must carry out their logistical duties without any bias, ensuring the appropriate level of logistical skills. They are obliged, if the need may be, to cooperate with other judges and court staff. The court chairman and judge must require such attitude of the court staff and other persons under their management or supervision.

**Article 91. Self-challenge of a judge**

1. A judge must self-challenge (excuse himself) from a case, if the conduct of proceedings by him may cast reasonable doubt concerning his impartiality. The self-challenge grounds shall include, but not be limited to the cases when:

1) A judge has prejudice about a party or his attorney;

2) A judge, as a person, has information on evidentiary facts disputed in the proceedings;
3) A judge or his/her spouse or person of up to third degree of kinship has taken part in the examination of the case at a lower instance as a judge, or was or can reasonably be a party to the case. For the purposes of this Code, the first degree of kinship includes a person’s spouse, children, parents, and siblings. The second degree of kinship includes persons within the first degree of kinship, as well as persons that have first degree of kinship with the latter. The third degree of kinship includes everyone within the second degree of kinship, as well as persons that have first degree of kinship with the latter; or

4) A judge knows that he/she personally or his spouse or a person within the third degree of kinship with the judge or the judge’s spouse has economic interests in the substance of the dispute or in association with any of the parties.

2. For the purposes of this article, “economic interest” shall not include:

1) An interest the size of which is insignificant;

2) Possession of shares in an open joint-stock company, if participation in the company’s governance is limited to participation in its general assembly of shareholders;

3) Having a bank interest, having an insurance company policy, or being a depositor or member of a credit union or savings union; or

4) Possession of securities issued by the Republic of Armenia, the communities, or the Central Bank of Armenia.

3. A judge that self-challenges must disclose the grounds of the self-challenge to the parties, which shall be recorded literally. A self-challenged judge may propose that the parties discuss the possibility of ignoring the self-challenge in the judge’s absence. If the parties decide, in the absence of the judge, to ignore the judge’s self-challenge, then the judge shall perform the judicial review of the case after putting such decision of the parties on the record.

**Article 92. Non-judicial activities of a judge**

1. A judge may not occupy an office not related to the performance of his duties in a state government or local self-government body, or an office in a for-profit organization, or perform any paid work other than scientific, pedagogic, and creative work.

2. The performance by a judge of non-judicial activities may not:

1) Cast reasonable doubt on his ability to act impartially as a judge;

2) Diminish the reputation of the judicial office, or

3) Hinder the proper performance of judicial duties.

3. A judge may not engage in advocate activities, including the performance of such activities for free, with the exception of cases in which the judge gives legal advice to his family members without any compensation.
4. A judge may not act as an asset trustee or enforcer of will, with the exception of the case when he acts in respect of his family member’s assets without any compensation.

5. A judge may occupy a position in a non-for-profit organization, if:
   - 1) His activities in such position are performed without any compensation;
   - 2) The judge’s court or a lower-instance court are not examining or expecting a case that is reasonably connected with the interests of such organization;
   - 3) If such position does not imply management of funds, execution of civil law transactions on behalf of the organization, or representation of the pecuniary interests of the organization before state government or local self-government bodies.

6. A judge may not occupy a position in a for-profit organization.

7. A judge must report his non-judicial activities to the Judicial Council Ethics Committee within a one-week period seeking a consultative opinion on the compatibility of such activities with the judicial office. Application to the Council shall not suspend the performance of the activities by the judge.

Article 93. Compensation for non-judicial activities of a judge

1. Payment for a judge’s scientific, pedagogic, and creative work may not exceed the reasonable amount, i.e. the amount that a non-judge would aspire to receive for the same work.

2. For non-judicial activities performed in accordance with these rules, a judge may receive reimbursement of expenses, if the source of such reimbursement cannot be reasonably perceived as influence over the judge in the performance of judicial duties, and if such reimbursement of expenses is limited to the real amount of reasonable costs of travel, food, and accommodation of the judge (and, in appropriate cases, also the judge’s spouse).

Article 94. Prohibition of a judge’s engagement in business activities

1. A judge may not be a sole entrepreneur.

2. A judge may not be a member of an economic company or a depositor of a confidence-based partnership, if:
   - 1) It reasonably implies use of the judge’s official position; or
   - 2) In addition to taking part in the general assembly of the company, the judge is also engaged in the performance of instructive or managerial functions within the organization; or
   - 3) It can be reasonably assumed that the for-profit organization is or will be in a continuous business relationship with persons that often appear before the respective court as a party to proceedings.

3. A judge must aspire to manage his investments in such a way as to minimize the number of cases in which he must self-challenge.
Article 95. Prohibition of judge accepting gifts

1. A judge shall not accept a give from anyone or agree to accept it in the future. A judge must keep family members living with him from such actions, as well. For the purposes of this Code, a “gift” includes any pecuniary advantage that would reasonably not be granted to a non-judge. For the purposes of this Code, a “gift” also includes inherited property, a ceded claim, assets sold or services rendered at a disproportionately low value, borrowings, free use of another one’s assets, and the like.

2. The restrictions specified in the paragraph above shall not apply to the following:

   1) Gifts usually given in public events;

   2) Books, computer software, and other similar materials provided at no cost for official use;

   3) An official reception;

   4) A gift related to the business, professional, or other type of autonomous activity of the judge’s family member living with the judge, including a gift that could be used jointly with other family members, including the judge, provided that such gift cannot be reasonably perceived to serve the aim of influencing the judge;

   5) Ordinary cases of hospitality;

   6) A gift received from a relative, friend, or associate on a special occasion, including a marriage, jubilee, or birth, provided that the essence and size of the gift reasonably correspond to the event and the nature of the relationship with the judge;

   7) A gift received from a relative, friend, or associate, if the essence and size of the gift reasonably correspond to the nature of the relationship with the judge;

   8) A scholarship, grant, or benefit awarded as a result of a public tender on the same conditions and criteria as those applied towards other applicants; and

   9) A borrowing from financial institutions at the ordinarily offered terms.

3. If the value of gifts considered permissible under this article, which were received from one person during the same calendar year, exceeds 50,000 Armenian drams, or if the total value of such gifts received during a calendar year exceeds 150,000 Armenian drams, the judge must report it to the Judicial Council Ethics Committee within a one-week period.

4. If a judge finds out that a person within third degree of kinship with the judge, who does not live in the same household as the judge, received a gift that can be reasonably perceived to have the aim of influencing the judge, then the judge must report it to the Judicial Council Ethics Committee within a one-week period of receiving such information.

Article 96. Filing of a financial declaration by a judge

1. A judge and related persons, which are required to declare their income and assets, shall be obliged to send to the Judicial Council Ethics Committee a copy of the declaration filed in
accordance with the procedure defined in the Law on Declaration of Income and Assets of Senior Officials of the Republic of Armenia Authorities.

CHAPTER: THE COUNCIL OF JUSTICE AND ITS AUTHORITIES

Article 97. The Council of Justice and Authorities
1. The Council of Justice is an independent body, which discharges its authorities envisaged by Constitution compliant to norm envisaged in the present law.

Article 98. Requirements Set for Members of the Council of Justice
1. A Judge who has minimum 5 years of experience in position of Judge and has not been imposed to disciplinary action during the past five years may be designated a member Judge of Council of Justice. The Judge who has been elected a member in Council of Judges may not become a member of Council of Justice.

2. RA citizen having an academic degree in the field of law, who has delivered lectures on law constantly in a tertiary education institution for 5 years period prior to designation, may be designated the legal scientist of Council of Justice. Person elected in legislative bodies or considered as a public servant may not be designated legal scientist at Council of Justice.

Article 99. Norm of Electing Member Judges at Council of Justice
1. Member Judges of Council of Justice are elected at General Meeting of RA Judges according to the following groups:

   1.) 2 members from Yerevan courts of general jurisdiction,
   2.) 2 members from marz courts of general jurisdiction,
   3.) 1 member from civil appellate court,
   4.) 1 member from criminal appellate court,
   5.) 1 member from courts of administrative and insolvency matters
   6.) 2 members from cassation court.

2. In the event that the vacancy of member Judge at the Council of Justice has been opened, the election of new member is done in the norm envisaged by the present law within a three months period, and if the number of member Judges in the Council is less than seven – in a week period.

3. In the event that member Judge of Council of Justice is transferred to another court or does not discharge his authorities as a consequence of abolishment of court, he continues to hold his position as a member in Council of Justice, but in future, in case of vacancy the General Meeting of Judges, if possible, fills the vacancy so that the proportion of Council of Justice envisaged in part 1 of the present article is restored.

Article 100. Voting Order
1. The ballot is secret, and it is done by voting papers. Voting papers are prepared according to groups envisaged in part 1 of Article 99 of the present law. The names of all those
Judges who meet the requirements of part 1 of Article 98 of the present law are included in the voting papers.

2. When voting the Judge has right for one vote per voting paper. For each vacancy elected is considered the Judge that has collected maximum votes. If two members must be elected at the same time from among groups envisaged by part 1 of Article 99, elected are considered the two Judges who have collected maximum votes. In the event that the votes were equal a ballot is conducted.

3. Through the results of vote the meeting adopts a decision, which is published in official reference of Republic of Armenia. The decision of Meeting comes into force on the next day from promulgation.

**Article 101. Early Suspension of Authorities of Member Judge of Council of Justice**

1. Authorities of Council member Judge are suspended ahead of time by the law, if his, as a Judge, authorities were suspended ahead of time on the basis specified by article 159 of the present law, as well as in case he has been imposed to disciplinary action.

**Article 102. Early Suspension of Authorities of Legal Scientist Member of Council of Justice**

1. Authorities of Council member legal scientist are suspended ahead of time by the law, if:
   
   1) he has renounced citizenship of Republic of Armenia or taken citizenship of another country too,
   2) he has been elected in legislative bodies of RA or has been designated to position of public servant,
   3) there exists a validated accusatory verdict of court upon him or a criminal proceedings instituted upon him has been closed on non acquitting basis,
   4) he has been recognized incapable to work, absent for unknown reason or announced deceased though a validated decision of the court;
   5) he has perished.

2. Authorities of legal scientist of the Council may also be suspended ahead of time by the designating body, if he has periodically missed the Council’s activities. Chairman of Cassation Court presents the intervention on suspension of authorities of legal scientist on the described basis to the designating body.

**Article 103. Term of Authorities of Member of Council of Justice**

1. Authorities of member Judge of Council of Justice are suspended on the next day of the fifth year since the decision envisaged in clause 3 of Article 100 has come into force.

2. Authorities of the legal scientists of Council of Justice designated by RA President come to an end in case of suspension of authorities of RA president.
3. Authorities of the legal scientists of Council of Justice designated by RA National Assembly are come to an end in case of end of term of RA National Assembly authorities or release of National Assembly.

Article 104. Participation of Member of Council of Justice in the Vote
1. Each of the members of Council of Justice has one vote during the votes.
2. The Council member Judge does not participate in the vote, which refers to the following:
   1.) Presenting a recommendation by the Council to the President of the Republic about giving consent for suspending the authorities of the Judge, for taking him into custody, for involving him as guilty or instituting administrative action by judicial order.
   2.) Instituting disciplinary action upon him,
   3.) discussion of his candidacy as chairman of court to recommend him for judge of Cassation Court, conclusion on his as a judge of another court, as well as on exchange of positions with other judge.
3. Legal scientists of the Council do not participate in the vote when the Council of Justice acts as the court.

Article 105. Rights and Obligations of Member of Council of Justice
1. A Council member is entitled to:
   1.) get familiar with materials related to issues discussed at the session;
   2.) make a speech on each issue discussed in the session;
   3.) ask questions
   4.) make proposals.
2. A Council Member is obliged to:
   1.) Participate at the sessions of Council of Justice and vote on each issue raised for discussion, except for cases stipulated by article 104 of the present law.
   2.) participate in votes by voting papers,
   3.) Discharge instructions given to him by decision of the Council.

Article 106. Sessions of Council of Justice
1. The Council of Justice operates through sessions. Sessions of the Council are invited by the Chairman of the Cassation Court. The Cassation Court summons a session of Council of Justice in two weeks period since the moment of arising an issue that demands a decision of the Council, except for cases stipulated by the present law. In cases stipulated by article 160, the sessions are summoned as soon as possible, but not later than the next day from
applying to the Council. Distant voting is allowed only in cases stipulated by part 1 of Article 133 and Article 159.

2. In connection with participating in sessions of the Council of Justice, the Council members are released from their post duties while maintaining the right for salary and other bonuses. Members of the Council of Justice working in marzes are reimbursed the expenses of business trips for participation in the sessions of the Council.

3. The Judicial Department of Council of Justice notifies the members of the Council of Justice, Minister of Justice and other persons participating in session, within a reasonable period, about the time and place of the session. When the Council of Justice acts as the Court, a court notification is sent to persons participating in the case as stipulated by the law.

4. Council sessions are chaired by the Chairman of Cassation Court. During the absence of chairman of Cassation Court the sessions of Council of Justice are summoned and presided over by the chairman of chamber substituting the chairman of Cassation Court.

5. The Council session is law competent if minimum seven member Judges take part in the session.

Article 107. Protocol of Sessions of Council of Justice

1. The sessions of Council of Justice are protocoled through simple paper protocol or audio-protocol and through computer with simultaneously summarized minutes.

2. When acting as the court, the simple paper protocol of the session of Council of Justice covers the following:

   1) the year, month, date and place of the session,
   2) Start and End time of the session,
   3) Names of members of council of justice present at the session and name of secretary of the court session,
   4) Data on the issue discussed by the Council: data on presence of persons participating at the session,
   5) Council of Justice decisions adopted without leaving the session hall and instructions of the chairman of the session,
   6) Announcements, interventions and explanations of persons participating in the session,
   7) Testimonies of witnesses, verbal clarifications of experts on their conclusions,
   8) Data about publication, observation and examination of proofs,
   9) Contents of decisions formulated as work agenda decisions of Council of Justice,
   10) Conclusive part of decisions and conclusions of Council of Justice.
3. By request of participant of session of Council of Justice or by instruction of the session chairman, the word for word reproduction of important expressions made during the session is included in the protocol.

4. The protocol is signed by chairman of the session and the protocol writing person.

5. When keeping protocol through special computerized recording system, it’s summarized simultaneously, by computerized method. The audio protocol is kept on laser disk. The summary is kept on paper, certified by signature of the minute taker.

6. A copy of computerized protocol of the Council session together with its summary is provided to persons participating in the Council session immediately after the session based on their written applications. In case of simple paper protocol of the session, copy of written protocol is provided to persons participating in the session not later than next day from the session based on written application of those persons.

Article 108. The Norm of Discussing Issues at the Council of Justice

1. The session chairman opens the Council of Justice by announcing what issue is subject to discussion, as well as with consent of members of the Council, defines the norm of examination of issues included in the session agenda, and presides over the session.

2. Sessions of Council of Justice are held behind the doors, except when hearing cases of taking disciplinary action upon a Judge, where the Judge upon whom the disciplinary action is initiated, demands public hearing of his case.

3. Minister of Justice may participate in sessions of Council of Justice with a right of consultative vote.

Article 109. The Right of Information Receipt

1. To fulfill the authorities defined by Constitution, the Council of Justice is entitled to collect necessary administrative, criminal, civil cases, including also data containing pre-investigative secrets, materials, certificates and other documents from officials and state bodies, including courts, office of public prosecutor, investigative and pre-investigative bodies. Only data of state secrecy make an exception.

Article 110. Acts of Council of Justice and the Order of their Adoption

1. When discharging authorities stipulated by clauses 2 and 4 of article 95 of Constitution, the Council of Justice adopts conclusions, and when discharging those specified by clauses 1, 3 and 5 – decisions.

2. To prepare issues subject to discussion, as well as with regard of other issues related to organizing its operation, the Council of Justice adopts procedural resolutions. Procedural resolutions are adopted through open ballot by majority of votes of council members who participate in the vote.

3. The vote is valid if minimum seven members have participated in the vote of Council of Justice.
4. Decisions and conclusions adopted by open ballot are approved by majority of votes of members of Council participating in the vote. The norm of adopting decisions and conclusions by secret ballot is defined by the present law.

5. Decisions of Council of Justice on giving consent for instituting disciplinary action upon the Judge, taking the Judge into custody, involving the Judge as accused, taking administrative action by court order are adopted in conference chamber and are signed by all members participating in the session of Council of Justice. Other decisions of Council of Justice are signed by chairman of the session.

6. Decisions of Council of Justice on taking disciplinary action upon the Judge, suspension of his authorities, taking the Judge into custody, involving him as accused, taking administrative action by judicial order and conclusions envisaged by Article 163 are final, and come into force at the moment of promulgation and are not subject to appeal.

7. Decisions and conclusions of Council of Justice not included in clause 6 of the present article come into force at the moment of promulgation in official internet website of court authorities. Interested persons may appeal those acts at the administrative court compliant to judicial order – in a period of one week after adoption of the act. The administrative court hears and resolves the case within three working days after receipt of it.

Article 111. Personnel of the Council of Justice

1. The Central Body of Judicial Department discharges the functions of personnel of Council of Justice.

2. The Council of Justice has the right of giving instructions to Judicial Department – through adopting procedural resolutions, as well the member of Council who has been given assignments by decision of Council.

3. The Judicial Department prepares sessions of the Council of Justice, within the deadline envisaged by the law sends materials related to issues discussed in the Council of Justice to members of the Council of Justice and interested persons, protocols the sessions of Council of Justice, delivers and publishes the acts adopted by Council of Justice.

Article 112. Financing of Council of Justice

1. Financing expenses of Council of Justice are calculated in the part of bid related to judicial department.

Article 113. List of Judge Candidacies

1. The Council of Justice compiles the list of candidacies of Judges based on qualification examination as specified by the norm of the present law and presents it to President of RA for approval. Amendments and additions in the list of candidates of Judges are made by the same norm.

Article 114. Qualification Examination

1. If the total number of graduates of Magistrates School and students studying at Magistrates School does not exceed 28 by September 1, the chairman of Cassation Court publishes an announcement on holding qualification examination in order to fill the list of candidates for Judges not later than September 10.
2. Qualification examination is held by competition order - by results of written quiz.

3. The management council of Magistrates School defines and publishes the type and conducting order of written quizzes, procedures of checking, assessing and appealing the written quizzes, the order of calculating the total score of the candidate based on the results of written quizzes. The logistics of qualification examination is fulfilled by the principal of the Magistrates School.

4. The qualification examination may be taken by RA citizens of 22-60 range of age, who do not hold any other country citizenship, who have been granted master degree or diploma of specialist of higher qualification of law in RA or have been granted a similar degree in a foreign country, and the recognition and equivalence of which has been approved in RA as defined by the law, who are fluent in Armenian, who have not been students of Magistrates School in the past and who meet the requirements set in clause 1 of Article 125.

5. The bids are submitted to principal of Magistrates School by October 15,

6. While submitting the bids, the mentioned persons submit consent for collecting necessary information from public bodies and officials about themselves, including data considered to be of medical confidentiality.

7. The candidate is obliged to submit also:

   1) personal identification document,

   2) a card containing candidate’s bio-information- with description of professional law activities fulfilled after the receipt of degree of attorney of law, by attaching corresponding proofs,

   3) A document certifying the candidate’s holding higher law education,

   4) original work-book or documents certifying the job activities fulfilled by the candidate

   5) position passport or other documents that certify work duties considered as professional law service,

   6) a document about absence of physical deficiencies or diseases hindering from designation to the post of Judge in compliance with norm defined by the government.

   The bidder is entitled to submit also recommendation letters in format defined by Council of Magistrates School.

8. The school principal may check the authenticity of submitted documents.

9. Acceptance of bids that do not meet the requirements envisaged by the law or those that were not submitted within the defined deadline is rejected and those bids are subject to be returned by principal of the school within three days period. The bidder may appeal at the administrative court the rejection of his bid by the principal of school, within three days period after the receipt of the rejection. The administrative court hears the case and resolves it within three days after its receipt.
10. Appealing of rejection of bid by school principal does not cease the procedure of bid acceptance and qualification examination envisaged by the present law.

11. In the event that the rejection of the school principal to accept the bid has been recognized void by the court, the bidder is entitled to pass the qualification examination, and if the qualification examination has been in progress, the bidder may participate in the next qualification examination without submitting a new bid.

12. Qualification examination and review of results, including appealing of qualification results, must be fulfilled within November 1-15.

**Article 115. Preparation of materials for discussion of the issue in Council of Justice based on qualification examinations**

1. After the closure of deadline for appeals, not later than by November 20 the management council of the school submits the results of 25 candidates who have collected the highest total scores from qualification examination (and in case of candidates who have collected scores equal to the lowest highest units, they too will be included) to Council of Justice to involve them in the list of candidacies of Judges. In the meantime, the management council of Magistrates School publishes the submitted list of candidacies in press in at least 3000 copies and in official website of judicial authority. The public bodies and officials who possess any information (including confidential information) regarding the given candidate that raises doubts about the reputation of that person and about his appropriate fulfillment of Judge authority are obliged to share that information with the Council of Justice within two weeks from the promulgation. The judicial department ensures that all members of Council of Justice, Chairman of Cassation Court and Minister of Justice get familiar with the received information.

2. The Minister of Justice, as well as Council of Justice may collect the necessary information about the candidate from public bodies and officials, and inquire the persons who have provided the recommendation letters.

**Article 116. Compiling and Approving the List of Judge Candidacies**

1. The Council of Justice studies the proposed candidacies at the session and invites them for interview.

2. To fill the list of Judge candidacies, the Council conducts a secret ballot with voting papers. In the voting paper a blank square is put after name of each candidate for marking the word of “For”. Each member of Council of Justice has a right of 16 votes, at that he may give not more than one vote to each candidate. When voting for the preferred candidate he marks the word of “For” in the corresponding square. The voting paper containing more than 16 votes is considered to be void. A list of 16 persons who have collected the maximum votes is compiled on the basis of the vote results. In the case of equal votes a ballot is held. The list is presented to RA President not later than December 15.

3. When compiling the list the gender balance is taken into consideration. If the number of any of sexes becomes less than 25 percent of the total number of Judges, minimum 8 work stations will be guaranteed to representatives of that sex in the list.

4. RA President not later than December 25 approves the list compiled by the Council of Justice with candidacies acceptable to himself.
Article 117. The Norm of Including Former Judges in the Lists of Judge Candidacies and of Professional Advancement

1. Persons who worked for five years during the past ten years and whose authorities have been suspended ahead of time in compliance with clauses of 1), 3), 5), or 9) of part 1 of article 159 (below – as former Judges), may be included in the lists of Judge candidacies and those of professional advancement as defined by the norm of the present article. Those Judges, whose authorities have been suspended ahead of time in compliance with clauses 5) or 9) of Part 1 of article 159, may apply for being included in the lists of Judge candidacies and those of professional advancement only in the event that the circumstances that served as a basis for early suspension of their authorities have been abolished.

2. The former Judges submit applications to the Chairman of Cassation Court by attaching the following documents:

1) personal identification document,

2) a card containing candidate’s bio-information- with description of professional law activities fulfilled after the receipt of degree of attorney of law, by attaching corresponding proofs,

3) original work-book or documents certifying the job activities fulfilled by the candidate

4) a document about absence of physical deficiencies or diseases hindering from designation to the post of Judge in compliance with norm defined by the government.

3. Within two weeks after receipt of the application, the Chairman of Cassation Court introduces the candidacy of former Judge to Council of Justice.

4. The Council of Justice studies the candidacy proposed by Chairman of Cassation Court at its session, and if necessary invites the candidate for an interview.

5. To fill the list of Judge candidates, the Council conducts a secret ballot with voting papers. After the name of the candidate in the voting paper two blank squares are envisaged for “For” and “Against”. The voter marks “For” when giving his vote to the candidate, and “Against” when not giving his vote for the candidate. If the candidate has collected more than the half of votes of participants, he is introduced to the President of RA. In the event that the President within two weeks after the receipt of proposal does not fill the list of candidates, the candidacy is considered as rejected.

6. In the event that the Council of Justice fails to recommend the candidacy or the RA President rejects the recommended candidacy, the former Judge is deprived of opportunity to apply for involvement in the list again as defined by the present article.

7. If the person has worked as a Judge in the past at Appellate Court or Cassation Court or was involved in the list of professional advancement, then along with involving him in the list of candidacies, by separate voting paper a vote is conducted by the same norm and the issue of involving him in the respective section of the list of professional advancement is presented to RA President too. When failing to be involved in the list of professional advancement, the person is considered to be involved in the list of Judge candidacies only.
**Article 118. The basis for Leaving a Candidate out of the List of Judge Candidacies**

1. A person involved in the list of Judge candidacies is withdrawn, if:

1) he has been designated to position of Judge,

2) he applies for that;

3) he has reached the retirement age of 65;

4) by legally valid act of the court it has been proved that he was enrolled in the list by violation of requirements,

5) in the cases specified by the present law he has been dismissed from the Magistrates School,

6) After finishing the Magistrates School he has failed to take the retraining program with no good reason.

7) After finishing the Magistrates School he has been dismissed or left his service in judicial department,

8) in cases envisaged by parts 6 and 7 of Article 121 of the present law, he does not agree to be designated to the proposed position of Judge;

9) Based on a legally valid decision of the court, he has been recognized incapable to work, capable with limited capacity, absent for unknown reason or announced deceased;

10) A criminal proceedings taken upon him has been closed for not justifying base,

11) the accusation verdict brought in upon him has entered into force,

12) he has renounced citizenship of Republic of Armenia or has obtained a citizenship of another country,

13) he has perished.

2. Within three days after revealing the basis for withdrawing from the list of Judge candidacies specified by the present article the Chairman of Cassation Court applies to the Council of Justice with a proposal on that. The Council of Justice studies the proposal of Chairman of Cassation Court at its session. If by results of open ballot the Council of Justice considers that the proposal meets the requirements of the present article, he applies to the RA President with proposal to withdraw the person from the list. If the procedures defined by the present law are not violated RA President removes the person from the aforementioned list within ten days period.

**Article 119. The basis for Opening a Vacancy of Judge at Court of First Instance**

1. A vacancy may be opened for position of Judge at Court of First Instance in case when:

1) a new court of first instance is created;
2) the authorities of the current Judge are suspended,

3) the number of Judges of the given court is increased.

2. In cases envisaged by clauses 2) and 3) of part 1 of the present article no vacancy is opened if there is a reduced Judge in the respective court, who has not been designated to the position of Judge in another court. In that case the Judge stops to be considered as reduced. In the event there are several Judges the priority is given to the senior by age.

**Article 120. The Norm of Proposing a Candidate for Vacancy of Judge at the Court of First Instance**

1. When a vacancy for Judge is opened at the Court of First Instance, the chairman of Cassation Court introduces a candidacy of Judge to Chairman of Cassation Court for the latter’s conclusion.

2. Candidacies for vacancy of position of Judge are proposed by the Chairman of Cassation Court in the sequence shown below, at that the candidates, against whom criminal proceedings are instituted are not considered.

1) First of all, it is proposed to the Chairman of Court of First Instance or Court of Appellate or to the Judge of Court of Appellate or Chairman or else to the Judge of Chamber of Cassation Court, who have applied in written form to Chairman of Cassation Court requesting to transfer him to position of Judge in First Instance Court. In the event of several such applicants first of all the priority is given to the Chairman of the same Court, then to the senior by age.

2) Secondly, the senior reserve Judge specified by clause 7 of Article 16 is offered, who has not been designated to position of Judge in another court.

3) Thirdly, the reduced Judge of Court of First Instance or Appellate Court specified by clause 6 of Article 16, who has not been designated to position of Judge at another court. In the case of several persons, the priority is given to the senior Judge of other Court of First Instance, then to the senior Judge of Appellate Court, then to senior Judge of Cassation Court (except for persons envisaged by Article 132).

4) Fourthly, it is offered to persons involved in the list of Judge candidacies defined by Article 117, even if they are involved in the List of Professional Advancement. In case there are several persons, the priority is given to the senior by age.

5) Fifthly, it is offered to candidates who have finished the Magistrates School, by declining order of total graduation scores, where the graduates of that year may be offered if there are no candidates of previous years graduates of Magistrates School among list of judge candidates.

3. Chairman of Cassation Court presents an offer to reserve Judges and persons envisaged by clause 4) of part 2 of the present article in written form at the residential address of the respective candidate. In other cases, the chairman of Cassation Court presents the written offer at the work address of the respective candidate.
Article 121. The Norm of Acceptance of Offer by Candidates Proposed for Vacancy of Judges at First Instance Court and Consequences of Objection

1. Within a week period after the receipt of the notification the candidate is obliged to submit his written agreement to the residence of chairman of Cassation Court or inform on his disagreement with the designation. Failure to submit agreement within the specified period is observed as disagreement.

2. In case of agreement of person defined by clause 1) of part 2 of Article 120 he starts to receive salary correspondent with the position he holds, and in case of having a reduced or reserved status, it is suspended.

3. In case defined by clause 1) of part 2 of article 120, the disagreement of the person does not leave any negative consequence.

4. In case envisaged by clauses 2) and 3) of part 2 of article 120, the agreement of the Judge of Appellate court does not abolish his respective status of reserve or reduced Judge, and for Judges of Court of First Instance – it does abolish.

5. In cases defined by clauses 2) and 3) of part 2 of article 120, the disagreement of Judge brings to suspension of his authorities.

6. In case defined by clause 4) of part 2 of article 120, the disagreement of candidate, except for he is involved in the list of professional advancement of Judges too, brings to removal of the Judge from list of Judge candidates. On this basis, when removed from the list of Judge candidates, the candidate may not ever apply with request to be involved in the list as defined by norm of Article 117.

7. In case defined by clause 5) of part 2 of article 120 the disagreement of candidate brings to his removal from the list of Judge candidates, except for the case that the list includes the same year graduates of Magistrates School, who have lower total score than his.

8. In case defined by clause 5) of part 2 of article 120 the candidate involved in the list who possesses the minimum total score of the given year in consequence of disagreement, compliant with clause 7 of the present article must be removed from the list, then the Chairman of Cassation Court repeats his proposal to the previous candidate with minimum total scores. If the latter too is removed from the list because of his disagreement, then the proposals defined by the present part are repeated for as long as necessary till someone is designated to the relevant position, or the list of school graduates of the given year has expired.

9. In case of candidate’s agreement, the Chairman of Cassation Court introduces his candidacy to Council of Justice. The Council of Justice conducts an open ballot regarding the introduced candidate and gives positive conclusion, if no procedures of the present law were violated. In case of positive conclusion of the Council the candidacy is introduced to RA President.

Option 1: If the procedures defined by the present law are not violated, RA President designates the introduced candidate to position of Judge within ten days period. In case of negative conclusion the candidate is not removed from the list, and the proposal for the vacancy starts all over again.
Option 2: If RA President does not designate a Judge within two weeks period after the receipt of proposal, that candidacy is considered to be rejected, the person is removed from the list of Judge candidates, and the proposal for the vacancy starts all over again.

**Article 122. The Judge’s Oath**

1. The person designated to the position of Judge not later than within two weeks period after the day of designation takes up the position with the following oath given at presence of RA President at the session of Council of Justice: “By taking up the high position of Judge, in front of people of Republic of Armenia, I take an oath to fulfill my responsibilities of Judge in compliance with RA Constitution and laws, be unbiased and fundamental, fair and human, maintain sacredly all requirements set to the status of Judge, by providing the priority of right and by keeping the high reputation of judicial authority”.

2. The oath is taken in ceremonial conditions, by individual order, each of the Judges reads the oath text, after which the Judge signs the read text.

**Article 123. The Norm of Designating Other Judge to the Vacant Position of Judge at Court of First Instance**

1. In exceptional cases the Chairman of Cassation Court is entitled to propose a Judge of another court for the vacant position from out of line defined by article 120. In this case the application of the respective Judge is submitted to Council of Justice, which states the convincing reasons of transfer. The Council of Justice reviews the proposal of Chairman of Cassation Court at its session, and if necessary invites the Judge for an interview. The Council conducts a secret ballot by vote papers. Two blank squares are envisaged for the words of “For” and “Against” after the name of the candidate. The voter marks in the square of “For” when voting for the candidate, and respectively marks in the square of “Against” when voting against. If the candidate has received more than the half of votes of voters, he is introduced to RA President. If RA President within two weeks after the receipt of the proposal does not designate the Judge, that candidacy is considered to be rejected and the Judge continues to hold his former position.

2. The Judge designated to vacant position of judge in norm defined by the present article receives a salary correspondent to the position he holds.

**Article 124. The Norm of Exchange of Positions of Two Judges of Different Courts of First Instance**

1. In exclusive cases the Chairman of Cassation Court is entitled to propose to Council of Justice an exchange of two positions of Judges in different Courts of First Instance. Such proposal cannot be made if there are reduced Judges in those courts.

2. The application of respective Judges is submitted to the Council of Justice which has to state the strong reasons for transfer. The Council of Justice reviews the submitted application during its session, and if necessary invites the Judges for an interview.

3. The Council conducts a secret ballot with voting papers in order to give conclusion. There are blank squares envisaged for marking the words of “For the exchange” and “Against the exchange” in the voting paper. The voter marks in the respective square. If more than the half of voters has voted for the exchange, the respective conclusion is presented to RA President. If the RA President within two weeks after the receipt of conclusion does not
designate the Judges, the issue of exchange of Judges is considered to be rejected and the Judges continue holding their former positions.

**Article 125. Limitations of Judge Designations**

1. Persons described below may not be designated to the position of Judge:
   
   1) Convicted for committing a crime despite the circumstance of liquidated or dismissed conviction,
   
   2) Criminal proceedings against whom was closed on basis of non justification,
   
   3) who is under criminal prosecution,
   
   4) who cannot work in the position of Judge caused by physical deficiency or disease,
   
   5) who has evaded from mandatory term military service.

2. The list of physical deficiencies and diseases envisaged by clause 4) of part 1 of the present article is defined by the Government.

**Article 126. The Norm of Designation of Chairman of First Instance Court**

1. If there opens a vacancy for chairman of Court of First Instance the Chairman of Cassation Court announces about the proposals for that vacancy through official internet website of RA Judicial authority. The announcement states the deadline and place of submission of applications and documents by candidates for the vacant position.

2. The Judges pretending to the relevant position, Chairmen of the Court and Chairmen of Chamber of Cassation Court may submit their bids to Council of Justice within two weeks after the announcement.

3. The Council of Justice reviews the personal files of the candidates, and if necessary invites them for interview.

4. The Council of Justice conducts a secret ballot with voting papers. All persons having submitted bids are involved in the voting paper. After name of each candidate there is a square envisaged for marking “For”.

5. Each member of Council of Justice has a right for one vote. When voting for the preferred candidate the voter marks the word “For” in the respective square. Voting paper containing more than one vote is considered to be void. By results of the ballot the person having collected the maximum number of votes “For” is introduced to RA President. In case of equality an extra ballot is conducted by involving the persons who have collected equal votes only. As a result of the extra ballot if the votes are equal the preference is given to the most senior person.

6. If one candidate has applied for the vacancy of position of chairman of Court of First Instance, then he is considered as having passed the ballot, if he has collected more than the half of participated votes. In the event that the candidate fails to collect the defined number of votes, new proposals are started based on announcement of chairman of Cassation Court as defined by the norm of the present article.
7. If the RA President does not designate the proposed candidate within two weeks after the receipt of the proposal, new proposals are started based on the announcement of chairman of Cassation Court as defined by the norm of the present article.

**Article 127. Demit of Chairman of Court of First Appeal, Appellate Court, Chamber of Cassation Court and Cassation Court, with Intention to Serve on the Bench**

1. Chairman of Court of First Instance, Appellate Court, Chamber of Cassation Court and Chairman of Cassation Court may submit an application to Council of Justice about demitting his post of chairman of the court (chamber of Cassation Court) with intention to serve on the bench.

2. Upon the receipt of the application the position of the chairman of the court (chamber of Cassation Court) is considered to be vacant and suggestions are made as defined by the norm of the present law. Before the designation of chairman of the court the chairman who has demitted his post continues to hold his post.

3. As a result of ballot fulfilled in a norm defined by the present law, when presenting the candidate for chairman of court (chamber of cassation court) also presented is a positive conclusion or proposal on designating the person demitted his post of chairman of court (chamber of cassation court) at his post.

4. If RA President fulfills the designations after receipt of the proposal, then the person demitted his post of chairman starts to receive a salary correspondent to the post he holds.

5. If RA President does not fulfill the designations after the receipt of the proposal within two weeks, new proposals are made as defined by the norm of the present law. The person demitted from his post of chairman is entitled to take his application back only till the closing deadline defined for proposals.

**Article 128. Characteristics taken into consideration during ballot with voting papers in connection with compiling the list of professional advancement of Judges, designation of Chairman of Court, Judge of Appellate Court, Judge and Chairman of Chamber of Cassation Court**

1. When voting by voting papers on compiling the list of professional advancement of Judges, designation of chairman of Court, Judge of Appellate Court, Judge and Chairman of Chamber of Cassation Court, the member of Council of Justice takes into consideration the following characteristics:

   1) professional knowledge of the Judge, taking into consideration the professional activities, professional and post-tertiary education of Judge,

   2) professional reputation of the Judge,

   3) work capabilities,

   4) quality of acts brought in by the Judge,

   5) protection of reputation of the court and the Judge and observance of canons of Judge conduct,
6) written and verbal communication abilities, coming from protocols of judicial sessions, brought in judicial acts,

7) the Judge’s participation in educational and professional training envisaged by the present law,

8) Judge’s participation in self-governance of judicial authority,

9) Judge’s participation in law and legislation development program,

10) attitude demonstrated towards his colleagues when fulfilling the duties of Judge,

11) organizational abilities of the Judge, in case of discharging managerial kind of work, qualities demonstrated in that work by Judge.

Article 129. Lists of Professional Advancement of Judges

1. Council of Justice compiles the list of professional advancement of Judges and presents to approval of RA President. Amendments and additions in the list of professional advancement are made by the same order.

2. The list of professional advancement of Judges consists of:

1) list of professional advancement of Judges of Court of First Instance,

2) list of professional advancement of Judges of Appellate Court.

3. Persons who work at the position of Judge (including the reserve Judges), as well as persons envisaged by article 117 and article 132 may be included in the lists of professional advancement.

Article 130. Compiling and Approving the List of Professional Advancement of First Instance Courts

1. A person who has minimum 5 years of experience in the position of Judge and who has never been instituted a disciplinary fine of warning or strict warning may be involved in the list of professional advancement of First Instance Court,

2. The list of professional advancement of Judges of First Instance Courts consists of two sections:

1) Criminal specialization;

2) Civil specialization.

3. If a list of professional section of list of professional advancement has expired or if there are not more than five Judges in the section of list of professional advancement as of November 1 of the current year, then the chairman of Cassation Court publishes an announcement about compiling the list of respective specialization within the list professional advancement of Judges through official reference book of RA courts, as well as through official internet website of judicial authority. The dates and place for submission of applications and documents are mentioned in the announcement.
4. Within a period of two weeks after publishing the announcement, persons envisaged by first part of the present article may submit application to Council of Justice about their intention to be involved in the respective section of the list of professional advancement. The person may apply and be involved only in one specialty section.

5. Within a period of ten days after the closure of the application receipt deadline, the Council of Justice reviews the personal files of candidates, and if necessary invites them for interview.

6. In order to compile the list of professional advancement of Judges, the Council conducts a secret ballot. For each section individual voting papers are prepared, involving all Judges having submitted the bids. After the name of each candidate the word “For” is marked in a blank square envisaged for it.

7. If more than necessary candidates have applied for involvement in the respective section of the list of professional advancement of Judges, then the number of votes of Council of Justice member when voting for that section equals to difference between 5 and the number of persons available in the respective section of list of professional advancement at the day of voting. The voter marks the word “For” in the respective square when voting for each candidate, and does not mark anything if he votes against. If the vote participant has given more votes than it is defined by the present clause, the voting paper is considered void. To involve in the respective section of the list of professional advancement based on the vote results, RA President is recommended with as many judges having collected maximum number of “for” votes, as the votes the voter had. In case of equal votes an extra ballot is conducted involving only the Judges who have collected equal number of votes. In the event that the votes are equal after the conducted extra ballot, the preference is given to the senior by age.

8. If less than required or equal to required number of candidates have applied for involvement in the respective section of the list of professional advancement of Judges, the number of votes of the member of Council of Justice voting for that section equals to the number of candidates. According to ballot results passed are considered those candidates who have collected the votes of more than the half of members of the Council.

9. RA President leaves the candidates acceptable to him from among the list presented by the Council of Justice, and not later than within ten days period he fills the list of professional advancement of Judges through an order. In case of not filling the list within the mentioned period, the proposed candidacy is considered to be rejected.

**Article 131. Compiling and Approving the List of Professional Advancement of Judges of Courts of Appeal**

1. A person who has minimum 5 years of experience in the position of Judge in Court of Appeal and who has never been instituted a disciplinary fine of warning or strict warning may be included in the list of professional advancement of Judges of Court of Appeal.

2. If the list of professional advancement has expired or if there are not more than three Judges in the list of professional advancement as of November 1 of the current year, the chairman of Cassation Court publishes an announcement about compiling the list of professional advancement of Judges through official reference book of RA courts, as well as through official internet website of judicial authority. The dates and place for submission of applications and documents are mentioned in the announcement.
3. Within a period of two weeks after publishing the announcement, persons envisaged by the first part of the present article may submit applications to Council of Justice about their intention to be involved in the list of professional advancement.

4. Within a period of ten days after the closure of the application receipt deadline, the Council of Justice reviews the personal files of candidates, and if necessary invites them for interview.

5. In order to compile the list of professional advancement of Judges, the Council conducts a secret ballot. All judges having submitted bids are included in the voting papers. After the name of each candidate the word “For” is marked in a blank square envisaged for it.

6. If more than necessary candidates have applied for involvement in the list of professional advancement of Judges, then the number of votes of Council of Justice member when voting equals to the difference of 3 and number of persons available in the list of professional advancement on the date of voting. The voter marks the word “For” in the respective square when voting for each candidate, and does not mark anything if he votes against. If the vote participant has given more votes than defined by the present clause, the voting paper is considered void. To involve Judges in the list of professional advancement based on the vote results, RA President is recommended with as many judges having collected maximum number of “for” votes, as the votes the voter had.. In case of equal votes an extra ballot is conducted involving only the Judges who have collected equal number of votes. During the extra ballot each member of the Council of Justice has a right for only one vote. As a result of the extra ballot, in case of equal votes the preference is given to the senior by age.

7. If less than required or equal to required number of candidates have applied for involvement in the list of professional advancement of Judges, the number of votes of the member of Council of Justice equals to the number of candidates. By ballot results passed are considered those candidates who have collected the votes of more than the half of members of the Council.

8. RA President leaves the candidates acceptable to him from among the list presented by the Council of Justice and not later than within ten days period he fills the list of professional advancement of Judges through an order. In case of not filling the list within the mentioned period, the proposed candidacy is considered to be rejected.

Article 132. The Norm of Involving the Legal Scientists in the Lists of Professional Advancement of Judges

1. Reputable scientists who are Doctors of law, have delivered lectures on law constantly in a tertiary education institution for the past 5 years period (below – the scientists), may be involved in the list of professional advancement of Judges by the norm of the present article.

2. The scientist submit their applications to Minister of Justice, attaching the following documents:

   1) Personal identification document,
   2) a card containing scientist’s bio-information- with description of professional law activities and lecturer’s operations fulfilled after the receipt of degree of attorney of law, by attaching corresponding proofs,
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3) a document certifying the Science Degree

4) original work-book or documents certifying the job activities fulfilled by the candidate

5) a document certifying absence of physical deficiencies or diseases hindering from designation at the post of Judge in compliance with norm defined by the government.

3. Within a period of two weeks upon acceptance of the application, the Minister of Justice either refuses to present the candidacy to Council of Justice or introduces the candidacy of the scientist to the Council of Justice.

4. The Council of Justice reviews the candidacy proposed by the Minister of Justice at its session, and if necessary, invites him for interview.

5. The candidacy of scientist may be involved in the list of professional advancement of Judges of Appellate Courts only. To this end the Council conducts a secret ballot by voting papers. Blank squares for words of “For” and “Against” are envisioned for marking after the name of candidate in the voting paper. The voter marks in the respective square of “For” when voting for the candidate, and “Against” in the respective square when voting against the candidate. If the candidate has collected more than the half of votes of voters, his candidacy is introduced to RA President with recommendation to involve the given candidate in the list of professional advancement of Judges at the Appellate Court. If within the period of two weeks upon the receipt of the proposal the RA President does not fill the list of professional advancement, then the candidacy is considered to be rejected.

Article 133. Grounds for Removing the Judges out of Annual Lists of Professional Advancement

1. The person involved in the lists of professional advancement of Judges is removed from the list, if:

   1) he has been promoted to a respective position of Judge as a professional advancement,

   2) he applies for that,

   3) his authorities of Judge have been suspended,

   4) by a resolution come into legal force, it has been proved that he was involved in the list of professional advancement through violation of law requirements,

   5) he has been involved in respective section of list of professional advancement for five years,

   6) Council of Justice has instituted a warning or strict warning as a means of disciplinary action against him,

   7) In cases defined by parts of 4 and 5 of Article 137.
2. A person is removed from the list of professional advancement of Judges when the grounds defined by the present article arise. In cases defined by clauses 4) and 5) of the present article the Chairman of Cassation Court applies to Council of Justice with that proposal.

3. Removal of the person from the list of professional advancement does not impede him from applying for involvement in the list again.

Article 134. Grounds for Announcing a Vacancy for Judge at the Appellate Court

1. A vacancy for position of Judge at the Appellate Court may be opened in cases described below:

   1) a new Appellate Court is established,
   2) authorities of the functioning Judge are suspended,
   3) number of Judges of the given court is increased.

2. In cases defined by clauses 2 and 3 of part 1 of the present article a vacancy is not opened, if there is a reduced Judge at the respective court, who has not been designated at position of Judge in another court. In this case, the Judge stops to be considered reduced. In case of several such Judges, the priority given to the senior by age.

Article 135. The Norm of Recommending a Candidate for Vacancy of Position of Judge at the Appellate Court

1. When there opens a vacancy for position of Judge at the Appellate Court, the Chairman of Cassation Court introduces a candidacy to the Council of Justice for conclusion of the latter.

2. The candidacies for the vacant position of Judge are proposed by the Chairman of Cassation Court in the sequence described below:

   1) First of all it proposed to the chairman of Appellate Court, to Chairman or Judge of Chamber of Cassation Court, who has applied to Chairman of Cassation Court in written form requesting to transfer him to position of Judge in Appellate Court. In the event of several such applicants the priority is given to the chairman of the same court first of all, then to the senior by age.

   2) Secondly, the senior reserve Judge of Appellate Court defined by clause 7 of Article 16 is offered, who has not been designated at position of Judge at another court.

   3) Thirdly, the reduced Judge of another Appellate Court or reduced Judge of Cassation Court defined by clause 6 of Article 16, who has not been designated at position of Judge at another court. In the case of several persons, the priority is given to the senior Judge of Appellate Court, then to the senior Judge of Cassation Court (except for persons envisaged by Article 132).

   4) Fourthly, the priority is given to the reduced Judge of Appellate Court, or to senior reserve Judge, who holds the position of Judge in Court of First Instance.

3. The Chairman of Cassation Court submits the offer in written form to functioning Judges at their work address, and to reserve Judges – respectively at their home address.
4. If the persons defined by part 2 of the present article are missing or do not accept the offer, it is considered that candidacies of all persons involved in respective section of the list of professional advancement are proposed. In that case the Council of Justice presents its conclusion on Judge candidacies of Appellate Court as defined by the norm of Article 137 of the present law.

**Article 136. The Norm of Acceptance of Offer by Candidates Proposed for Vacancy of Judges of Appellate Court, and Consequences of Objection. Conclusion of Council of Justice and Designation**

1. Within a week period upon the receipt of the notification the candidate is obliged to submit his written agreement to the residence of Chairman of Cassation Court or inform on his disagreement with the designation. Failure to submit agreement within the specified period is observed as disagreement.

2. In case of agreement of person defined by clause 1) of part 2 of Article 135 he starts to receive salary correspondent to the position he holds, and in case of having a reduced or reserved status- it is suspended.

3. In case defined by clause 1) of part 2 of article 135, the disagreement of the person does not leave any negative consequence for him.

4. In case envisaged by clauses 2) and 3) of part 2 of article 135, the agreement of the Judge of Cassation Court does not abolish his status of a reduced Judge, and for Judges of Appellate court – does abolish.

5. In cases defined by clauses 2) and 3) of part 2 of article 135, the disagreement of Judge brings to suspension of his authorities.

6. In case defined by clause 4) of part 2 of article 135, in case of disagreement the Judge starts to receive a salary compliant to his position.

7. In case of candidate’s agreement, the Chairman of Cassation Court introduces his candidacy to Council of Justice. The Council of Justice conducts an open ballot regarding the introduced candidate and gives positive conclusion, if no procedures of the present law were violated. In case of positive conclusion of the Council the candidacy is introduced to RA President. If the procedures defined by the present law were not violated, RA President designates the introduced candidate at position of Judge within ten days period. In case of negative conclusion the candidate is not removed from the list, and the proposal for the vacancy starts all over again.

**Article 137. The Norm of Giving Conclusion on Persons involved in the List of Professional Advancement for Vacancy of Position of Judge in Appellate Court and The Norm of Designation**

1. At its session the Council of Justice reviews the personal files of persons involved in respective section of list of professional advancement, and if necessary invites them for an interview.
2. The Council of Justice conducts a secret ballot by voting papers. All persons involved in the respective section of the list of professional advancement are listed in the vote paper. After name of each candidate there is a square envisaged for marking “For”.

3. Each member of Council of Justice has a right for one vote. When voting for the preferred candidate the voter marks the word “For” in the respective square. Voting paper containing more than one vote is considered void. By results of the ballot the person having collected the maximum number of “For” votes is given a positive conclusion. In case of equality of votes an extra ballot is conducted by involving the persons of equal votes only. As a result of the extra ballot if the votes are equal the preference is given to the most senior by age.

4. If there is only one candidate in the respective section of list of professional advancement, he is considered as having gotten a positive conclusion, if he has collected more than the half of participated votes. In the event that the candidate fails to collect the defined number of votes, the Council of Justice recommends to RA President to remove that person from the list of professional advancement. RA President removes the person from the list of professional advancement within two weeks after the receipt of that recommendation. The Chairman of Cassation Court announces about acceptance of new candidacies in the respective section of list of professional advancement, as defined by Article 130.

5. Within a period of two weeks after the receipt of positive conclusion on the person, RA President removes the person from the list of professional advancement either through designating him at the given position or through refusing his designation. If there are other persons involved in respective section of the list of professional advancement, the Council of Justice initiates compiling a new conclusion in a norm defined by the present Article. If there are no other persons in the respective section of the list of professional advancement, the Chairman of Cassation Court starts to accept new recommendations of candidates to involve in the list of professional advancement.

Article 138. The Norm of Designation of Chairman of Appellate Court

1. A person involved in the list of professional advancement of Court of First Instance, a Judge of Appellate Court, Chairman of other Appellate Court, a Judge or Chairman of Chamber of Cassation Court may be designated at the position of Chairman of Appellate Court, in compliance with norm of designation of chairman of Court of First Instance defined by the present law.

Article 139. Grounds for Opening a Vacancy of Position of Judge at Cassation Court

1. A vacancy for position of Judge at the Cassation Court may be opened in cases described below:

   1) authorities of the functioning Judge are suspended,

   2) number of Judges of the given court is increased.

2. In cases defined by clauses 1 and 2 of part 1 of the present article a vacancy is not opened, if there is a reduced Judge at the respective court, who has not been designated at position of Judge in another court. In this case, the Judge stops to be considered reduced. In case of several such Judges, the priority given to the senior by age.
Article 140. The Norm of Proposing a Candidacy for Vacancy of Judge at Cassation Court

1. When there opens a vacancy of position of Judge at the Cassation Court, the Chairman of Cassation Court on behalf of Council of Justice introduces candidacies to RA President in written form in a sequence described below:

   1) First of all the Chairman of Chamber of Cassation Court is proposed, who has applied to Council of Justice in written form requesting to transfer him to position of Judge in Cassation Court. In the event of several such applicants the priority is given to the senior by age.

   2) Secondly, the reduced Judge of Cassation Court defined by clause 6 of Article 16 is offered, who holds the position of Judge at Appellate Court.

2. If the persons defined by part 1 of the present article are missing or do not accept the offer, then the Council of Justice initiates selecting a candidate from the list of professional advancement as defined by the norm of Article 142 of the present law.

Article 141. The Norm of Acceptance of Offer by Candidates Proposed for Vacancy of Judges of Cassation Court, and Consequences of Objection. Conclusion of Council of Justice and Designation

1. Within a week period after the receipt of the notification the candidate is obliged to submit his written agreement to the residence of Chairman of Cassation Court or inform on his disagreement with the designation. Failure to submit agreement within the specified period is observed as disagreement.

2. In case of agreement of person defined by clause 1) of part 1 of Article 140, he starts to receive salary correspondent to the position he holds, and in case of having a reduced status, it is suspended.

3. In case defined by clause 1) of part 1 of article 140, the disagreement of the person does not leave any negative consequences.

4. In case envisaged by clause 2) of part 1 of article 140 he starts to receive a salary correspondent to position he holds.

5. In case of candidate’s agreement, the Council of Justice introduces his candidacy to RA President. If the procedures defined by the present law were not violated, RA President designates the introduced candidate at position of Judge within ten days period. In case of negative conclusion the candidate is not removed from the list, and the proposal for the vacancy starts all over again.

Article 142. The Norm of Giving Conclusion on Persons involved in the List of Professional Advancement for Vacancy of Position of Judge in Cassation Court and The Norm of Designation

1. At its session the Council of Justice reviews the personal files of persons involved in list of professional advancement, and if necessary invites them for an interview.
2. The Council of Justice conducts a secret ballot by voting papers. All persons involved in the list of professional advancement are listed in the vote paper. After name of each candidate there is a square envisaged for marking “For”.

3. Each member of Council of Justice has a right for one vote. When voting for the preferred candidate the voter marks the word “For” in the respective square. Voting paper containing more than one vote is considered void. By results of the ballot the person having collected the maximum number of votes “For” is given a positive conclusion. In case of equality of votes an extra ballot is conducted by involving the persons having collected equal votes only. As a result of the extra ballot if the votes are equal the preference is given to the most senior by age.

4. If there is only one candidate in the list of professional advancement, he is considered as having been granted a positive conclusion, if he has collected more than the half of participated votes. In the event that the candidate fails to collect the defined number of votes, the Council of Justice recommends to RA President to remove that person from the list of professional advancement. RA President removes the person from the list of professional advancement within two weeks after the receipt of that proposal. The Chairman of Cassation Court announces about acceptance of new candidacies in the respective section of list of professional advancement, as defined by Article 131.

5. Within a period of two weeks after the receipt of positive conclusion on the person, RA President removes the person from the list of professional advancement either through designating him at the given position or through refusing his designation. If there are other persons involved in the list of professional advancement, the Council of Justice initiates compiling a new conclusion as defined by the present article. If there are no other persons in the list of professional advancement, the Chairman of Cassation Court starts to accept new recommendations of candidates to be involved in the list of professional advancement, as defined by the norm of Article 131.

Article 143. The Norm of Designating a Chairman of Cassation Court Chamber
1. A person involved in the list of Professional Advancement of Appellate Court or a Judge of Chamber of Cassation Court may be designated at the position of Chairman of Chamber of Cassation Court.

2. No bids are accepted for proposing candidacy of Chairman of Chamber of Cassation Court and all persons defined by part 1 of the present Article are entered into the voting paper.

3. The Chairman of Chamber of Cassation Court is designated in compliance with the norm of designating a Chairman of Court of First Instance defined by the present law, with consideration of clauses of parts 1 and 2 of the present article.

Article 144. The Norm of Designating the Chairman of Cassation Court
1. Chairman of Appellate Court, Chairman of Chamber of Cassation Court or Judge of Chamber may be designated at the position of chairman of Cassation Court.

2. No bids are accepted for proposing candidacy of Chairman of Cassation Court and all persons defined by part 1 of Article 143 are entered into the voting paper.
3. The Chairman of Cassation Court is designated in compliance with the norm of designating a chairman of Court of First Instance defined by the present law, with consideration of clauses of parts 1 and 2 of the present article.

CHAPTER: DISCIPLINARY ACTION AGAINST JUDGE

Article 145. Grounds for Imposing a Disciplinary Action upon the Judge

1. The Judge may be imposed a disciplinary action only by Council of Justice.

2. Grounds for disciplinary action upon the Judge are as follows:

1) When discharging justice, bringing in an apparent unlawful judicial act virtually resolving the case. To impose disciplinary action upon the Judge by present ground the proceedings may be instituted in case of confirmation of judicial act’s contradiction to the law by judicial act of higher judicial instance. within 1 year period after the act of higher judicial instance has come into force.

2) Apparent and gross infringement of norms of judicial law when fulfilling justice. To impose a disciplinary action upon the Judge by the present ground, the proceedings may be instituted within a period of 6 months after the judicial act virtually resolving the case brought in by the Judge comes into force.

3) Recurring or gross violation of work discipline. The proceedings aimed at imposing a disciplinary action upon the Judge by this ground may be instituted within a period of one month after violation of work discipline by the Judge.

4) Illegal or inappropriate management of financial resources. Proceedings aimed at imposing a disciplinary action upon the Judge by this ground may be instituted within three months after revealing the violation, but not later than three years after the violation.

5) Grave or recurring violation of canons of conduct by the Judge. Proceedings aimed at imposing a disciplinary action upon the Judge by this ground may be instituted within a period of three months after revealing them, but not later than one year after the violation. Proceedings aimed at imposing a disciplinary action upon the Judge by this ground may be instituted also before bringing in a judicial act virtually resolving the case by the given case.

6) Judge’s failure to fulfill the duties defined by part 3 of Article 14, Article 70, part 2 of Article 88, part 2 of Article 105, part 3 of Article 148, part 3 of Article 151, Article 184, Part 3 of Article 159, Article 186 of the present law. Proceedings aimed at imposing a disciplinary action upon the Judge by this ground may be initiated within a period of one month after the Judge’s violation.

7) Failure to inform the Commission of Ethics about interference in his activities or other unforeseen influence in connection with fulfillment of justice and other authorities envisaged by the law. Proceedings aimed at imposing a disciplinary action upon the Judge by this ground may be initiated within a period of three months after revealing the violation, but not later than a year after the violation.
3. Overruling or amending the judicial act does not create a discipline action upon the Judge who has brought in that act.

4. Imposing a criminal, administrative, civil-legal or other actions upon the Judge as envisaged by law does not exclude from imposing disciplinary action upon him.

**Article 146. Discussing the Information Transfer on Disciplinary Infringement by the Judge at the Commission of Ethics**

1. Upon receipt of information on violation of work discipline or conduct canons by the Judge, or when coming across a similar fact while discussing another issue within its authorities, the Commission of Ethics holds a discussion and invites the Judge to participate in it. In the event that the Commission finds that those violations were not gross and are not recurrent, the Commission may limit to discussing the issue only. Otherwise, the Commission applies to Chairman of Cassation Court with intervention to initiate disciplinary proceedings.

2. When receiving information defined by parts 3 or 4 of Article 95, as well as that defined by Article 96, the Commission of Ethics may organize a discussion of the issue by its own initiative in case he finds that the information is not complete or if it is doubtful and may invite the Judge to participate. The consequences of discussion are decided in compliance with the norm of part 1 of the present article.

**Article 147. Instituting Disciplinary Proceedings upon the Judge**

1. Disciplinary proceedings are initiated upon the Judge of Court of First Instance and Appellate Court and upon the chairman of the court, except for Judges of Cassation Court Chamber by:

   1) Minister of Justice,

   2) Chairman of Cassation Court,

2. Upon the Judge and Chairman of Chamber of Cassation Court disciplinary proceedings are instituted by the Chairman of Cassation Court.

3. In the event that the Minister of Justice has instituted disciplinary proceedings, then he informs the Chairman of Cassation Court on that and mentions the assumed violation to him. If the Chairman of Cassation has initiated disciplinary proceedings, he informs the Minister of Justice on that and mentions the assumed violation. Two proceedings in connection with the same violation may not be initiated.

4. Initiating disciplinary proceedings may be caused by:

   1) person’s application,

   2) information transfer by public and local self-governmental body, by official,

   3) intervention by Commission of Ethics of Council of Judges,

   4) results of judicial practice review or study, as well as disclosure of an action considered as a basis for disciplinary action by proceedings initiating person or well grounded doubt of that action.
5. The application, transfer or intervention envisaged by clauses 1), 2) and 3) of part 4 of the present article, that does not contain any evident grounds about an action that would become a basis for disciplinary action by the Judge are returned without examination to the person who has submitted it.

6. In case of not instituting any proceedings based on application, transfer of intervention as defined by clauses 1), 2) and 3) of part 4 of the same article, the proceedings instituting person is not obliged to give the grounds for not instituting the proceedings.

7. As a result of study of transfer on an action that was a basis for disciplinary action, the Commission of Ethics presents a relevant intervention to the Chairman of Cassation Court when revealing grounds for initiation of disciplinary action.

Article 148. The Process of Disciplinary Proceedings upon the Judge

1. The disciplinary proceedings may last not longer than 6 weeks, except for cases of Judge’s absence. The length of disciplinary proceedings may be extended by the period of absence of the Judge.

2. Within the disciplinary proceedings, the proceedings instituting person is entitled to:

1) request from the court and study criminal, civil or any other case materials with valid judicial acts,

2) get familiar with criminal, civil or any other materials at court, on which there is no valid judicial act so far,

3) request for written explanations from the Judge,

4) call and listen to witnesses,

5) request and receive materials from state and local self-governmental bodies and officials,

6) apply to person who has submitted an application that has become a basis for instituting disciplinary proceedings, with recommendation to provide extra clarifications. State and local self-governmental bodies, officials are obliged to provide clarifications.

3. The Judge, who has been initiated the disciplinary proceedings, is obliged to present written explanations to the person who has initiated the proceedings.

4. As a result of carried out surveys the proceedings initiating person brings in any one decision from those described below:

1) on closing the disciplinary proceedings,

2) on applying to Council of Justice with intervention on instituting disciplinary action upon the Judge.

5. If the Minister of Justice has closed the disciplinary proceedings, he informs the chairman of Cassation Court on that. If the Chairman of Cassation Court has closed the
disciplinary proceedings, he informs the Minister of Justice on that. After bringing in a decision about closing the disciplinary proceedings, the proceedings institutor may not institute proceedings for the second time on the same basis.

6. If the proceedings instituting person decides to apply to Council of Justice with intervention to institute disciplinary action upon the Judge, he has to compile a conclusion on the disciplinary violation, that will reflect every action of the Judge that is considered as violation of discipline, all circumstances that served as a basis for qualifying the action as violation of discipline and kind of proposed disciplinary fine.

7. Before sending the materials of disciplinary proceedings to Council of Justice, the Judge who has been initiated the disciplinary proceedings has a right to get familiar with them. The materials are handed to the Judge not later than two weeks prior to the closing date envisaged by part 1 of the present article. Within a week upon the receipt of the materials the Judge has a right to submit additional explanations or institute intervention about implementing additional verifications. The person who has instituted the proceedings has a right to change his conclusion based on the additional explanations of the Judge or additional verifications, if that does not deteriorate the Judge's condition.

8. The person who has instituted the proceedings sends the materials of disciplinary proceedings to the Council of Justice and the Judge, who has been initiated the proceedings with notification on the submission. Since the moment of sending the disciplinary proceedings materials to the Council of Justice the person who has instituted the proceedings may not call back the materials of the proceedings and those materials are subject to virtual discussion at the Council of Justice.

9. Within a week period after the receipt of the materials of disciplinary proceedings, the Judge is entitled to sending the response to the Council of Justice. Failure to send the response by the Judge does not impede the hearing of his case of discipline at the Council of Justice. With intervention of the Judge, the Council may extend the deadline provided to the Judge.

10. The person who has instituted the proceedings, witnesses participated in the proceedings and other persons are obliged to keep the confidentiality of the disciplinary proceedings. Within the disciplinary proceedings all delivered documents must be delivered in sealed envelopes with a stamp of “confidential” on it.

**Article 149. Disciplinary fines Applied upon the Judge**

1. As a result of discussing the matter of the Judge’s disciplinary action the Council of Justice may apply any of the following kinds of disciplinary fines upon the Judge:

   1) warning,

   2) warning, paralleled with depriving the Judge of 25 percent of his salary for a period of six months,

   3) strict warning, paralleled with depriving the Judge of 25 percent of his salary for a period of one year,

   4) applying to RA President with intervention to suspend the Judge’s authorities.
2. The warning is an official reprimanding given to the Judge that is applied by the Council of Justice, for a violation of discipline recognized as mild, if the Judge has no fine.

3. The kind of discipline fine envisaged by clause 4) of part 1 of the present article is subject to be applied only if in consequence of the gross violation of discipline he is no longer compatible for the position of Judge.

4. The disciplinary fine applied upon the Judge must be proportionate to the committed violation. When applying a disciplinary fine the Council of Justice takes into consideration also the consequences of the violation, the personality of the Judge, the degree of the guilt, the existing fines, and other circumstances that require attention for describing the Judge.

5. If within a period of two years since the day of getting the warning or strict warning, and within a period of one year since the day of getting reproof the Judge has not been instituted any new disciplinary fine, he is considered to have no disciplinary fine.

6. If the Judge has been instituted disciplinary fines in a sequence, that have decreased his salary, then the total decrease of his salary cannot exceed 50 percent of his monthly salary.

Article 150. Hearing the Proposal on Instituting Disciplinary Action upon the Judge

1. When hearing the matters on instituting disciplinary action upon the Judge, the Council of Justice acts as the Court. When acting as the Court the Council of Justice applies the norms of RA Administrative Trial Code towards the norm of hearing of the cases as much as they are applicable in the hearing of the case at the Council of Justice and do not contradict to the norms of the present law.

2. A member of Council of Justice may not announce waiver. The member of Council of Justice may not be granted waiver.

3. The person who has instituted the proceedings bears the responsibility of proving the evidence of grounds for imposing disciplinary action upon the Judge. The unsettled doubts on disciplinary violation by the Judge at the session of Council of Justice are commented in favor of the Judge.

4. The Council of Justice hears the case on imposing disciplinary action upon the Judge within a reasonable deadline.

5. Documents reviewed by the Council of Justice are attached to the heard materials either in original or copy certified in proper manner.

Article 151. The Course of Hearing a Case on Imposing a Disciplinary Action upon the Judge at the Council of Justice

1. At Council of Justice the case hearing starts when the person who has instituted the proceedings makes a report on conclusion regarding the essence of the matter and the violation of discipline. If the disciplinary proceedings upon the Judge were instituted by Minister of Justice, the latter is obliged to be present at the session of the Council of Justice and has a right to appear in person or through a state official of the Ministry.

2. In the event that after submission of materials of disciplinary materials to Council of Justice, the proceedings instituting person has learned about circumstances that mitigate the
Judge’s condition or exclude imposing disciplinary action upon him, the proceedings instituting person is obliged to inform the Council on that.

3. After the report made by person who has instituted the proceedings at the Council of Justice, the Council listens to explanations of a Judge, upon whom the proceedings were instituted. The Judge provides explanations on each violation reflected in the conclusion of disciplinary violation. He may deny the fact of act considered to be disciplinary violation, the fact of considering his act as violation of discipline or the aforementioned two facts at the same time. In case the Judge does not dispute the facts of violation of discipline and provides explanation on having violated discipline, the Council starts the discussion of issue of applying disciplinary fine upon him.

4. In the event that the Judge does not accept that he has violated the discipline, after listening to his explanations, the Council starts to study the materials and proofs of the proceedings.

5. The Council of Justice is entitled to initiative of inviting and interrogating witnesses at the session. In case the witnesses fail to appear the Council of Justice is entitled to adopt a decision about bringing the witness.

6. The Council of Justice warns the invited witnesses about the responsibility disavowing or evading from testifying, about apparent false evidence, and respectively warns the expert about the responsibility for disavowing or evading from providing conclusion, about apparent false evidence.

7. After the study of case materials the Council of Justice listens to conclusive speeches of persons participating at the session, and after that leaves for consultation room to bring in a decision.

8. In the consultation room, first of all, the issue of guilt of Judge’s action is voted, then the issue of kind of proposed disciplinary fine is voted.

Article 152. Rights and Responsibilities of the Judge in the Course of Hearing the Case On Imposing Disciplinary Action upon Him at the Council of Justice

1. The Judge is entitled to:

1) get familiar with materials that are considered as a basis for hearing the case at the Council of Justice, make extracts, receive their copies,

2) ask questions to the speaker, submit objections, make explanations and interventions any time before leaving for the consultation room to bring in a decision about imposing disciplinary action,

3) provide proofs and participate in their examination,

4) participate in the session; appear in person or by attorney.

2. The Judge’s attorney is entitled to participate in the hearing of case of a given Judge at the Council of Justice and is vested with rights envisaged by part 1 of the present article.
3. In case of instituting disciplinary proceedings upon the Judge, providing the Council of Justice with explanations is his responsibility.

4. When the Council of Justice discusses the matter of imposing disciplinary action upon the Judge, the Judge is vested with guaranties envisaged by clause 1 of article 6 of European Convention on Human Rights and Basic Freedoms Protection.

5. In the event the Judge fails to appear on the call of Council of Justice, the Council of Justice is vested with a right to hear the case on imposing disciplinary action upon the Judge in the absence of the Judge.

**Article 153. Resolution of Council of Justice on Imposing Disciplinary Action upon the Judge**

1. Within the hearing of one disciplinary proceedings, even if the same Judge has made several disciplinary violations, the Council of Justice brings in one decision. When bringing in a decision the Council of Justice is not constrained to the kind of disciplinary fine proposed by the person who has instituted the disciplinary proceedings. The Council of Justice may apply a more severe kind of fine upon the Judge than the one proposed by the person who has instituted the proceedings.

2. The resolution is adopted in the consultation room. Only members of the Council of Justice are entitled to be present in the consultation room for bringing in the resolution on the case heard at the Council of Justice. The resolution is adopted by open ballot of the member Judges of the Council of Justice. In case of equal votes, adopted is the resolution that is more favorable for the Judge.

3. Issues discussed in the consultation room of Council of Justice, the position expressed by members of the Council and vote results are not subject to be published in the course of the session, not even after the completion of case hearing.

4. As a result of hearing the case on imposing disciplinary action upon the Judge, the Council of Justice may bring in any of the following decisions:

   1) on imposing disciplinary fine upon the Judge as envisaged by the present law,

   2) on closing the case.

**Article 154. Grounds for Closing the Case on Imposing Disciplinary Action upon the Judge by the Council of Justice**

1. The Council of Justice closes the case on imposing disciplinary action upon the Judge, when:

   1) The available basis for imposing disciplinary action upon the Judge is not well-grounded,

   2) The proceedings were instituted with violation of deadlines envisaged by part 2 of Article 145, if the Judge agrees with closing the proceedings on the mentioned basis,

   3) His authorities have been suspended or he has been removed from his office.
2. In case the Council of Justice does not find it expedient to apply a means of disciplinary fine upon the Judge, he may be satisfied by discussion of the case and registering the availability of grounds for disciplinary action and closing the case on imposing disciplinary action upon the Judge. The present clause may be applied upon the same Judge only once.

**Article 155. Requirements submitted for Resolution of the Council of Justice on Imposing Disciplinary Action upon the Judge and the Promulgation of the Resolution**

1. The resolution of the Council of Justice on imposing disciplinary action upon the Judge must contain the following:

   1) Name and composition of Council of Justice,
   2) The time and location of hearing the case at the Council of Justice,
   3) First name, last name and position of the Judge, who has been instituted the disciplinary proceedings,
   4) First name, last name and position of the person who has instituted the disciplinary proceedings,
   5) Circumstances of the case,
   6) Standpoint of the person who has instituted the proceedings or that of representative in case defined by the present law,
   7) Explanations of the Judge, who has been instituted the proceedings,
   8) Explanations of those persons who have been invited to the session of Council of Justice,
   9) Circumstances describing the personality of the Judge,
   10) The well-substantiated conclusion of Council of Justice with refer to available proofs,
   11) Resolution envisaged by part 4 of Article 153.

2. The conclusive part of resolution is published at the session of Council of Justice.

3. The substantiating part of the resolution is prepared within ten days after promulgation of the conclusive part.

4. Within a ten days period the resolution is sent to the person who has instituted the proceedings, to the Judge and judicial department, and the resolution on applying to RA President for intervention in order to suspend the authorities of the Judge – also to the RA President.

Article 156. Revision of the Resolutions on Imposing Disciplinary Action upon the Judge when New Circumstances are Revealed

1. The Council of Justice is entitled to revise its resolution on imposing disciplinary action upon the Judge when new circumstances are revealed.

2. The intervention on revising the resolution of Council of Justice may be presented by the person who has instituted the proceedings upon the Judge or by the Judge, who has been imposed to disciplinary action by the brought in resolution.

3. The responsibility of proving the circumstances that serve as a basis for revision of the resolution of Council of Justice on imposing disciplinary action upon the Judge is born by the person who has submitted the intervention.

4. In case the Council of Justice considers that the grounds for revising the resolution of Council of Justice on imposing disciplinary action upon the Judge are missing, it adopts a resolution to keep the resolution on imposing disciplinary action unaltered.

5. In case of availability of grounds for revising the resolution of Council of Justice with the newly revealed circumstances, the Council of Justice recognizes its resolution void and adopts a new resolution.

6. In the event that the Council of Justice with the newly revealed circumstances recognizes void its resolution on suspending the authorities of the Judge as a disciplinary fine, the Council resolves to apply to RA President with intervention to restore the disciplinary fine imposed Judge in his formerly held position.

7. Within a ten days period after the receipt of the intervention, RA President restores the Judge in his formerly held position. Designation at the position of the Judge imposed to disciplinary fine before the restoration of the Judge does not impede from restoring the Judge at his position. In that case the restored Judge obtains a status of reduced Judge as envisaged by part 6 of Article 16.

Article 157. Disciplinary Action of Chairman of the Court (Chamber of Cassation Court)

1. Improper discharge of duties by the chairman of the court (Chamber of Cassation Court) is a basis for imposing disciplinary action upon him. Provisions of the present chapter are applicable towards the disciplinary proceedings and case hearing, as long as they do not contradict to the provisions of the present article.

2. The disciplinary proceedings on the basis envisaged by part 1 of the present article may be imposed within three months period after revealing the violation, but not later than one year.

3. In case only the violations envisaged by part 1 of the present article have served as a basis for instituting proceedings, the Council of Justice may apply disciplinary fine upon the Judge of court (Chamber of Cassation Court):

   1) warning,

   2) reproof, paralleled with depriving the chairman of the court of bonus for a period of six months,
3) Strict warning, paralleled with depriving the chairman of the court of bonus for a period of 12 months,

4) Application to RA President with intervention for suspension of authorities of the Judge.

4. If in result of hearing the case on imposing disciplinary action the Council of Justice resolves that the chairman of court (Chamber of Cassation Court) has violated his responsibilities both as a Judge and as a chairman, he applies any of the following disciplinary fines:

1) warning,

2) reproof, paralleled with depriving the Judge of 25 percent salary and bonus of chairman of court for a period of six months,

3) strict reproof, paralleled with depriving the Judge of 25 percent salary and bonus of chairman of court for a period of twelve months,

4) application to RA President with intervention to suspend the authorities of the Judge.

Article 158. Circumstances of Refusal of RA President about Intervention of Council of Justice in Suspending the Authorities of the Judge

1. If RA President does not suspend the authorities of the Judge within two weeks period after the receipt of intervention about suspension of the Judge’s authorities from Council of Justice, the intervention is considered to be refused. In that case by the power of law it is considered that clause 3) of Part 1 of Article 149, or clause 3 of part 3 or part 4 of Article 157 respectively has been applied upon the Judge.

Article 159. Suspension of Authorities of Judge on a Basis not Related to Disciplinary Action

1. Authorities of the Judge are subject to mandatory suspension by RA President on the basis of recommendation of Council of Justice, if:

1) he applies for that (he resigns);

2) he has reached 65 years of age (the retirement age);

3) he has not worked in consequence of temporary work disability for more than four uninterrupted months or more than 6 months in calendar year has not been able to perform his official duties,

4) by legally valid act of the court it is proved that he was designated at the position of Judge by violation of requirements,

5) Based on a legally valid decision of the court, he has been recognized incapable to work, capable with limited capacity, absent for unknown reason or announced deceased,
6) The accusing verdict brought upon him has come into legal force or criminal case instituted upon him has been closed for not justifying base.

7) He has renounced the citizenship of Republic of Armenia or has obtained a citizenship of another country,

8) He has not passed the annual retraining programs for two years,

9) After designation he has obtained a physical deficiency or a disease hindering the designation at position of Judge.

2. In presence of bases envisaged by clauses 1)-8) of part 1 of the present article the Chairman of Cassation Court is obliged to apply to Council of Justice with intervention about suspending the authorities of the Judge.

3. If there is an evident presence of basis envisaged by clause 9) of part 1 of the present article, the Minister of Justice and Chairman of Cassation Court together apply to state authorized body to organize a medical examination of the Judge. The Judge is obliged to pass the medical examination. In case the results of the examination substantiate the base envisaged by clause 9) of part 1 of the present article, the chairman of Cassation Court submits a respective intervention to the Council of the Justice.

Article 160. Recommendation on Giving Consent for Arrest of the Judge, for Involving him as Guilty, for Imposing Administrative Action by Judicial Order

1. The Prosecutor General applies to Council of Justice with the recommendation to give consent for arresting the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order. And in the event that the case upon the given Judge is in the legal proceedings - the court that hears the case applies to the Council of Justice with recommendation to give consent for arresting the Judge.

2. The Prosecutor General or the court that hears the case submit to the Council the materials that serve as a basis for arresting the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order.

3. The recommendation of Council of Justice on giving consent for arresting the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order does not mean approval of validity of arresting the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order, and does not constraint to resolving the issue of permitting the arrest of the Judge of authorized court as defined by the norm.

4. Recommendation for the second time about arresting the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order may not take place.

5. If after the receipt of the consent of Council of Justice on involving the Judge as guilty the scope of the guilt has altered, in a way that deteriorates or may deteriorate the condition of the Judge, the Prosecutor General applies to Council of Justice as defined by clause 1 of the present article.

6. On matters regarding the recommendation on giving consent for arresting the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order, the Council resolves through maximum avoiding interrupting or postponing the session.
Article 161. Suspension of Authorities of the Judge in Case of Consent for Involving the Judge as Guilty on the Basis of Recommendation of Council of Justice

1. When RA President gives his consent for involving the Judge as guilty on the basis of recommendation made by Council of Justice, the authorities of the Judge are considered to be suspended for the period of pre-investigation and forensic-investigation. When suspending the authorities of the Judge, the cases of his proceedings are transferred to another Judge of the given court. If the Judge participates in collective hearing, in case of suspension of his authorities the Judge is substituted by another Judge. In case of suspension of criminal case instituted upon the Judge, he continues discharging his authorities until the decision on restarting the criminal case is adopted.

2. When suspending the authorities of the Judge, he receives a compensation as being temporarily unemployed not for his fault.

Article 162. Norm of Examining the Recommendation on Giving Consent for Arrest of the Judge, for Involving him as Guilty, for Imposing Administrative Action by Judicial Order and That of Bringing in the Resolution by Council of Justice

1. During the examination of recommendation on giving consent for arrest of the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order, the canons envisaged by clauses 1), 2) and 4) of part 1, parts 2, 3 and 5 of Article 152, parts 2), 3) of Article 153, part 5 of Article 155 of the present law are applied.

2. During the examination of recommendation on giving consent for arrest of the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order, RA Prosecutor General is obliged to be present at the session of Council of Justice and present his position in person.

3. A copy of resolution of Council of Justice on giving consent for arrest of the Judge, for involving the Judge as guilty, for imposing administrative action by judicial order is immediately sent to RA President and Prosecutor General.

Article 163. Expressing Opinion on Pardoning Matters

1. At inquiry of RA President the Council of Justice expresses opinion about pardoning matters.

2. Minister of Justice and Prosecutor General are invited to the session of Council of Justice on the matters of pardon and before bringing in the resolution of the Council they have the right to express their opinion on pardon matters.

CHAPTER MAGISTRATES SCHOOL

Article 164. Purpose and legal status of the Magistrates School

1. The School is a state non-for-profit non-commercial organization that has the status of a legal entity.

2. The founder of the School is the Republic of Armenia, acting through the Government of the Republic of Armenia.
3. The activities of the School shall be governed by this Code, the Republic of Armenia Law on State Non-Commercial Organizations, and the By-Laws of the School. The requirements of the Law on Education shall not apply to the Magistrates School.

Article 165. Assets and financing of the School
1. The School shall be financed from the state budget with a separate budgetary line.

2. The founder shall assign to the School the assets necessary for the operation of the School for an indefinite amount of time, with use right at no cost.

3. The School shall have the right to place assets assigned to it by the founder under a lease in accordance with the procedure specified in this Code and the By-Laws of the School.

4. Income received by the School from the use of assets assigned to it shall belong to the School.

Article 166. By-Laws of the School

Article 167. Functions of the School
1. In accordance with this Code and its goals under its By-Laws, the School shall:

   1) Organize professional education of individuals short-listed as judge candidates based on the qualification test results;

   2) Organize and conduct training of individuals that graduated the School and are in the Official Qualification and Promotion List (with the exception of scientists);

   3) Organize and conduct professional training of judicial servants in the staff of courts;

   4) Organize and conduct seminars and conferences on the legal system, the legislation, and the administration of justice, publish academic literature, and so on;

   5) Develop the curriculum of the School; and

   6) Carry out other activities prescribed in the By-Laws.

   STRUCTURE OF THE SCHOOL

Article 168. Bodies of the School
1. The School shall be governed by the School Governing Board and the executive body, i.e. the School Director.

Article 169. School Governing Board
1. The School Governing Board shall carry out the general governance of the School and oversee its ongoing activities.
2. The following shall be members of the Governing Board of the School:

   1) The Republic of Armenia Minister of Justice;
   2) The Chairman of the Republic of Armenia Cassation Court;
   3) The Judicial Council Training Committee Chairman and one judge elected by this Committee from amongst its members;
   4) The Chairman of the Chamber of Advocates; and
   5) One member of the legal academic community elected by the Board of the Law Department at Yerevan State University for a term of three years.

3. The Judicial Council Training Committee Chairman shall be the School Governing Board Chairman.

4. The School Governing Board members shall carry out their duties without any compensation.

5. The powers of a School Governing Board member shall terminate:

   1) In the event of dismissal, termination of office, or expiry of the term; or
   2) Under Paragraph 2(5) of this article, on the basis of his written request, or by decision of the Governing Board, if the member is not properly carrying out his duties as a Governing Board member.

**Article 170. Functions of the School Governing Board**

1. The School Governing Board:

   1) Approves the strategic plan and academic curriculum of the School;
   2) Approves the number and names of teachers at the School;
   3) In accordance with guidelines developed by the Judicial Council Training Committee, approves the training plan and training timetable of judges, judge candidates, and individuals included in promotion lists;
   4) Approves the School budget and its amendments, as well as the annual report, including the financial reports;
   5) In accordance with the procedure established by itself, competitively recruits and dismisses the School Director;
   6) In accordance with Paragraph of, defines and publishes the type of written exam, the procedure of conducting it, the procedures of checking, evaluating, and appealing written tests, the procedure of calculating the sum of credits scored by an applicant on the basis of the evaluation of written tests, and gives appropriate instructions to the School Director in this respect;
   7) Takes a decision on giving the assets of the School on lease;
8) Takes a decision on how to use the profit of the School; 

9) Approves the auditor of the School; 

10) Hears the reports of the School Director at the frequency established in the By-Laws; 

11) Approves the grounds and procedure of granting postponement to and applying disciplinary sanctions in respect of attendees; 

12) Upon presentation by the School Director, discusses and solves issues contemplated in Article 177 of this Code; 

13) Every year, publishes the annual report of the School, including financial reports and the income and expenditure statement with reasonable level of detail; 

14) Approves the terms of the employment contract with the Director; 

15) Upon presentation by the School Director, applies disciplinary sanctions; 

16) Approves the procedure and terms of conducting exams in the School; 

17) Approves the procedure of evaluating the knowledge of attendees, calculating exam credits, and re-taking exams; 

18) In accordance with this Code and the School By-Laws, adopts decisions, procedures, and other internal legal acts, and supervises their enforcement; and 

19) Carries out other functions prescribed by this Code and the By-Laws.

2. Functions vested in the School Governing Board may not be delegated to another body.

**Article 171. School Governing Board sessions and decision-making procedure**

1. The School Governing Board acts through sessions. Sessions of the School Governing Board may be summoned by the Chairman of the Governing Board, or at the request of the Republic of Armenia Cassation Court Chairman, the Minister of Justice, or the School Director. The School Director may take part in the sessions of the School Governing Board, but only with the right to a consultative voice.

2. A session of the School Governing Board shall have power to act, if two thirds of the members are in attendance.

3. Decisions of the School Governing Board shall be taken by majority of the votes of the total number of its members.

**Article 172. Chairman of the School Governing Board**

1. The School Governing Board Chairman shall:

   1) Organize the work of the School Governing Board;
   
   2) Summon and chair sessions of the School Governing Board;
3) Organize the taking of session minutes;

4) Conclude an employment contract with the School Director; and

5) Carry out other functions as prescribed by this Code and the By-Laws.

2. In the absence of the School Governing Board Chairman, his functions shall be performed by another member of the Training Committee of the Council.

Article 173. Executive Director of the School

1. The everyday activities of the School shall be managed by the Executive Director of the School, who is elected by the School Governing Board for a three-year term.

2. The School Director manages the everyday activities of the School, with the exception of matters reserved to the authority of the School Governing Board by this Code and the By-Laws.

3. The School Director shall:

1) Manage the educational process;

2) Organize the execution of Governing Board decisions;

3) Manage the School’s assets, including the financial assets, and execute transactions on behalf of the School;

4) Represent the School in the Republic of Armenia and in foreign states;

5) Present to the School Governing Board for approval the Internal Work Regulations of the School, including the staffing list and the internal work discipline rules;

6) Present to the School Governing Board for approval the strategic plan, curriculum, and training programs of the School;

7) Within the limits of his authority, issue decrees and orders, give binding instructions, and monitor their execution;

8) Make recommendations to the Governing Board on the application of disciplinary sanctions in respect of the attendees;

9) Carry out logistical work related to the performance of qualification tests in order to compile the list of judge candidates; and

10) Carry out other functions prescribed by this Code and the By-Laws.

4. The School Director may also have other functions prescribed by the By-Laws.

5. If it is temporarily impossible for the School Director to carry out his duties, a person elected for such purpose by the Board shall replace him.
CHAPTER 6

STATUS OF SCHOOL ATTENDEES AND INDIVIDUALS INCLUDED IN THE OFFICIAL QUALIFICATION LIST OF JUDGES

Article 174. Status of School attendees
1. A person included in the Official Qualification List of Judges in accordance with of this Code shall be an attendee of the School.

2. During the education, a School attendee shall receive a stipend in the amount of 80% of the salary of an assistant of a judge in a universal first instance court.

Article 175. Employment of School graduates
1. From the 1st date of the first September following graduation of the School, School graduates shall be employed in the headquarters of the Judicial Department and shall receive a salary matching their position.

2. School graduates may take the initiative to work as judge assistants instead of becoming employed in the headquarters of the Judicial Department.

3. From after graduation of the School to employment in accordance with the procedure defined in Paragraph 1 above, the attendee shall retain the right to receive a stipend.

Article 176. Disciplinary sanctions against School attendees
1. In the cases and procedure defined in the School By-Laws, an attendee may be subjected to a disciplinary sanction.

2. The following types of disciplinary sanctions may be applied:
   1) Warning;
   2) Reprimand, which is combined with deprivation of 25% of the stipend for a six-month period;
   3) Strict reprimand, which is combined with deprivation of 25% of the stipend for a 12-month period; and
   4) Removal from the School.

3. If an attendee was successively subjected to disciplinary sanctions that result in lowering of the stipend, then the total lowering of the stipend during any given month cannot exceed 50% of the stipend.

4. An attendee may file a judicial appeal against a decision to apply a disciplinary sanction against him, within one month of receiving a copy of such decision.

Article 177. Removal or dismissal of an attendee from the School
1. Upon presentation by the School Director, the Board may remove an attendee from the School—as a disciplinary sanction—in the following cases:
1) If he regularly misses class without an acceptable excuse;

2) If his exam credit received for a course taught at the School is lower than the Board-established minimum credit required to graduate a course, or if he fails the appropriate phase of the trial period a second time, as defined in Paragraph 4 of Article 183; or

3) If he has committed an act that is a ground for termination of powers in accordance with the Judicial Code of Ethics.

2. An attendee removed from the School shall be deprived of the right to ever become included in the list of judge candidates.

3. An attendee shall, upon presentation by the Director and the decision of the Board, be dismissed from the School, if:

   1) He so requests, with the exception of the case when the grounds specified in Paragraph 1 of this article are present;

   2) As a consequence of temporary work incapacity, he misses class for more than four consecutive months or any six months during the calendar year;

   3) A final judgment of court has proven that he was included in the list of judge candidates by violation of the requirements of law;

   4) A final judgment of court has recognized him to be incapacitated, to have limited capacity, to be missing, or declared dead;

   5) A convicting judgment against him has entered into legal force, or a criminal case against him was suspended on a non-acquittal ground;

   6) He refused citizenship of the Republic of Armenia or acquired citizenship of another state, as well; or

   7) A physical handicap or disease became revealed, which renders him unable to work in the position of a judge.

4. If the ground specified in Paragraph (3)(7) hereof is apparently present, then the School Director shall request the School Board to ask the competent state authority to organize the health check of the attendee. An attendee shall be obliged to undertake the health check. If the check confirms that the ground specified in Paragraph (3)(7) hereof is present, then the attendee shall be dismissed from the School in accordance with the procedure laid down in Paragraph 3 of this article.

5. If entitlement to yearly postponement is present, as prescribed by a decision of the Governing Board, the School attendee may be dismissed from the School on the basis of his application, but retain the right to be reinstated in the School during the course of a regular academic year.

6. In case of dismissal from the School on the grounds specified in Paragraph (3)(6) hereof, the attendee shall lose the right to be ever included in the list of judge candidates.
Article 178. Status of individuals included in the Official Qualification List
1. An individual included in the Official Qualification List shall be guaranteed appointment to the position of a judge.

2. For the whole term of being on the list, individuals included in the Official Qualification List shall be exempt of regular military draft for a term, other conscription, and drills.

CHAPTER 7
LEARNING AND TEACHING IN THE SCHOOL

Article 179. Learning of attendees in the School
1. In the School, the academic program should be structured in such a way as to be aimed at building an impartial, competent, capable, and professional judicial corps.

2. In the School, the learning process shall be conducted in the form of lectures, seminars, moot court games, debates, discussion of judicial acts and their peculiarities, familiarization with specific court cases, and didactic materials, video tapes, recorded lectures, and other contemporary techniques of education, which promote self-learning on the part of attendees.

Article 180. Stages of education
1. The education in the School shall end with a trial period. The education in the School shall begin in January, after summarizing the results of the qualification tests in accordance with of this Code, and shall end no later than on August 1 of the academic year of graduating the School.

Article 181. Teachers at the School
1. Teaching of attendees in the School shall be carried out teachers/lecturers.

2. Teachers shall work in the School on contractual grounds.

Article 182. Exams taken during education
1. At the end of each subject course in the School, attendees shall take an exam, the purpose of which is to evaluate the theoretical knowledge and practical skills obtained.

2. Exam evaluation is used to calculate the total credit of an attendee at graduation.

Article 183. Trial of attendees
1. The trial period shall be mandatory.

2. An attendee must pass a trial period in different judicial instances, including specialized courts.

3. If the exam credit scored from an exam/exams (including repeat exams) taken in a course/courses taught at the School is lower than the minimum credit established by the Board to consider a course completed, the attendee shall not pass the trial period and shall be removed from the School.
4. If the respective phase of the trial period is evaluated negative by the trial period mentor in accordance with Paragraph 4 of of this Code, the attendee shall have the right to re-take the trial period in accordance with the procedure established by the Board, but in such case shall not retain the right to receive a stipend.

Article 184. Mentor of trial period
1. The Governing Board shall, upon presentation by the School Director, appoint trial period mentors for each phase of the trial period.
2. At any phase of the trial period, only a judge may be a mentor.
3. The trial period mentors must make sure that the attendee undertakes the trial period in accordance with the program.
4. At the end of each phase of the trial period, the mentor shall submit to the School a written description covering the practical and moral characteristics displayed by the attendee during the trial period, including an evaluation of the attendee’s trial period as positive or negative.

CHAPTER 8
COMPLETION OF STUDIES

Article 185. Completion of studies
1. Upon completing the studies, the attendees shall not take graduation exams.
2. Upon completing the studies, but no later than before the 1st of August, the School Governing Board shall sum up the total exam score (for subject courses taught at the school) of an attendee that received positive evaluation for all the phases of the trial period, and shall declare the attendee a graduate of the School.

CHAPTER 9
TRAINING OF JUDGES AND INDIVIDUALS INCLUDED IN THE OFFICIAL QUALIFICATION LIST

Article 186. Forms of training organization and implementation
1. In accordance with the training program developed by the Board, the School shall regularly organize and conduct training courses that shall be binding for judges and all individuals included in the list of judge candidates.
2. Prior to October 1 of the respective calendar year, the Qualification Committee shall define the main guidelines of the training, the total number of training program hours (to be no less than 80 and no more than 120 academic hours per annum), and the different categories of training programs and the minimum number of hours for each program for judges of different instances (including specialized courts) and individuals included in the judge candidate list and the official promotion list, with the exception of individuals designated in of this Code, based on which the School Governing Board shall, prior to November 1 of the respective calendar year, develop the School’s training programs and present them to the School Board for approval.
3. Judges, as well as individuals included in the list of judge candidates and the official promotion list shall have the right to elect the proposed training courses in accordance with the requirements and number of hours established by the Training Committee.

4. The procedure of implementing training programs, the timetable, the procedure of notification about such programs, and the procedure of remunerating trainers shall be determined in accordance with the procedure defined in the School By-Laws.

5. Judges, as well as individuals included in the list of judge candidates and the official promotion list shall be considered to have passed the training, if they have taken part in all the hours of the training course.

6. Training courses shall be organized and carried out in accordance with the methods set forth in Article 179 of this Code.

7. During the training, judges and individuals included in the judge candidate list shall be exempted of their official duties in connection with the training, but shall retain their entitlement to salaries and other supplements. Judges and individuals included in the judge candidate list, which permanently reside outside the place in which the training is carried out, shall receive compensation of the training-related transportation and accommodation costs.

SECTION
JUDICIAL SERVICE

Chapter --

SERVICE IN JUDICIAL DEPARTMENT

Article 187. Judicial Department

1. The Judicial Department provides smooth organizational and economic-financial operation of all courts of RA, General Meeting of Judges of RA and Council of Judges of RA.

2. The overall management of Judicial Department is discharged by Chairman of Cassation Court, and the immediate management – by the head of the Department.

3. The Judicial Department operates on the basis of charter approved by RA Council of Judges.

4. The Judicial Department:

   1) discharges staff policy, financial, technical-material and other kind of measures aimed at creating conditions for effective operation of judicial authorities,

   2) performs the role of staff of Council of Judges, its commissions and Council of Justice,

   3) prepares the sessions of Council of Justice, sends the materials on matters discussed in Council of Justice and copies of resolutions of Council of Justice to
members of Council of Justice, state bodies envisaged by the present law and other vested persons within the deadlines defined by the present law,

4) prepares the sessions of General Meeting, Council and its commissions,

5) within the authorities vested in it by the charter, supervises the organizational operation of staff of RA courts,

6) analyses and reviews the judicial practice and judicial statistics,

7) organizes enrollment of graduates of Magistrates School in the Judicial Department,

8) carries on personal files of Judges,

9) organizes the operation of official internet website of RA courts,

10) discharges other authorities vested in it by the present law and charter of the Department.

5. The Judicial Department is funded through state budget by line of Cassation Court.

Article 188. Service in Judicial Department (judicial service)

1. Judicial service is a professional activity carried out to ensure the performance of functions and powers vested in courts and self-governing bodies of the judiciary. Judicial service is a part of public service defined in the Republic of Armenia legislation.

2. Judicial service shall be performed in the Judicial Department:

1) In structural units of the Judicial Department; and

2) In the court staffs of separate units of the Judicial Department.

3. Serving in the office of a judge, as well as the activities of court-appointed experts, specialists, insolvency (bankruptcy) administrators, technical support staff, and individuals contracted for specific issues or functions shall not be considered judicial service.

4. Technical support staff shall be considered staff of the judicial department, and employment matters related to them shall be regulated by the Labor Code and other legal acts.

Article 189. Legislation regulating judicial service

1. Employment matters related to judicial service shall be regulated by the Republic of Armenia labor legislation, unless this Code prescribes peculiar provisions on such matters.

2. Official relations between judicial servants shall be regulated by this Code, decisions of the General Assembly of Judges and the Judicial Council, and the By-Laws of the Judicial Department.
Article 191. Structural Subdivisions of Judicial Department

1. Structural subdivisions of Judicial Department consist of divisions, departments, services and other subdivisions approved by RA Council of Judges.

2. The operation of self-governed bodies of RA Judges and Council of Justice of RA services the structural subdivisions of Judicial Department.

CHAPTER

CLASSIFICATION OF JUDICIAL SERVICE POSITIONS AND RANKS

Article 192. Judicial service positions

1. A judicial service position is a judicial service position designated under the nomenclature of positions approved in accordance with the procedure defined in this Code.

2. Judicial service positions shall be classified into groups and sub-groups based on the responsibility of work organization and management for individuals in these positions, the difficulty of tasks, decision-making powers, contacts, representation, and the required level of knowledge and skills.

3. Judicial service positions shall be classified into the following groups:
   1) Highest positions of judicial service;
   2) Senior positions of judicial service;
   3) Leading positions of judicial service; and
   4) Junior positions of judicial service.

4. The judicial service positions of each group shall be classified into first and second sub-groups.

5. The first subgroup of judicial service position groups is the highest sub-group of that group.

6. A person that occupies any position contemplated under the nomenclature of judicial service positions shall be deemed a judicial servant.

7. Individuals working in judicial service positions assigned to judges in cases prescribed by this Code shall be deemed judicial servants assigned to judges.

Article 193. Judicial service ranks

1. The following ranks shall be awarded to judicial servants:
   1) To judicial servants in the highest positions of judicial service—ranks of primary and secondary rank highest counselors of judicial service of the Republic of Armenia;
2) To judicial servants in the senior positions of judicial service—ranks of primary and secondary rank counselors of judicial service of the Republic of Armenia, as well as the secondary rank highest counselor rank;

3) To judicial servants in the leading positions of judicial service—ranks of primary and secondary rank leading servants of judicial service of the Republic of Armenia, as well as the secondary rank counselor rank; and

4) To judicial servants in the junior positions of judicial service—ranks of primary and secondary rank junior servants of judicial service of the Republic of Armenia, as well as the second rank leading servant rank.

2. Judicial service ranks shall be equal to civil service ranks.

3. The highest counselor rank of judicial service may be awarded by the Cassation Court Chairman on the basis of an opinion issued by the Judicial Council of the Republic of Armenia.

4. Other judicial service ranks may be awarded by the Head of the Judicial Department.

5. At the time of appointment to a judicial service position, a judicial service rank shall be awarded to the judicial servant, unless he has a higher rank of judicial or public service. If he does, then he shall retain the higher rank.

6. A rank that is higher than the rank corresponding to the sub-group of position occupied by a judicial servant shall be awarded as a result of evaluating performance in accordance with the procedure defined in this Code.

7. A person that occupies a judicial service position for the first time shall receive a judicial service rank upon completion of the trial period prescribed by this Code.

8. Judicial servants’ ranks shall be retained upon dismissal from work and transfer to another public service position, including transfer within the judicial service.

9. A judicial service rank may be lowered by means of a court procedure—as a type of disciplinary sanction—based on a claim of the official that has the power to award the rank in question.

10. A judicial servant shall be deprived of his judicial service rank in case of dismissal from his position on the grounds specified in sub-paragraphs 1), 2), and of Paragraph 1 of Article 224 of this Code.

Article 194. Judicial service positions

1. Judicial service positions shall be defined in an exhaustive list of judicial service position, which is called the Nomenclature of Judicial Service Positions.

2. Positions of judicial servants assigned to the judge by laws and other legal acts, and other positions designated for the operation of the Judicial Department shall be incorporated in the Nomenclature of Judicial Service Positions with due respect for the requirements specified in Paragraph 4 of Article 1 of this Code.
Article 195. Judicial service position passport

1. A judicial service position passport is a document that defines the functions of the servant occupying that position, his official rights and duties, contacts, representation, professional knowledge and skills required to occupy that position, and the appropriate requirements of judicial service experience.

2. Judicial service position passports shall be approved by the Judicial Council of the Republic of Armenia. The Head of the Judicial Department shall be responsible to present the description of judicial service position passports.

3. Judicial service position passports shall contain, as a minimum, the requirements laid down in paragraphs 4, 5, 6, and 7 of this article, with the exception of position passports of judicial servants assigned to the judge.

4. The passports for the highest judicial service positions shall contain, as a minimum, the following requirements:

   1) Higher education;

   2) At least two years’ experience in at least the second sub-group of senior positions of judicial (public) service, or at least five years’ judicial service experience, or the rank of at least secondary rank counselor of senior judicial service, or at least three years’ work experience in political or discretionary positions (with the exception of Republic of Armenia community head deputies, advisors, press secretaries, assistants, and secretaries) or equivalent civil service positions during the last five years;

   3) Adequate knowledge of literary Armenian; and

   4) Command of at least one foreign language.

5. The passports of senior positions of judicial service shall contain the following requirements:

   1) Higher legal education or other professional education (if the nature of the job is not legal);

   2) At least two years’ experience in at least the second sub-group of leading positions of judicial (public) service, or at least three years’ judicial service experience, or the rank of at least secondary rank leading servant of senior judicial service, or a scientific degree and three years’ professional work experience, or at least one years’ work experience in political or discretionary positions or equivalent civil service positions during the last three years;

   3) Adequate knowledge of literary Armenian; and

   4) Command of at least one foreign language.

6. The passports of leading positions of judicial service shall contain the following requirements:
1) Higher education;
2) Two years’ experience in judicial service positions, or three years’ professional work experience, or at least one years’ work experience in political or discretionary positions or equivalent civil service positions during the last one year; and
3) Adequate knowledge of literary Armenian.

7. The passports of junior positions of judicial service shall contain the following requirements:
1) Secondary education; and
2) Adequate knowledge of literary Armenian.

8. To undertake judicial service in each of the lower groups, it is sufficient to meet the requirements defined for a higher group.

Article 196. Nomenclature of judicial service positions and staffing list
1. The nomenclature of judicial service positions and the number of staff positions shall be approved by the Judicial Council of the Republic of Armenia. The Head of the Judicial Department shall be responsible for presentation of the aforementioned nomenclature of judicial service positions and the number of staff positions.

2. The staffing lists of structural and separated units of the Judicial Department shall be approved/amended by the Head of the Judicial Department of the Republic of Armenia within a one-month period of the Republic of Armenia Judicial Council approving the nomenclature of judicial service positions. The staffing list includes the nomenclature of judicial service positions, the positions of technical support staff, and the amounts of remuneration.

CHAPTER
PROCEDURE OF APPOINTMENT TO AND DISMISSAL FROM JUDICIAL SERVICE POSITIONS

Article 197. Eligibility to take up a judicial service position
1. In accordance with the procedure defined in this Code, Republic of Armenia citizens that have reached age 18, have command of the Armenian language, and meet the requirements contained in the respective judicial service position passport shall have the right to take up a judicial service position, regardless of nationality, race, sex, faith, political or other views, social origin, property status, or other status.

Article 198. Non-eligibility to take up a judicial service position
1. The following individuals shall not have the right to take up judicial service positions:
   1) Individuals that were recognized by court as incapacitated or having limited capacity;
2) Individuals that were deprived by court of the right to take up a public service position;

3) Individuals that suffer an illness that can hinder the performance of official duties in case of their appointment to a judicial service position;

4) Individuals that were convicted for a crime and have not had their conviction removed or extinguished in accordance with the established procedure;

5) Individuals that avoided mandatory military service for a term.

2. The list of illnesses referred to in Paragraph (1)(3) of this article shall be approved by the Republic of Armenia Government.

Article 199. Appointment to judicial service positions

1. Appointment to judicial service positions shall be made in accordance with the procedure defined in this Code.

2. Individuals appointed to judicial service positions shall be irreplaceable, unless the grounds for dismissal from the position, which are prescribed by law, are present.

3. Appointment to and dismissal from judicial service positions shall be performed in the following manner:

1) The Head of the Judicial Department of the Republic of Armenia shall be appointed and dismissed by the Judicial Council of the Republic of Armenia upon presentation by the Cassation Court Chairman;

2) The heads of structural units of the Judicial Department and the chiefs of staff of courts shall be appointed and dismissed by the Judicial Council of the Republic of Armenia upon presentation by the Head of the Judicial Department;

3) Individuals in other positions of judicial service shall be appointed and dismissed by the Judicial Department Head upon presentation by the head of the respective structural or separated unit of the Judicial Department; and

4) Individuals in other positions of judicial service, assigned to the judge in the case specified in this Code, shall be appointed and dismissed by the Judicial Department Head upon presentation by the respective judge.

4. The appointment of a person taking on a judicial service position for the first time shall be made for a trial period of up to six months in accordance with the procedure defined in the Republic of Armenia legislation.

Article 200. Procedure of appointment to a vacant judicial service position

1. Vacant positions of judicial service shall be filled competitively, with the exception of the cases provided by this Code.

2. If no winner is selected in a closed competition held in accordance with the procedure defined in this Code, as well as for vacant junior positions of judicial service, an open competition shall be conducted in accordance with the procedure defined in this Code.
3. Appointment to a vacant position of judicial service assigned to the judge shall be made upon presentation by the judge, without a competition. A person appointed to a vacant position of judicial service assigned to the judge shall correspond to the requirements prescribed in the position passport.

4. With the consent of the judge, a vacant position of judicial service, which is assigned to the judge, may be filled in accordance with the competitive procedure prescribed by this Code. The individual that is selected as the winner of the competition shall be appointed to the vacant procedure in accordance with the procedure defined in this Code.

**Article 201. Closed competition held to fill a vacant position of judicial service**

1. If a vacant position of judicial service emerges, with the exception of the position of the Judicial Department Head and junior positions of judicial service, as well as the case prescribed in Paragraph 3 of Article 200 of this Code, a closed competition shall be held to fill the vacant position. Judicial servants and individuals included in the staff reserve in accordance with the procedure defined in this Code may participate in the closed competition, provided that they meet the requirements prescribed in the passport of the vacant position.

2. The announcement on holding a closed competition to fill a vacant position of judicial service shall be published within a one-week period of the emergence of the vacant position, but no later than one month before the day of holding the competition, so as to provide a reasonable possibility to find out about and participate in the competition. This announcement shall be posted on the official website of the judiciary.

3. A closed competition shall be held either on the basis of evaluating a competition participant's performance and/or by means of an interview. If more than one individual are recognized as winners of the closed competition, appointment to the vacant position shall be made in accordance with the procedure laid down in Article 204 of this Code.

4. The procedure of conducting a closed competition shall be defined by the Judicial Council of the Republic of Armenia.

**Article 202. Open competition held to fill a vacant position of judicial service**

1. If no appointment is made as a result of a closed competition in accordance with the procedure defined in this Code, or if a junior position of judicial service becomes vacant, the Judicial Department Head shall, within a three-day period, take the decision on holding an open competition to fill the positions (hereinafter, “Competition”).

2. The announcement on holding an open competition to fill a vacant position of judicial service shall be published no later than one month before holding the competition in a print press with circulation of at least 3,000 copies or other means of the mass media, as well as on the official website of the judiciary. Such announcement shall be published in such a way as to ensure the reasonable possibility to find out about and participate in the Competition.

3. Competitions for filling vacant positions of judicial service shall be carried out by competition committees created in accordance with the procedure defined in this Code. The competition preparatory work shall be performed and logistical support to the activities of the competition committees provided by the Judicial Department of the Republic of Armenia.
4. A competition committee shall not allow a citizen to take part in the competition, unless he meets the requirements set forth in Article 197 of this Code, or if any of the grounds specified in Article 198 of this Code is present.

5. A Competition shall be held even if only one person has applied to participate in it.

6. The Competition shall be carried out in testing and interview stages.

**Article 203. Testing in an open competition**

1. The goal of testing is to test conformity to the requirements specified in the passport of the vacant position of judicial service.

2. Testing may be performed by means of a computer or in writing. Tests shall be compiled in accordance with the procedure defined by the Judicial Council of the Republic of Armenia.

3. Participants that give correct answers to at least 80% of the test assignments shall be recognized as winners of the testing stage.

4. The procedure of testing shall be defined by the Judicial Council of the Republic of Armenia.

**Article 204. Open competition interview stage and summarization of results**

1. An interview shall be conducted in order to evaluate winners of the testing stage and to summarize the competition results.

2. At the interview stage, participants shall be evaluated on the basis of scores for each of the evaluation criteria.

3. The participant that scores the largest number of points based on the summing up of scores evaluated by competition committee members shall be considered the competition winner. If more than one candidate scores the maximum number of points, then the winner shall be determined by the person that has competence to make an appointment to the position in question.

4. The procedure of conducting the interview and evaluating the candidates shall be defined by the Judicial Council of the Republic of Armenia.

5. No later than on the day following the summarization of competition results, the competition committee shall present the final protocol on the winning participant/-s of the competition to the official that has competence to make an appointment to the position in question. The final protocol shall contain data on the competition winner/-s.

6. Within three days of receiving the final protocol, the official that has competence to make an appointment to the judicial service position in question shall appoint the winning participant or one of the winning participants of the competition to the relevant position.
Article 205. Publishing competition results; repeat competitions

1. The competition results shall be provided to the competition participants or posted at an accessible place within the administrative building of the Judicial Department for the public to see.

2. A repeat competition shall be held when:
   1) As a result of the competition, none of the participants score the required minimum of points at the testing stage;
   2) No applications are submitted for participating in the competition;
   3) All the applications presented contain one of the grounds specified in Paragraph 4 of Article 15 of this Code;
   4) None of the citizens that submitted applications showed up at the competition;
   5) The competition was carried out with a significant breach of the procedures defined either in this Code or by the Judicial Council of the Republic of Armenia; or
   6) A court recognized the competition as null and void.

3. A repeat competition shall be conducted on general grounds.

4. If the grounds specified in Paragraph 2 of this article are present, the competition shall be deemed to have not taken place. A person appointed to a position as a result of a competition deemed to have not taken place shall be dismissed.

5. If a repeat competition is deemed to have not taken place, or if no winner is selected as a result of the repeat competition, then the respective vacant position of judicial service shall be filled from among the individuals in the staff reserve, by means of an interview, followed by the execution of an employment contract.

6. If no winner is selected as a result of the repeat competition, a new competition shall be announced after two months.

7. Judicial servants and individuals included in the staff reserve may take part in open competitions announced to fill vacant positions of judicial service in accordance with the general procedure.

Article 206. Procedure of formation and operational procedure of judicial service competition committees

1. The procedure of forming competition committees to fill vacant positions of judicial service, as well as their operational procedures shall be established by the Judicial Council of the Republic of Armenia.

Article 207. Career experience of judicial service

1. Judicial service career experience shall include the whole term of occupying a judicial service position, as well as the whole term of employment in courts, prior to the coming into
force of this Code, in positions equivalent to judicial service positions designated under the nomenclature of judicial service positions.

2. Judicial service career experience shall be included in the general and professional career experience and public service experience of judicial servants defined in the legislation of the Republic of Armenia.

Article 208. Leaves granted to judicial servants for education or training

1. For the purposes of enhancing professional knowledge and work skills, an academic leave may be granted to judicial servants in accordance with the procedure defined in the legislation.

2. In case of such a leave, the judicial servant shall retain the following:

   1) His judicial service position, remuneration, and judicial service career experience for a business trip lasting up to one year, with the authorization of the Judicial Department Head; and

   2) His judicial service position and judicial service career experience for a business trip lasting from one to three years, with the authorization of the Cassation Court Chairman.

3. For a leave in excess of three years, the judicial servant shall be dismissed from his position. The career experience for the business trip period preceding dismissal (training time) shall be considered equivalent to judicial service career experience.

Article 209. Replacement of and term employment contracts with judicial servants

1. If a judicial service position temporarily remains vacant, it shall be temporarily filled by a substitute judicial servant prescribed in the passport of that position or, in the absence of such a substitute, appointment shall be made for a term of up to three months from among the individuals included in the staff reserve, which meet the criteria set forth in the passport of that position.

2. If a position remains vacant for longer than three months, it shall be filled by means of concluding a term employment contract.

3. A term employment contract shall be executed for a specific time term. A term employment contract shall be terminated prematurely on the day on which the judicial service reports for duty.

CHAPTER

JUDICIAL SERVANTS’ PERFORMANCE ASSESSMENT, TRAINING, AND THE STAFF RESERVE

Article 210. Judicial servants’ performance assessment

1. Judicial servants’ performance assessment shall be performed once a year by their direct supervisors. The performance assessment of judicial servants assigned to the judge shall be performed on the basis of an annual performance description report on the judicial servant, prepared by the judge.
2. Performance assessment shall be mandatory after the end of the trial period, as well.

3. The procedure and criteria of performance assessment and the form of the performance report shall be defined by the Judicial Council of the Republic of Armenia.

4. The judicial servants’ performance assessment criteria shall be the same for all judicial servants. Judicial servants’ performance assessment shall be objective and clear and provide an exhaustive assessment as to whether all the requirements of the judicial servant’s position have been met.

Article 211. Judicial servant’s performance description report

1. A judicial servant’s performance description report shall be prepared and presented to the Judicial Council of the Republic of Armenia or the Judicial Department Head within the period established by the Judicial Council of the Republic of Armenia.

2. Before presentation to the Judicial Department Head, the respective official shall make a copy of the description report available to the described staff member and the court’s chief of staff, or, in case of judicial servants of the structural units of the Judicial Department, to the official performing the respective duties. The chief of staff or, in case of judicial servants of the structural units of the Judicial Department, the official performing the respective duties shall have the right to attach his private opinion to the description report.

3. Within a one-week period of receiving a copy of the description report, the judicial servant shall have the right to express written consent or objection to both the report and the private opinion. Failure of a judicial servant to express written objection shall be deemed consent of the judicial servant to the assessment of his performance.

4. A judicial servant’s performance description report shall contain one of the following conclusions:
   1) Conforms to the position currently held; or
   2) Does not correspond to the position currently held.

5. When issuing a conclusion of conformity to the position held, the respective official may make a recommendation on encouraging the judicial servant.

6. The following shall not be subject to a performance assessment:
   1) Judicial servants that have been in a position for less than six months, with the exception of those being transferred to another judicial service position;
   2) Judicial servants that are on leave due to pregnancy or the care of a child under the age of three; and
   3) Judicial servants that have returned from compulsory military service—within the first six months of their return.

7. If a judicial servant has been transferred to a different position of judicial service during the course of the year, the assessment of his performance shall be performed by the direct supervisor under whose supervision the servant worked longer.
8. Based on the performance assessment results, the Judicial Council of the Republic of Armenia or the Department Head may, within a one-month period of receiving the description report, dismiss the judicial servant from his current position on the basis of the report and the private opinion, or apply any type of encouragement prescribed by law, or refer the judicial servant to training.

**Article 212. Training of judicial servants**

1. Each judicial servant must be trained in accordance with the procedure and at the frequency established by the Judicial Council of the Republic of Armenia.

2. The state budget shall allocate financing for the training of judicial servants.

3. Training of judicial servants shall be conducted in accordance with the programs of the Magistrates School, as well as in other ways determined by the Judicial Council of the Republic of Armenia.

4. The procedure of judicial servants’ training shall be approved by the Judicial Council of the Republic of Armenia.

**Article 213. Staff reserve of judicial servants**

1. Individuals that were recognized as winners of interviews in open competitions held in accordance with the procedure defined in this Code, but were not appointed to judicial service positions, as well as judicial servants dismissed from office on the grounds prescribed in Paragraph 1 and Paragraph 2 of Article 224 of this Code shall be included in the Judicial Department Staff Reserve.

2. Citizens included in the Judicial Department Staff Reserve, which did not assume a judicial service position for three years, shall be deemed to not have been included in the Judicial Department Staff Reserve.

**CHAPTER
LEGAL STATUS OF JUDICIAL SERVANTS**

**Article 214. Fundamental rights of judicial servants**

1. A judicial servant shall have the following fundamental rights:

   1) To become acquainted with legal acts that define the rights and responsibilities associated with his position;

   2) To become acquainted with and provide comments on all the materials in his personal file, his performance assessments, and other documents;

   3) To obtain information and materials necessary for the performance of his official duties in accordance with the established procedure;

   4) To enjoy remuneration for work, health protection, and safe and appropriate work conditions;

   5) To have social protection and security;
6) To have legal protection;
7) To have his judicial service rank increased in accordance with the established procedure;
8) To be trained with funding from the state budget and other sources not prohibited under the Republic of Armenia legislation;
9) To appeal against the competition and performance assessment results, including appeals in court; and
10) To make recommendations on the organization and improvement of judicial service.

2. Judicial servants shall also have other rights defined in this Code and other legal acts.

Article 215. Main responsibilities of judicial servants
1. The main responsibilities of judicial servants are:
   1) To strictly comply with the requirements of the Republic of Armenia Constitution, laws, and other legal acts;
   2) To possess necessary and sufficient knowledge for the performance of professional and official duties;
   3) To perform the duties prescribed in the passport of a judicial service position in an accurate and timely manner;
   4) To perform tasks in accordance with the established procedure;
   5) To comply with the internal work discipline rules established in a legal act;
   6) To study all the presented documents and the applicable legal acts, and to process them in accordance with the established procedure; and
   7) To comply with the Republic of Armenia legislation requirements on how to work with documents containing official secrets or other confidential information protected by law, including compliance with confidentiality requirements after the termination of service.

2. A judicial servant shall also have other responsibilities prescribed by this Code and other legal acts.

Article 216. Limitations applicable to judicial servants
1. A judicial servant may not:
   1) Perform other paid work, with the exception of scientific, pedagogic, and creative work;
   2) Personally engage in business activities;
3) Be a representative in court, with the exception of being a lawful proxy;

4) Commit violations of the judicial servants’ code of ethics approved by the Judicial Council of the Republic of Armenia, or use his official position for personal goals or other goals not related to the interests of service;

5) Receive honorarium for publications or speeches made in the course of performing his official duties;

6) Use material, technical, financial, and information resources, other court assets, and official information for non-official purposes; or

7) Receive gifts, amounts, or services from other individuals in return for performing his official duties, with the exception of cases prescribed by the Republic of Armenia legislation.

Article 217. Social safeguards for judicial servants
1. All the social safeguards, which are defined for civil servants in the Law on Civil Service, shall be guaranteed to judicial servants.

Article 218. Remuneration of judicial servants
1. Work remuneration of judicial servants shall be performed in accordance with the procedure and in an amount equal to that established for civil servants by the Republic of Armenia Law on Remuneration of Civil Servants, taking into account the peculiarities prescribed by this Code.

2. The base pay rate of judicial servants’ work remuneration shall be equal to the official base pay rate established for civil servants.

3. The bulk salary of a judicial servant is the official pay rate that corresponds to his judicial service position sub-group and his total career experience in the current position.

Article 219. Social security of judicial servants
1. Social security of judicial servants, including their pension security shall be provided in accordance with the procedure defined in the Republic of Armenia legislation.

Article 220. Legal status of judicial servants in the event of Department reorganization or structural change
1. Reorganization or structural change of the Judicial Department of the Republic of Armenia shall not serve as a ground for dismissing a judicial servant, with the exception of the case when such reorganization is accompanied with a reduction in the number of staff positions.

2. In the event of reducing the number of staff positions, preference for continued employment shall be given to judicial servants that have a higher rank of judicial service or, if the judicial service ranks are equal, then to the judicial servant with a longer career experience or, if the lengths of career experience are equal, then to the judicial servant with a longer total work experience.
Article 221. Personal file of a judicial servant

1. The service-related activities of a judicial servant are reflected in his personal file, which shall be maintained by the Judicial Department.

2. The procedure of maintaining personal files of judicial servants shall be approved by the Judicial Council of the Republic of Armenia.

CHAPTER

ENCOURAGEMENT OF JUDICIAL SERVANTS, APPLICATION OF DISCIPLINARY SANCTIONS, AND DISMISSAL FROM JUDICIAL SERVICE POSITION

Article 222. Types of encouragement applied to judicial servants

1. For long-term service and for performance of official duties and certain assignments, the following types of encouragement may be applied in respect of a judicial servant: (i) granting a higher rank, and (ii) other types of encouragement prescribed in the Labor Code of Armenia.

2. Different types of encouragement shall be applied in respect of judicial servants by the Judicial Council of the Republic of Armenia or the Judicial Department Head.

Article 223. Disciplinary sanctions applied to judicial servants

1. Disciplinary sanctions prescribed in the Labor Code of the Republic of Armenia and sanctions prescribed in Paragraph 9 of Article 193 of this Code shall be applied to judicial servants in case of the failure to perform official duties or the improper performance thereof without any ground of excuse, as well as for exceeding official powers and for violating internal work discipline rules and judicial servants’ code of ethics.

2. Prior to ordering a disciplinary sanction, written explanation shall be demanded from the judicial servant that committed the disciplinary violation. If the judicial servant fails to provide a written explanation, the work sanction shall be ordered on the basis of a report by an official that has the power to demand such an explanation.

Article 224. Grounds for dismissal of judicial servants

1. In addition to the grounds prescribed in the Labor Code of Armenia, judicial servants may be dismissed on the following grounds:

   1) Applying a disciplinary sanction more than once during any year;
   2) A grave violation of the judicial servants’ code of ethics;
   3) Elimination of the judicial service position (redundancy);
   4) Becoming elected or appointed to a political or discretionary position;
   5) Being appointed to a judicial service position in grave violation of the requirements of this Code;
   6) Not being eligible to take up a judicial service position or not meeting the requirements specified in the respective judicial service position passport;
7) Being recognized by court as incapacitated, having limited capacity, or missing;

8) Being deprived by court of the right to take up a public service position;

9) Being convicted to imprisonment by a convicting judgment that has entered into legal force; or

10) Being above the maximum age defined in this Code for taking up a judicial service position.

2. Judicial servants assigned to the judge may also be dismissed on the ground of the respective judge’s transfer or termination of the respective judge’s powers.

3. The duties of a judicial servant shall be deemed terminated upon his death.

4. Judicial servants that are pregnant, looking after a below-three child, or performing compulsory military service may not be dismissed from their positions on the ground of elimination of the respective judicial service position (redundancy), judicial servant’s performance assessment, or long-term incapacity.

Article 225. Maximum age for taking up a judicial service position

1. The maximum age for taking up a judicial service position is 65.

2. Upon reaching the maximum age for taking up a judicial service position, the term of a judicial servant may be prolonged by up to five years by a decision of the Judicial Council of the Republic of Armenia, upon presentation by the Judicial Department Head.

Article 226. Judicial appeal against decisions to apply a disciplinary sanction against or to dismiss a judicial servant

1. A judicial servant shall have the right to lodge a judicial appeal against a decision to apply a disciplinary sanction against him, including a decision to dismiss him from his judicial service position.

2. If the legal act on dismissal from the judicial service position is declared null and void, the judicial servant’s position shall be reinstated within a five-day period of the court judgment entering into legal force, and the judicial servant shall receive compensation for forced idleness in accordance with the procedure and in the amount prescribed by the Republic of Armenia legislation.

CHAPTER

JUDICIAL SERVICE GOVERNANCE AND MANAGEMENT BODIES

Article 227. Judicial service governance bodies

1. The judicial service governance body is the Judicial Council of the Republic of Armenia.

2. Certain governance functions shall be performed by the Republic of Armenia Cassation Court Chairman.
Article 228. Judicial service management body

1. The judicial service management body is the Head of the Republic of Armenia Judicial Department, who shall ensure the performance of judicial service.

2. The Judicial Department Head is a judicial servant.

3. The powers of the Judicial Department Head are defined in this Code, other laws, the By-Laws of the Judicial Department, decisions of the Judicial Council, and other legal acts.

SECTION .

JUDICIAL POLICE

Chapter 1. General Provisions on Judicial Police

Article 229. Judicial police

1. Judicial police service is a special type of public service, which is created and operates within the Judicial Department structure.

2. The peculiarities of judicial police service and the terms and conditions of its organization shall be defined in this Code.

Article 230. Legislation on judicial police

1. The rights and responsibilities of judicial police servants, as well as other matters related to their testing, trial period appointment, service, rest time, leaves, restrictions on giving orders to them, supervision of their activities, liability of judicial police servants, official safeguards and restrictions, and, in cases prescribed by this Code, other issues related to judicial police service shall be regulated by the provisions of the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts, to the extent that their nature makes them applicable in respect of judicial police servants, and to the extent to which they do not contradict this Code. In the application of the Law on the Service Ensuring Compulsory Execution of Judicial Acts in respect of matters related to judicial police, the functions vested in the Minister of Justice by that law shall be carried out by the Judicial Council, and those vested in the Chief Compulsory Executor—by the Judicial Police Chief, unless otherwise flows from the provisions of this Code.

2. In cases prescribed by this Code, matters related to judicial police service shall be subject to the provisions of the Republic of Armenia Law on Penitentiary Service, to the extent that their nature makes them applicable to the judicial police servants, and to the extent to which they do not contradict this Code.

Article 231. Tasks of judicial police

1. The task of the judicial police is to ensure, in accordance with this Code and other laws:

   1) Protection of the life, health, dignity, rights, and freedoms of the judge, parties to proceedings, and other persons from criminal and other unlawful encroachment;

   2) Protection of the public order and security in the territory of the court;

   3) Execution of court orders subject to immediate execution on the spot; and
4) Protection of judicial assets, buildings, and adjacent areas.

2. To accomplish its tasks, the judicial police cooperate with the Republic of Armenia Police and other public bodies with a view to sharing information, organizing and implementing joint action, and providing the necessary mutual assistance.

Article 232. Principles of judicial police operation
1. The judicial police operate in strict accordance with the principles of lawfulness, respect for the individual’s rights, freedoms, honor, and dignity, humanity, and transparency.

2. Practice of torture, cruel or degrading treatment, or violence against a person by judicial police staff shall be prohibited and shall give rise to liability in accordance with the procedure defined by law.

3. In any case of restricting human rights and freedoms, the judicial police staff shall be obliged to immediately present the grounds for such restriction to such person, and to explain his rights and responsibilities; in the event of arresting a person, they are obliged to ensure immediately transfer him to the Police.

CHAPTER

JUDICIAL POLICE SERVICE FORMATION, STRUCTURE, AND MANAGEMENT

Article 233. Judicial police service structure
1. The judicial police system shall be composed of the judicial police headquarters and separated units of judicial police. As a rule, the separated units of judicial police are created by courts.

2. The list of the separated units of judicial police shall be approved by the Judicial Council of the Republic of Armenia.

3. The staffing list of judicial police shall be approved by the Judicial Council of the Republic of Armenia within the limits of state budget allocations.

4. The judicial police headquarters shall be composed of the Judicial Police Chief and his Deputy.

Article 234. Management of judicial police
1. The activities of the judicial police shall be coordinated by the Judicial Department Head.

2. The judicial police headquarters shall be managed by the Judicial Police Chief.

3. The judicial police headquarters shall ensure the execution of tasks specified in of this Code through the separated units of judicial police.

4. Institutional management of judicial police units shall be performed by the Judicial Police Chief. Their direct management shall be performed by the respective unit chiefs.

5. Instructions given by the judge in the courtroom shall prevail and be binding for execution by the judicial policeman.
Article 235. Judicial police service positions

1. Judicial police service positions shall be classified into the following groups:

   1) Senior positions of judicial police service, including:
      - Judicial Police Chief; and
      - Deputy Judicial Police Chief;

   2) Leading positions of judicial police service, including:
      - Unit Chief; and
      - Deputy Unit Chief;

   3) Junior positions of judicial police service, including:
      - Senior judicial policeman; and
      - Junior judicial policeman.

2. Those that occupy the judicial service positions specified in Paragraph 1 of this Article shall be considered judicial policemen.

Article 236. Judicial police service ranks

1. The following ranks shall be awarded to judicial police servants:

   1) Colonel of justice;
   2) Lieutenant-colonel of justice;
   3) Major of justice;
   4) Captain of justice;
   5) Senior lieutenant of justice;
   6) Lieutenant of justice;
   7) Senior corporal of justice;
   8) Corporal of justice;
   9) First sergeant of justice;
   10) Senior sergeant of justice;
   11) Sergeant of justice; and
   12) Junior sergeant of justice.
2. The ranks specified in Paragraph 1 of this article are presented in hierarchical order—from high to low.

3. The Judicial Police Chief is awarded a rank by the Judicial Council. The Deputy Judicial Police Chief and the leading and junior positions are awarded ranks by the Judicial Police Chief.

4. Ranks are awarded in consecutive order, in accordance with the ranks designated for one’s current office.

5. The following ranks are designated for judicial police positions:

<table>
<thead>
<tr>
<th>Group of positions</th>
<th>Position</th>
<th>Lower and higher limits of rank corresponding to the position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Judicial Police Chief</td>
<td>Lieutenant colonel of justice—colonel of justice</td>
<td></td>
</tr>
<tr>
<td>Deputy Judicial Police Chief</td>
<td>Major of justice—lieutenant colonel of justice</td>
<td></td>
</tr>
<tr>
<td>Leading Unit chief</td>
<td>Senior lieutenant of justice—major of justice</td>
<td></td>
</tr>
<tr>
<td>Deputy unit chief</td>
<td>Lieutenant of justice—captain of justice</td>
<td></td>
</tr>
<tr>
<td>Junior</td>
<td>1) Senior judicial policemen</td>
<td>First sergeant of justice—senior corporal of justice</td>
</tr>
<tr>
<td></td>
<td>2) Junior judicial policemen</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Junior sergeant of justice—senior sergeant of justice</td>
<td></td>
</tr>
</tbody>
</table>

6. The Republic of Armenia Law on Penitentiary Service regulates matters concerning the award of ranks, their term, the procedure of calculation, and rank deprivation.

**Article 237. Main requirements for entry into judicial police service**

1. The requirements for entry into judicial police service are those stipulated in the Republic of Armenia Law on Penitentiary Service. The provisions of the Republic of Armenia Law on Penitentiary Service concerning the middle group of positions in penitentiary service shall apply to the leading group of positions in judicial police service.

**Article 238. Vow of judicial policeman**

1. Citizens that are first-time entrants into the judicial police service shall take a vow in accordance with the procedure established by the Judicial Council, in front of the state flag of the Republic of Armenia, with the following text:

   “I, [name, surname, patronymic], by entering into the Republic of Armenia judicial police service, vow to perform my functions in accordance with the Republic of Armenia Constitution and laws, with due respect for human and civic rights and freedoms, and to carry out the official duties of a judicial policeman with commitment and in good faith.”

**Article 239. Appointment and dismissal of judicial policemen**

1. The Judicial Police Chief shall be appointed and dismissed by the Judicial Council of the Republic of Armenia upon presentation by the Judicial Department Head.
2. The Judicial Police Chief Deputy shall be appointed and dismissed by the Department Head upon presentation by the Judicial Police Chief.

3. Appointment to and dismissal from leading and junior groups of judicial police service positions shall be made by the Judicial Police Chief.

**Article 240. Conditions for appointment of judicial policemen**

1. To be appointed as the Judicial Police Chief, a citizen must have higher education and must have:

   1) Occupied the position of the Judicial Police Chief Deputy prior to such appointment, and a rank of a lieutenant colonel of justice; or

   2) Occupied the position of a unit chief for at least four years, with the rank of a major of justice prior to such appointment, or

   3) Served in the Republic of Armenia national security, police, armed forces, penitentiary service, Ministry of Justice Department for Compulsory Execution of Judicial Acts, or the competent bodies of prosecution for at least 5 years during the 10 years preceding such appointment, and not been removed from service on the ground of committing a disciplinary violation, and had the rank of a major of justice for at least four years, or currently has a rank not below that of a lieutenant colonel of justice.

2. To be appointed as the Judicial Police Chief Deputy, a citizen must have higher education and must have:

   1) Occupied the position of a unit chief prior to such appointment, with the rank of a major of justice, or

   2) Occupied the position of a unit chief deputy for at least three years prior to such appointment, with the rank of a captain of justice, or

   3) Served in the Republic of Armenia national security, police, armed forces, penitentiary service, Ministry of Justice Department for Compulsory Execution of Judicial Acts, or the competent bodies of prosecution for at least 5 years during the 10 years preceding such appointment, and not been removed from service on the ground of committing a disciplinary violation, and had the rank of a captain of justice for at least four years, or currently has a rank not below that of a major of justice.

3. To be appointed as a unit chief or deputy unit chief of judicial police, a citizen must have higher education and must, with his practical and personal potential, be capable of performing the duties associated with the respective position. If the citizens appointed to the aforementioned positions have military or special rank or qualification rank below that of a lieutenant, or have no rank, then upon appointment, they shall be awarded the rank of a lieutenant of justice.

4. To be appointed to a junior category position of judicial police, a citizen must have at least secondary education. To be appointed to a senior judicial policeman, a citizen must have at least the rank of a first sergeant of justice or, must have occupied a position corresponding to
that of a junior judicial policeman for at least three years prior to appointment, while holding the rank of a senior sergeant of justice. When appointed to the position of a junior judicial policeman, a citizen is awarded the rank of a junior sergeant of justice or a rank that corresponds to the higher military or special rank (or qualification rank) already possessed by him.

5. The correspondence of positions in the armed forces, national security, the Police, the competent bodies of prosecution, the Ministry of Justice Department for Compulsory Execution of Judicial Acts, and the Penitentiary Service, to the judicial police service positions shall be determined in accordance with the procedure approved by the Republic of Armenia Government for the Penitentiary Service.

CHAPTER

TESTING AND TRAINING OF JUDICIAL POLICEMEN

Article 241. Testing of judicial policemen

1. The judicial policemen’s testing committee shall be formed and the testing procedure and terms defined by the Judicial Department Head upon presentation by the Judicial Police Chief.

2. The testing committee shall, the procedure and time prescribed by the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts, present the testing results, including the appeals and the results of appeal review and the decisions taken to the Judicial Police Chief.

Article 242. Training and special training of judicial policemen

1. Judicial policemen that occupy leading and junior positions shall take part in training and special training. Training and special training shall be carried out in accordance with the procedure set forth in the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts.

2. The procedure and terms of taking part in training shall be defined by the Judicial Department Head upon presentation by the Judicial Police Chief.

Article 243. Judicial policeman’s transfer to another position

1. A judicial policeman may be transferred to another position by the person that appointed him in accordance with the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts.

CHAPTER

FUNCTIONS IN THE AREA OF JUDICIAL POLICE ACTIVITIES

Article 244. Functions of judicial police chief

1. The Judicial Police Chief shall:

   1) Organize and manage the activities of judicial police;

   2) Carry out the distribution and redistribution of judicial police cadre between units;
3) Organize the execution of decisions and instructions of the Judicial Council and the Judicial Department Head regarding the judicial police service;

4) Supervise the activities of Judicial Police units;

5) Make a recommendation to the Department Head on the structure of Judicial Police units and staffing;

6) Publish orders, decrees, and instructions aimed at organizing the activities of the Judicial Police;

7) Present to the Judicial Department Head recommendations on the material and technical resources of the Judicial Police;

8) Review complaints against actions of judicial policemen, as a matter of subordination;

9) Encourage and apply disciplinary sanctions in respect of judicial policemen;

10) Organize professional and special training of judicial policemen; and

11) Present an annual report to the Judicial Department Head regarding the activities of the Judicial Police.

2. The Judicial Police Chief shall be responsible for the performance of the functions of the Judicial Police.

Article 245. Functions of deputy judicial police chief

1. The Deputy Judicial Police Chief shall carry out instructions, orders, and decrees issued by the Judicial Police Chief, and replace him during his absence.

Article 246. Functions of judicial police unit chiefs

1. A unit chief of the Judicial Police shall:

   1) Ensure the performance of Judicial Police functions in the respective court;

   2) Organize and supervise the activities of the unit;

   3) Head the activities of judicial policemen operating within the unit;

   4) Ensure the execution of instructions of the court chairman, session chairman, or the judge regarding maintenance of the public order and security in court;

   5) Within the limits of his authority, encourage and apply disciplinary sanctions in respect of judicial policemen;

   6) Make recommendations to the Judicial Police Chief on encouraging and applying disciplinary sanctions in respect of judicial policemen;

   7) Examine complaints against judicial policemen of the respective unit;
8) Within the limits of his authority, give binding orders and instructions to the judicial policemen in the respective unit; and

9) Carry out the instructions and orders of the Judicial Police Chief.

2. A unit chief of the Judicial Police shall be responsible for the performance of the Judicial Police unit functions.

Article 247. Functions of deputy unit chiefs of judicial police

1. A deputy unit chief of judicial police shall carry out the instructions, orders, and decrees issued by the judicial police unit chief, and shall replace him during his absence.

Article 248. Functions of judicial policeman

1. With a view to ensuring compliance with the established procedure of court activities, a judicial policeman shall, in accordance with this Code and other laws:

   1) Ensure the protection of the life, health, dignity, rights, and freedoms of the judge, parties to proceedings, and other persons in court against criminal and other illegal encroachments;

   2) Carry out the instructions of the court chairman, the session chairman, or the judge concerning maintenance of the public order and security in court;

   3) Ensure protection of judicial assets, premises, and adjacent territory, and protection of the judge consultation room while the judge is inside such room;

   4) Check whether the courtroom is ready for the judicial session, and ensure, upon instruction of the judge, the delivery of the criminal case materials and evidence to the judicial examination place and their protection;

   5) Prevent and disrupt the committal of crimes and other offences in court, identify offenders, and, if necessary, arrest them, in which case their immediate transfer to the Police must be ensured; and

   6) Protect the public order and security in the court premises.

Article 249. Rights and responsibilities of the judicial policeman during the performance of his functions

1. To perform his functions, a judicial policeman shall have the right:

   1) To determine the identity of persons entering into the court, present in the courtroom, or subjected to a judicial sanction;

   2) Based on a court decision, to remove a person from the courtroom or to restrict the entry of such person into the courtroom;

   3) To examine the persons entering into the court or the courtroom, including their belongings; and
4) In accordance with the procedure and terms enshrined in this Code, to apply physical force and special means.

2. A judicial policeman must exercise his rights in accordance with law and make sure that his activities do not violate the rights and lawful interests of persons.

Article 250. Binding nature of judicial policeman’s demands
1. Demands made by a judicial policeman within the limits of his authority shall be binding.

2. If a person disobeys the demands of the judicial policeman while the latter is exercising his rights set forth in Paragraph 1 of Article 249 of this Code, the judicial policeman may, as the case may be, prohibit such person's entry into the court building, remove a person from the courtroom if the person, who is already in the courtroom, refuses to disclose his identity or presents manifestly false information, or, in case of a person subjected to a judicial sanction, apprehend the person to the Republic of Armenia Police, and, to prevent resistance or an encroachment on the part of the person, to arrest him, in which case his immediate transfer to the Police must be ensured.

3. Failure to comply with the demands of a judicial policeman and/or the hindering of his performance of his duties shall result in liability prescribed by law.

Article 251. Use of physical force and special means
1. In the cases and procedure defined in this Code, a judicial policeman has the right to use physical force and special means.

2. The judicial police staff shall be obliged to undertake special training and to regularly take part in tests determining the ability to act in situations that render the use of physical force and special means necessary.

3. When choosing whether or not to use physical force and special means, a police staff shall be guided by the situation at hand, the nature of the offence, and who the offender is.

4. In the absence of special needs in conditions of necessary defense or extreme necessity, a judicial police staff member has the right to use all possible means available at his disposal.

5. The use of physical force and special means shall be made in accordance with the procedure defined in the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts.

Article 252. Use of physical force
1. In cases of disobeying the lawful demands of a judicial police staff member, displaying disobedience, or engaging in resistance, as well as for purposes of self-defense, judicial policemen may use physical compulsion in respect of offenders.

Article 253. Cases and procedure of using special means
1. Judicial policemen shall have the right to use special means available at their disposal, when:

   1) Disrupting an ongoing attack on a judge, persons present in the judicial session, or a judicial policeman;
2) Overcoming disobedience to the judicial policeman or disrupting resistance;

3) Capturing persons caught at the moment of committing an offence and trying to flee;

4) There are sufficient grounds to assume that the person or persons are preparing to engage in an armed attack or resistance; and

5) When arresting a person caught for committing an offence, or refusing to disclose his identity, or presenting manifestly false information, and apprehending him to the Republic of Armenia Police, if his behavior gives reason to assume that he may flee, harm himself or the surroundings, engage in disobedience, or resist the judicial policeman.

2. The judicial police staff may use the following special means: rubber truncheons, handcuffs, electrocuting devices, and spark dischargers.

3. The procedure of allocating and maintaining special means shall be defined by the Judicial Police Chief.

CHAPTER . SAFEGUARDS OF LEGAL AND SOCIAL PROTECTION OF JUDICIAL POLICEMEN

Article 254. Vacation of judicial policemen

1. A person in a position of the senior group of judicial police service shall be granted a leave by the Judicial Department Head. Leaves to persons in the leading and junior groups of positions shall be granted by the Judicial Police Chief.

Article 255. Material security of judicial policemen

1. The amount and calculation procedure of monetary compensation of judicial policemen shall be set forth in the Republic of Armenia Law on Penitentiary Service.

2. The official pay rates of the Judicial Police Chief and his deputy shall be equal to the official pay rate of a penitentiary institution chief.

3. The official pay rates of a Judicial Police unit chief and his deputy shall be equal to the official pay rate of a penitentiary institution unit head.

4. The official pay rate of a senior judicial policeman shall be equal to the official pay rate of a second rank expert in the Penitentiary Department.

5. The official pay rate of a junior judicial policeman shall be equal to the official pay rate of a second rank expert in a penitentiary institution.

Article 256. Uniform and official ID of a judicial servant

1. In the performance of his official duties, a judicial policeman shall wear a uniform with differentiating signs and symbols, the descriptions of which shall be defined by the Republic of Armenia Government. The procedure of allocating and wearing uniforms shall be established by the Republic of Armenia Judicial Council upon presentation by the Judicial Department Head.
2. Judicial policemen shall receive IDs in accordance with the unified sample approved by the Judicial Department.

Article 257. Material and technical resources of judicial police

1. The material and technical resource security of Judicial Police shall be ensured by the Judicial Department.

CHAPTER

Encouraging and applying disciplinary sanctions in respect of judicial police servants

Article 258. Types of encouragement applied in respect of judicial policemen

1. For lengthy service and for diligent execution of official assignments, the following types of encouragement may be applied in respect of a judicial policeman:

1) Public appreciation;
2) One-time monetary award;
3) Award of a souvenir;
4) Pre-term award of a rank; and
5) Reward of a medal.

2. As encouragement for a judicial policeman, early termination of a previously-applied disciplinary sanction by the manager that applied the sanction or his supervisor may be performed.

3. The encouragement specified in Paragraph (1) of this article shall be applied in respect of judicial policemen in exceptional cases, and may be applied only once during the whole term of a policeman's service.

4. Several types of encouragement may be applied at the same time.

5. Encouragements referred to in Paragraph 1 of this article may be applied in respect of judicial policemen by the Judicial Police Chief upon presentation by the respective unit head.

6. Encouragements referred to in Paragraph 1 of this article may be applied in respect of the Judicial Police Chief by the Judicial Department Head. Encouragement in the form of pre-term award of a rank to the Judicial Police Chief may be applied by the Judicial Council upon presentation by the Judicial Department Head.

7. The types and forms of medals referred to in Paragraph (1)(5) of this article shall be defined by the Judicial Council.

8. The encouragements specified in sub-paragraphs 2, 3, and 5 of Paragraph 1 of this article shall be applied using the relevant resources provisioned in the State Budget of the Republic of Armenia.
Article 259. Disciplinary sanctions applied in respect of judicial policemen

1. In case of the failure to perform official duties without an excusable reason, the improper performance thereof, excess of official powers, and violating the requirements of law and other legal acts, the following disciplinary sanctions shall be applied in respect of judicial policemen in accordance with the procedure defined in the Republic of Armenia legislation:

   1) Warning;
   2) Severe warning;
   3) Lowering of position;
   4) Lowering of rank by one degree; and
   5) Dismissal from service.

2. The disciplinary sanctions prescribed in Paragraph 11 of this article may be applied in respect of judicial policemen by the Judicial Police Chief.

3. The sanction specified in Paragraph (1)(5) of this article may be applied in respect of the Judicial Police Chief Deputy by the Judicial Department Head, upon presentation by the Judicial Police Chief.

4. The disciplinary sanctions specified in sub-paragraphs 1 and 2 of Paragraph 1 of this article may also be applied by the head of the relevant unit of the Judicial Police, but in respect of the Judicial Police Chief, such sanctions may be applied by the Judicial Department Head.

5. The disciplinary sanction specified in Paragraph (1)(3) of this article may not be applied in respect of the Judicial Police Chief.

6. The disciplinary sanction specified in sub-paragraphs (4) and (5) of Paragraph 1 of this article may be applied in respect of the Judicial Police Chief by the Judicial Council, upon presentation by the Judicial Department Head.

7. The procedure of applying sanctions in respect of judicial policemen and terminating such sanctions shall be defined in the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts.

CHAPTER

JUDICIAL POLICE SERVANTS' DISMISSAL FROM OFFICE AND TERMINATION OF SERVICE

Article 260. Dismissal from judicial police service and position within the judicial police service

1. Judicial police servants’ dismissal from service and dismissal from position within the judicial police service shall be subject to the provisions of the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts.
Article 261. Age restrictions in judicial police service

1. 60 years shall be the maximum age limit for having a senior group position within the judicial police service.

2. 55 years shall be the maximum age limit for having a leading and junior group position within judicial police service.

3. When a judicial policeman reaches the maximum age limit for having a position within judicial service, his term of service may be extended for a term of up to five years by the person that appointed him to such position.

4. A judicial policeman’s dismissal on the ground of his having reached the maximum age limit shall be performed on the first date of the first month after the person has reached the age specified in Paragraphs 1 and of this article.

Article 262. Reinstatement in judicial police service or in a position

1. Matters related to reinstatement within the judicial police service or in a position, as well as the award of a rank after such reinstatement and the length of service shall be regulated in accordance with the procedure defined in the Republic of Armenia Law on the Service Ensuring Compulsory Execution of Judicial Acts.

CHAPTER. JUDICIAL DELIVERY

Article 263. Forms of executing judicial delivery

1. Judicial delivery is a type of delivery of documents to addressees, which ensures the consistency and integrity of delivered documents.

2. Documents delivered and received by means of judicial delivery shall be considered consistent and holistic, unless otherwise proven by court.

3. Judicial delivery by mail or judicial delivery in person shall be deemed judicial delivery.

Article 264. Entities accepting judicial delivery

1. A delivery package addressed to a natural person shall be delivered directly to him or to his proxy.

2. A delivery package addressed to a person declared incapacitated or having limited capacity in accordance with the procedure defined by law may be passed on to his lawful proxy or a person authorized by his lawful proxy.

3. A delivery package addressed to a legal person shall be passed on to the head of the executive body of the legal person or a person that has the right to receive correspondence on behalf of such legal person.

4. If the addressee is a state government or local self-government body or official, the delivery package shall be delivered to their common division or another unit that usually accepts the correspondence.

5. If the addressee is a person undergoing compulsory treatment or arrest, detention, or conviction (serving a sentence in a prison), then the delivery package shall be passed on to the
head, common division, or other unit of the respective institution that usually accepts the correspondence. They are obliged to accept the delivery package and immediately pass it on to the addressee.

Article 265. Judicial delivery by mail

1. Judicial delivery by mail shall take place only through the national postal operator.

2. The rules of this article shall apply to deliveries made to addressees within the Republic of Armenia territory.

3. The sender shall pass the documents subject to delivery to the post in an open package, without an envelope. The postal servant that accepts the delivery package shall place a numbered stamp (in the form approved by the competent authority) on each page of the documents in the package, and fill in the delivery statement, one copy of which shall be passed on to the sender.

4. If a notarized stitched document is being delivered, the numbered stamp shall be placed only on the first page of the document.

5. The delivery statement shall specify:

   1) The delivery date;
   2) The name and address of the legal person that is the addressee, or the name, surname, patronymic, and address of the natural person that is the addressee;
   3) The sender’s name and address, but, if the sender is a natural person, his name, surname, patronymic, and address;
   4) The number of delivered pages and the numbers of stamps; and
   5) The name, surname, and signature of the postal servant that accepted the delivery package.

6. The delivery statement shall contain a special field in which the sender may make notes.

7. Prior to delivery of the package, the postman shall become assured that the package is being delivered to the person specified in Article 264 of this Code. The national postal operator shall be responsible for damage caused to the addressee as a consequence of delivering a package to a non-addressee.

8. A person that receives the delivery package shall personally note his name, surname, patronymic, date received, total number of pages received, and numbers of stamps on the delivery statement, after which he shall sign the delivery statement and return it to the postman.

9. If the addressee refuses to accept the package, or if the address is wrong, the postman shall make an appropriate note on the delivery statement and sign it. The delivery package and delivery statement shall be returned to the sender.

10. If the addressee natural person is absent from the specified address, the postman shall undertake measures defined by the competent authority in order to deliver the package to the
addressee. If within a week of passing the package on for delivery, it is impossible to deliver it to
the addressee, then the postman shall make an appropriate note on the delivery statement and
sign it. The delivery package and delivery statement shall be returned to the sender.

11. Delivery to an addressee that is a legal person shall be made on working days during
work hours. If the accepting person is absent, the postman shall undertake the actions specified
in Paragraph 10 of this article.

Article 266. Liability of national postal operator

1. If the requirements of this chapter are violated, the national postal operator shall be
liable for damage caused to the sender, addressee, or third parties as a consequence of such
violation.

Article 267. Judicial delivery in person

1. Judicial delivery in person shall be deemed completed, if the sender has copies of the
documents that make up a part of the delivery package, each page of which shall contain a note
made by the package recipient regarding the fact and date of receipt, as well as the recipient’s
signature.

Article 268. Judicial delivery to addressees in other states

1. If judicial delivery by mail is performed to an addressee that is in another state, the
delivery package shall be accepted by the mail service in accordance with the procedure defined
in Paragraphs and 4 of Article 265 of this Code. The postal servant shall fill in the delivery
statement, which must correspond to the requirements set forth in Paragraphs 5 and 6 of Article
265 of this Code, and shall thereafter deliver the package. One copy of the delivery statement
shall be passed on to the sender. Delivery shall be deemed completed, if the sender has a
delivery statement, filed in conformity with the requirements of this Code, confirming that the
delivery package has been passed on to the postal service.

FINAL PROVISIONS

Article 269. Coming into force

1. This Code shall come into force on ___________________.

2. Sections ________ of this Code shall come into force on ________.

3. From the moment this Code comes into force, the following shall be repealed:

Article 270. Transitional provisions