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HIGH JUDICIAL COUNCIL

REGULATION

ON THE CRITERIA AND THE PROCEDURE OF THE TEMPORARY TRANSFER OF THE JUDGE

The High Judicial Council, based on article 147 of the Constitution of the Republic of Albania, article 2 and 89 of Law no. 115/2016 “On the governance bodies of the justice system”, article no. 46 of Law no.96/2016 “On the Status of the Judges and Prosecutors in the Republic of Albania”,,

Decided:

Article 1

Scope

1. The scope of this regulation is the stipulation of the comprehensive rules on the criteria and the procedure for temporary transfer of the judge, according to article 46 of Law no. 96/2016 “On the Status of Judges and Prosecutors in the Republic of Albania”.

Article 2

Subjects

2. The subjects of this regulation are the judges, who exercise their function at the first instance court and at the court of appeal in the Republic of Albania, whose function is not limited due to the grounds provided for in the law.

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Article 3

Definitions

1. The terms used in this regulation shall have the same meaning as the terms defined in Law no. 96/2016 “On the Status of Judges and Prosecutors in the Republic of Albania”.
2. Apart from the provision in paragraph 1 of this article, for the purpose of the implementation of this regulation, the following terms mean:
 - a) “Court in need” means the court where there is one or there are several temporary vacancies; a situation which impinges its normal functioning.
 - b) “Temporary vacancy” means the case when the judge who has that position permanently, for at least 3 months, is temporarily incapable of exercising the function in that position.
 - c) “Consent” is the display of any materialized will of the subject of this regulation, identifying his acceptance for the temporary transfer to a certain court.
 - ç) “Transfer” is the temporary mobility of the judge for a certain period of time, from a permanent position in his court, to a temporary vacancy in another court of the same level or of a higher level, if he meets the criteria for that position.
 - d) “Absence of the judges available in the mobility scheme” means the case when there are no assigned judges in the mobility scheme or when the assigned judges are under the legal incapacity to exercise the function.
 - dh) “Court with a lower workload” means the Court with the lowest medium of the judicial cases per judge at the moment the transfer is requested.
 - e) “His/her court or the court he/she comes from” means the court where the judge has been assigned permanently.
 - ë) “Judge with the least experience in that court” means the judge of the court from which the transfer will take place, who has the least experience as a judge in the same level of judiciary”.

Article 4

Principles and criteria of the temporary transfer of the judge

1. The temporary transfer of the judge shall be carried out only when the need of the court cannot be fulfilled through the mobility scheme.
 2. The temporary transfer of the judge shall be carried out only when there is at least one temporary vacancy in the court where he will be transferred.
 3. The temporary transfer of the judge shall not be carried out, in case the Council deems that the consequence caused in his court is bigger than the benefit he is expected to bring to the court where he will be transferred. For this purpose, the Council, in any case, shall take the opinion of the chairperson of the court where the judge has been assigned permanently.
 4. The temporary transfer shall be carried out through the judges from the courts with a lower workload, starting from the closest courts or the ones within the same jurisdiction of appeal with the court in need. Exceptionally, if temporary transfer under this Rule would affect the functionality of the lower-load courts, the transfer may be made by judges of other courts, but in any event respecting the principle under paragraph 3 of this article.
 5. In case that there is more than one judge who gives the consent for the temporary transfer to a concrete court, the council decides to choose that judge who comes from the court with the lowest
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average of workload per judge. In case the candidates come from the same court, the Council shall select the candidate taking into consideration the professional experience of the judges and the field of law for which his service is requested.

6. With regard to the temporary transfer, the Council shall take into consideration the progress of the justice system in general as well as the courts through which the transfer is carried out specifically. In any case, the transfer period, according to the meaning of this regulation, cannot last longer than a year. However, with the consent of the judge, the temporary transfer may be repeated, in accordance with the procedure laid down in Chapter II of this Regulation.
7. The temporary transfer is carried out upon the consent of the judge who is transferred. When no judge gives the consent, the temporary transfer may be conducted even without the consent, according to the criteria of article 46(2) of Law no. 96/2016 "On the Status of the Judges and Prosecutors in the Republic of Albania".
8. At the end of the transfer period, the judge shall return to the previous position.
9. The temporary transfer is not conducted in the cases when the judge is under the effect of a disciplinary measure, whose implementation may be avoided due to the involvement in the transfer procedure.

CHAPTER II: TRANSFER UPON CONSENT

Article 5 Announcement of the Vacancies for the Temporary Transfer

1. When a court is in need and in the delegation scheme there is no judge available, at the request of the court in need, or with its own initiative on the proposal of the Career Development Commission, the Council when it considers that the need of the court exists and can only be met by temporary transfer, shall announce the temporary vacancy which is open for the transfer and shall address a call to the judges to give the consent.
2. The call for applications shall be published on the Council's website and communicated to judges through the chairs of the courts. The Call contains the provisional transfer criteria as the case may be and the mode of consent as per the form attached to this Regulation.
3. If the need of a court, to which a judge has been temporarily transferred with the consent of a judge, can be fulfilled again only by means of a temporary transfer, the Council shall declare the temporary vacancy inviting, initially, to give consent, the judge who is transferred to that court if his/her transfer does not affect the functionality of the court where he/she is permanently assigned. In such a case, this judge may be temporarily transferred back to the court in need if he or she consents.
4. The Council shall postpone the announcement of the vacancies for a transfer when it deems that the need in the court, where the transfer is targeted, is not urgent. The Council shall consider even taking other measures to address the need to the court where the transfer is targeted.
5. The Council shall authorize the Career Development Commission to follow further steps for the treatment of the request for transfer.

Article 6
Asking the consent of the judge

1. In the case of the declaration of a temporary vacancy in a court in which there are temporarily transferred judges by consent, the consent of that judge shall first be sought.
2. If a judge temporarily transferred with the consent of a court in need again does not give consent, as in any other case of the declaration of a vacant position in a court in need, the consent is required of all judges who meet the criteria for the temporary vacancy announced.
3. The call for applications shall be published on the Council's website and communicated to judges through the Chairpersons of the courts. The call also contains the temporary transfer criteria.

Article 7
Preliminary verification on the fulfilment of criteria

1. The Career Development Commission shall verify preliminarily the fulfilment of the criteria of the judge, who has given the consent on the temporary transfer.
2. When the Career Development Commission finds that the judge does not meet the transfer criteria stipulated in the request, it proposes to the Council the objection of his request to be transferred.

Article 8
Reviewing the consent given on the temporary transfer

1. During the evaluation of the cases for the temporary transfer, the Career Development Commission, shall, apart from the verification of the fulfilment of the criteria by the judge who has given the consent, evaluate even the opinion of the chairperson of the court where the respective judge exercises his functions.
2. Upon the request of the Career Development Commission, the chairperson of the court shall send in writing, within two days, his opinion on the temporary transfer of the judge. The opinion of the chairperson expresses his evaluation on the workload of the court in general as well as of the judge specifically, the total number of the judges who exercise the functions in that court, the section from which the judge comes or the field of law where he serves, the consequences that may be caused on the workload of the court due to the transfer of the judge as well as proposal on the maximum period for which the judge may be transferred temporarily taking into consideration the lowest negative effects that may come due to the transfer.
3. At the end of the review of the requests of the judges who have given the consent for the temporary transfer, the Commission shall prepare a report for each case and lodge it with the Council for examination, proposing:
 - a) the approval of the temporary transfer;
 - b) the refusal of the temporary transfer.
 - c)

Article 9
Decision-making of the Council

1. The Council shall take a decision to transfer or not temporarily the judge who has given the consent after the examination and the proposal of the Career Development Commission. The decision shall be communicated immediately to the judge and to the chairpersons of the courts.
2. The Council may decide that the effects of the decision on the temporary transfer of the judge start at a later moment from the date of the decision.

CHAPTER III:
TRANSFER WITHOUT CONSENT

Article 10
Commencement of the temporary transfer procedure without consent

1. When the needs of a court for judges can be fulfilled neither from the mobility scheme nor from the temporary transfer without consent of a judge, the Career Development Commission shall notify the Council and shall start the temporary transfer procedures of a judge without consent.

Article 11
Special conditions and criteria of the transfer without consent of the judge

1. The transfer shall be made without the consent according to the following conditions and criteria:
 - a) when no judge gives the consent to be transferred temporarily to a court;
 - b) the judge or the judges should be from the courts with the lowest average workload per judge, of that instance for which the transfer is required,
 - c) the judge shall be the least experienced as a judge in that court,
 - d) the judge shall fulfil the criteria for the position where he is required to be transferred temporarily,
 - e) the judge shall come from the court located in the same territorial jurisdiction of the Court of Appeal, possibly as close as possible to his own court. When the closest court is found in the territorial jurisdiction of another Court of Appeal, the judge shall be sent from this court. In case of impossibility, the transfer shall be carried out from the other closest courts.
2. The transfer without consent for a certain period in the court of appeal shall be done firstly from the judges of appeal, according to the criteria of this article. In case of impossibility, the transfer shall be carried out from the judges of the first instance who meet the criteria for the position where they are requested to be temporarily transferred.
3. The transfer without consent for a certain period to the administrative court shall be done firstly from the judges of the administrative courts, according to the criteria of this article. In case of impossibility, the transfer shall be carried out from the judges of the courts of the general jurisdiction, who meet the criteria for the position where they are requested to be temporarily transferred.

Article 12

Identification of the judge who will be transferred without consent

1. The Career Development Commission requests from the chairpersons of courts the information necessary to determine the court with the lowest workload.
2. After determining the court with the workload, having regard also to the requirements of section 4, Article 4, of this Regulation, the Career Development Commission shall identify in that court the judge with the least experience who at the same time fulfills the criteria for the position required to be temporarily transferred. In the case of several lower courts, the Career Development Commission identifies for each of these courts the least experienced judge, who also fulfills the criteria for the position required to be temporarily transferred.
3. In any case, the Career Development Commission shall evaluate even the opinion of the chairperson of court where the respective judge exercises his functions.
4. The chairperson of the court shall send in writing, within two days, his opinion on the temporary transfer of the judge. Upon the request of the Career Development Commission, the chairperson of the court shall send in writing, within two days, his opinion on the temporary transfer of the judge. The opinion of the chairperson expresses his evaluation on the workload of the court in general as well as of the judge specifically, the total number of the judges who exercise the functions in that court, the section from which the judge comes or the field of law where he serves, the consequences that may be caused on the workload of the court due to the transfer of the judge as well as proposal on the maximum period for which the judge may be transferred temporarily taking into consideration the lowest negative effects that may come due to the transfer. The opinion of the chairperson of the court is not determinant.
5. At the end, the Commission shall prepare a report on the transfer without consent and shall lodge it with the Council to review it, proposing the approval of the temporary transfer and the transfer period.

Article 13

Decision-making of the Council

1. The Council shall take a decision to transfer or not temporarily without consent the judge after the examination of the proposal of the Career Development Commission. The decision shall be communicated immediately to the judge and to the chairpersons of the courts, among which the transfer shall be carried out.
2. The Council may decide that the effects of the decision on the temporary transfer of the judge start at a later moment from the date of the decision.
3. In case the Council decides not to approve the proposal of the Career Development Commission, the latter shall repeat the procedure provided for in article 12 of this regulation.

Article 14

Benefits due to the temporary transfer

1. The judge who is transferred temporarily pursuant to this regulation shall benefit a compensation according to the provisions of articles 15 (2) of Law no. 96/2016 “On the Status of Judges and Prosecutors in the Republic of Albania”.

Article 15

Register of Transfers

1. The Council shall create a special register, which contains information on the judges transferred according to this regulation, the transfer period and their workload.

Article 16

Entry into force

1. This Regulation shall enter into force on the day of its publication in the Official Journal.