



Strasbourg, 18 March 2025

CDL-AD(2025)004

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

BOSNIA AND HERZEGOVINA

FOLLOW-UP OPINION TO PREVIOUS OPINIONS

ON

THE DRAFT LAW ON

THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL

**Adopted by the Venice Commission
at its 142nd Plenary Session
(Venice, 14-15 March 2025)**

On the basis of comments by

**Ms Jana BARICOVÁ (Member, Slovakia)
Mr Martin KUIJER (Member, Netherlands)
Mr Jørgen STEEN SØRENSEN (Member, Denmark)**

Opinion co-funded
by the European Union



Table of Contents

I.	Introduction	3
II.	Background and scope.....	3
III.	Analysis.....	4
A.	Preliminary remarks.....	4
B.	Members and organisation of the HJPC	5
1.	Composition and elections of the members of the HJPC	5
2.	Mandate of the HJPC (Competencies), working methods and financial matters	10
C.	Appointments and security of judges and prosecutors.....	11
1.	Appointment procedure and (in)eligibility criteria	11
2.	Appraisal of judges and prosecutors.....	12
3.	Asset declarations by judges and prosecutors.....	12
4.	Transfers and leave of absence	13
5.	Status: security of tenure, immunity and incompatibilities	13
D.	Disciplinary liability of judges and prosecutors.....	13
1.	Institutional set-up	14
2.	What conduct should render a judge liable to disciplinary proceedings?	14
3.	Disciplinary proceedings.....	16
IV.	Conclusion	16
	Appendix.....	18

I. Introduction

1. By letter of 22 November, the Minister of Justice of Bosnia and Herzegovina, Mr Davor Bunoza requested a follow-up opinion of the Venice Commission on the draft law on the High Judicial and Prosecutorial Council ([CDL-REF\(2024\)045](#)), hereinafter the “draft law”).

2. Ms Jana Baricová, Mr Martin Kuijer and Mr Jørgen Steen Sørensen acted as rapporteurs for this opinion.

3. On 23 and 24 January 2025, the rapporteurs of the Commission had online meetings with the Minister of Justice of Bosnia and Herzegovina, the Minister of Justice of the Federation and representatives of the Ministry of Justice of the Republika Srpska, representatives from different groups of the Parliament, the High Judicial and Prosecutorial Council (hereinafter the “HJPC” or the “Council”), the Disciplinary Council Office (ODC), the Association of Judges as well as civil society organisations and different international interlocutors. The Commission is grateful to the Ministry of Justice and the Council of Europe Office in Bosnia and Herzegovina for the excellent organisation of this visit.

4. This opinion was prepared in reliance on the English translation of the draft law. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 23 and 24 January 2025, as well as the comments submitted by the authorities on 5 March 2025. The Venice Commission is also informed of the fact that the Council of Ministers of Bosnia and Herzegovina adopted on 4 March a Law on the HJPC that has been forwarded to the Parliamentary Assembly for adoption with urgent procedure. The Venice Commission could not get acquainted with the text of the law and does not know whether it corresponds with the draft law at stake in this Opinion.

6. The draft opinion was examined at the Joint Meeting of the Sub-Commissions on the Judiciary, the Rule of Law and Latin America on 13 March 2025. Following an exchange of views with Mr. Željko Bogut, Secretary of the Ministry of Justice of Bosnia and Herzegovina, it was adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14-15 March 2025).

II. Background and scope

7. The current “draft law”, accompanied by an Explanatory note (pages 73-100), is a revised version of the draft law submitted to the Venice Commission in May 2024 and assessed in the Interim Follow-up Opinion to previous Opinions¹ on the draft law on the High Judicial and Prosecutorial Council, adopted by the Venice Commission at its 139th Plenary Session ([CDL-AD\(2024\)009](#)), hereinafter the “previous Opinion”).

8. In this Follow-up Opinion, the Venice Commission will limit itself to assess to which extent its recommendations provided in the previous Opinion have been fulfilled and it will therefore follow the same structure. The Commission will provide further details and recommendations where it sees it fit, in light of the fact that the previous Opinion was an interim one.

9. As in the previous Opinion, the Commission is aware that the current draft law is linked with the European Union path of Bosnia and Herzegovina, and it reiterates that it is not within its mandate to comment on the compatibility of the draft law with EU law.

¹ See all previous Venice Commission Opinions on the matter: Bosnia and Herzegovina, [CDL-AD\(2021\)015](#), Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council; [CDL-AD\(2014\)008](#), Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina; [CDL-AD\(2013\)015](#), Opinion on the draft Law on the Courts on Bosnia and Herzegovina; [CDL-AD\(2012\)014](#), Opinion on Legal certainty and the independence of the judiciary in Bosnia and Herzegovina.

III. Analysis

A. Preliminary remarks

10. On a general note, the Venice Commission welcomes the efforts of the authorities to address the recommendations of its previous Opinion and notes that this new draft is a step forward towards its alignment to European standards. For example, the new draft law provides in Article 1(1) that “the Law confirms the continuity” of the HJPC and it establishes that the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina (Article 4(7)) and the Law on Administration (Article 4(8)) shall not apply to the Council, as recommended by the Venice Commission.²

11. Nevertheless, as regards the long-standing recommendation of providing the HJPC with a constitutional status,³ the Commission notes that this is still not fulfilled, and it reiterates its recommendation. On the same line, it seems that neither the overall process of reform of the judiciary nor the proper sequencing of these reforms have progressed much so far,⁴ even though the current text has been adjusted by deleting references to bodies that do not exist yet (Appellate Court of Bosnia and Herzegovina) and some explanation for the harmonisation with the Law on Courts has been provided by the Explanatory note (page 81).

12. Concerning the transitional and closing provisions,⁵ the Commission welcomes that a new Chapter VI has been added to the draft law. Article 233(1) of the draft law aims at ensuring the continuity of the work of the HJPC during the transitional period by establishing that the mandate of HJPC members would continue for a period of 12 months. While for certain members, this represents an extension of their mandate, which is well justified, for most members, this is in fact a reduction of their mandate which is at odds with the principle of security of tenure. For Council’s members, as it is the case for judges, this can only be exceptionally accepted in the context of a “reform of the organisation of the judicial system”, which is a concept that has to be interpreted narrowly.⁶

13. The Venice Commission acknowledges that the reform of the HJPC carried out with the draft law at stake can be considered the first step of a reform of the whole judicial system and that it justifies the early termination of the mandate of several members, as long as it is provided, as it seems to be the case in Article 234(7), that Council members who did not serve more than half of their mandate can apply to be re-elected.

14. The Venice Commission however observes that, if new members of the new HJPC assume office all at the same time, as it seems to be the case in Article 234, the continuity of the functioning of the HJPC could be put at risk. The Commission recommends providing a system for staggered terms of office, for example by holding elections of judges and prosecutors in two different points in time, and subsequently proceeding to the selection and appointment of lay members. A system could be put in place to stagger also the termination of the mandate of previous members.

15. The Venice Commission notes that the meaning of Article 233(2) concerning the term of office of members elected before the draft law enters into force is unclear as it risks being either a repetition of or in contradiction with Article 233(1). Members elected before the draft law enters

² Paragraphs 15 and 16 of the previous Opinion.

³ Paragraph 14 of the previous Opinion.

⁴ Paragraphs 12-13 of the previous Opinion.

⁵ Paragraph 17 of the previous Opinion.

⁶ Committee of Ministers, Recommendation [CM/Rec\(2010\)12](#) on the independence, efficiency and responsibilities of judges, para. 52. See also, Venice Commission, Ukraine, [CDL-AD\(2019\)027](#), Opinion on the Legal framework in Ukraine governing the Supreme Court and judicial self-governing bodies, paras. 36-38.

into force are either already in office when the law enters into force, and therefore will simply continue being in office for 12 more months as provided by Article 233(1), or not yet in office, in which case the previous office holder should still be in office and therefore extended for 12 months. The Explanatory note should clarify this point.

16. The Venice Commission remarks that the deadlines for adoption of by-laws (Book of Rules on drawing lots, on the Procedure for Election of Council Members) are very ambitious and may require more flexibility (Article 234(1) and (2)).

17. Finally, as to the law-making process,⁷ the Venice Commission welcomes the fact that a public consultation has taken place, and it has reportedly been broader than any other public debate on a legislative text.⁸ Nonetheless, it appears that the inclusiveness of the process could be improved, especially as regards the involvement of the civil society and the professional organisations, not only by providing the possibility to express an opinion but by demonstrating that submitted proposals are taken into account or explanation is provided when such proposals could not be incorporated. Several interlocutors raised the lack of clarity on the actual text of the draft law and its modifications as well as a disregard for finding solutions to the issues raised during the consultations.

B. Members and organisation of the HJPC

1. Composition and elections of the members of the HJPC

Diversity of membership and the organisational model

18. In its previous Opinion, the Venice Commission recommended to progressively move forward from the ethnical approach towards a system of appointments which is based on the merits of the candidates, ensuring that the HJPC be generally representative of the peoples of Bosnia and Herzegovina, as required by the Constitution.⁹ The Commission also expressed a preference for a model that combines diversity and varied representation with a limited and uneven number of members, and a balance between judges and prosecutors.¹⁰

19. The recommendation has been partially followed inasmuch as Article 5 of the draft law provides for a diverse and varied representation of the judiciary with a limited number of members (eight) that is equal between judges and prosecutors. However, the overall number of members is still even. This problem could be easily solved by adding a lay member (or three, see below).

20. More important, and more problematic, is the fact that Article 4(5) of the draft law states as a “principle” that the composition of the Council “must have at least four members from each constituent people and two members who are the Others”. Codifying such a “principle” risks reinforcing rather than phasing out the ethnic approach. The Venice Commission wishes to clarify that “phasing out” means that the ultimate aim should be that ethnicity is not anymore a relevant factor in the appointment of members of the HJPC (or any other judicial position). However, in light of the specificities of Bosnia and Herzegovina, a specific transitional phase with a 'sunset clause' could be considered. In their comments of 5 March 2025, the national authorities expressed disagreement with the approach of the Commission and insisted on the necessity to maintain a form of proportional representation of the constituent peoples in the HJPC. In particular, the authorities refer to the fact that 97% of the citizens of Bosnia and Herzegovina identify themselves as members of the constituent peoples and the HJPC should therefore follow this proportional representation, which cannot happen “naturally”, without the establishment of

⁷ Paragraph 18 of the previous Opinion.

⁸ Information provided by several interlocutors during the online meetings.

⁹ Paragraphs 25-26, and 36 of the previous Opinion.

¹⁰ Paragraphs 33-35 of the previous Opinion.

minimum quota. The authorities demonstrate this statement by providing the example of the Supreme Court of Bosnia and Herzegovina, that is composed of 44 judges, out of which 28 are Bosniaks, 10 are Serbs, 4 are Croats, and 2 are Others, while, according to the latest census of 2013, the Federation of Bosnia and Herzegovina is composed of 70% Bosniaks, 22.4% Croats, 2.6% Serbs, and approximately 4.6% of Others. Hence, according to the authorities, a clear disproportion emerges. Similarly, looking at the current ethnic composition of the HJPC, out of 27 managerial positions, 20 are Bosniaks, 5 are Serbs and 2 are Croats.

21. In addition, Article 5(9) of the draft law provides for a drawing lot procedure to be regulated by the Book of Rules for ensuring the gender and ethnic representation. The Commission could not understand how the drawing lot procedure would work, either during the online visit or through written submissions provided by several interlocutors. Hence, the Venice Commission is not in a position to endorse this method of selection and recommends clarifying this procedure. In addition, if such a drawing lot procedure was to be maintained, the law should provide that this is carried out in a transparent fashion with the possibility for monitoring by the public.

Lay members

22. The Venice Commission recommended opening lay membership to other legal professionals, and considering also non-legal professionals, as well as increasing significantly the number of lay members.¹¹

23. This recommendation has been partially followed as Article 5(8) opens lay membership to other legal and non-legal professionals, and paragraphs (4) to (7) increased the number of lay members from two to four. However, this cannot be considered a significant increase, and the Venice Commission recommends bringing at least to seven the number of lay members of the HJPC, who could then reasonably fulfil their role of counterbalancing the risk of corporativism in the HJPC, against eight judges or prosecutors in each Department. The choice of an uneven number of lay members would also solve the issue of having a general even number of the Council in order to avoid a tie vote, as reported above. In their comments of 5 March 2025, the national authorities found a contradiction between the Commission's proposal to increase the number of lay members and the preference expressed in the previous Opinion for a Council "which combines diversity and varied representation with a limited number of members".¹² However, the Commission wishes to underline that the number of members was only one (and the least important) factor taken into account for choosing between two proposed models. The relevance of a diverse and varied representation is all the more essential and the need to increase significantly the number of lay members was already highlighted in the previous Opinion. Moreover, the authorities could also opt for reducing the number of judicial and prosecutorial members.

a. Eligibility and ineligibility criteria of HJPC membership

24. The Venice Commission recommended adding an explicit ineligibility criterion excluding persons convicted of criminal acts of a certain nature or severity.¹³ The recommendation has been partially followed as Article 6(6) of the draft law provides for such ineligibility criterion without nuancing the severity of the conduct and, which is more problematic, including persons that are not yet convicted but simply subject to criminal proceedings, which would affect the presumption of innocence.

¹¹ Paragraphs 40-41 of the previous Opinion.

¹² Paragraph 33 of the previous Opinion.

¹³ Paragraph 46 of the previous Opinion.

b. Methods of election of HJPC members

25. As regards the election of judicial and prosecutorial members, the Venice Commission suggested reducing the number, respectively, of judges or prosecutors, members of the electoral committee and excluding all members thereof from the decision on the objection that should be taken by the respective Department. The Commission found also more appropriate to increase to eight days the term to file the objection to the election committee.¹⁴

26. The recommendation has been partially followed as Article 11 of the draft law reduced the number of members of the election committee to three (one judge, one prosecutor, one lay member) and Article 16 increased the number of days to file the objection to eight. However, the decision on the objection is not attributed to the respective Department of judges or prosecutors, and members of the electoral committee recuse themselves only if the objection refers to their conduct. The Commission recommends that members of the Election Committee always recuse themselves because the subject-matter of the objection (i.e. irregularities in the procedure) by definition concerns the (decisions taken by and the work of the) electoral committee.

27. As concerns the election of lay members, the Venice Commission recommended to provide for a public call prior to the nomination of lay members and to elaborate in (eligibility) criteria and procedures for their election.¹⁵ The recommendation has been partially followed as Article 18(1) of the draft law refers to Article 9(1) concerning the public call, Articles 5(4) to (7), 8(2) and 18 of the draft law establish the procedures for the election of the lay members, and Article 6(5) and (6) provides for ineligibility criteria. However, Article 5(8) of the draft law provides for eligibility criteria that are too vague, especially for selecting the candidates to be elected by the parliament.

28. The Commission also recommended that parliamentary control is to be exercised over the appointment of the member by the Council of Ministers and that the lay member chosen by the parliament should be elected by qualified majority with an anti-deadlock mechanism.¹⁶ In their comments of 5 March 2025, the national authorities expressed disagreement with the fact that the executive authority would have only one representative and pointed to the fact that Bosnia and Herzegovina is the country with the lowest number of representatives from the executive and legislative authorities in Europe. The Commission wishes to underline that, on the one hand, the recommended increase of lay members may be done by way of parliamentary election and, on the other hand, the influence of the executive branch on the body in charge of the independence of the judiciary should be possibly avoided.

29. This recommendation has been partially followed inasmuch as Article 5(5) provides for a qualified majority (two-third) for the election of a lay member. However, no effective anti-deadlock mechanism is foreseen in the law itself (as for example assigning the decision to a third neutral body). The reference in the explanatory note to the HJPC Book of Rules does not suffice in this regard. The Commission also considers that it would be more appropriate to simplify the process by requiring only the vote of the House of Representatives, instead of the two chambers, upon proposal of a parliamentary committee (Article 18(1) should be amended accordingly).

30. In addition, parliamentary control is not clearly provided for the appointment by the Council of Ministers. During the online meetings, it has been explained that there is a possibility for the parliament to call for a vote on the proposed appointment by the government.

31. In addition, in view of the recommendation to increase by three the number of lay members, the Commission suggests considering the appointment by other neutral bodies/entities.

¹⁴ Paragraph 50 of the previous Opinion.

¹⁵ Paragraph 52 of the previous Opinion.

¹⁶ Paragraph 54 of the previous Opinion.

c. Tenure and status of HJPC members

Tenure (Termination, Removal and Suspension of HJPC members)

32. The previous Opinion recommended revising the cooling off clause following the end of the HJPC mandate because it was considered excessive inasmuch as it applied to vacant positions in lower courts.¹⁷ The recommendation was not followed as Article 24(1) of the draft law still refers to “a vacant position in the judiciary” without distinguishing between lower courts and more senior judicial positions.

33. Article 29(1)(g) and (l) of the draft law add the death of a member to the causes for termination of the mandate, as recommended.¹⁸ The draft law also contains, as recommended, a cross-reference to the situations mentioned in the provision concerning removal from office.

34. The text in Article 29(1)(b) to (h) of the draft law states that the mandate of a council member shall be terminated if disciplinary measures have been imposed “by virtue of which he/she was elected to the Council”. The explanatory note furthermore refers to Article 25(4) which states that removal from office can only be the result of misconduct of such severity that it led to “a serious damage to the reputation of the Council or the judiciary”. The recommendation to clarify that the term of office of council members can only be terminated as a result of a disciplinary measure of a certain gravity and where disciplinary liability is the result of the work performed as a council member may be considered fulfilled.¹⁹

35. In the previous Opinion, the Commission recommended to clarify that the term of office of HJPC members can only be terminated as a result of criminal offences if the latter are of a certain gravity.²⁰ Article 29(1)(f) of the revised draft law now reads that the mandate of a council member shall be terminated if the member has been “finally convicted of a criminal offence which renders him or her unworthy to continue to hold the office”. The recommendation has been partially followed as it is not clear what is considered “unworthy”, and it would be preferable to refer to a threshold of gravity. The Commission also notes that Article 29(1)(g) refers to Article 25(3)(c), which does not exist.

36. The recommendation to clarify the terms “seriously damages the reputation of the Council”²¹ was not followed. Indeed, Article 25(4) of the draft law still uses this notion for the removal from office of a HJPC member, and the explanatory note does not provide any clarification.

37. The previous Opinion recommended that an incompatibility shall not be a reason for removal if the member gives up the other position which gave rise to the incompatibility.²² This point has not been addressed in the draft law, but it could be simply clarified in the explanatory note. The Commission positively notes that automatic removal is no longer prescribed.

38. The recommendation to specify that the provision on incompatible offices should contain a prohibition to be a member of any organisation that discriminates, which should also apply to the members of the Secretariat of the Council,²³ has been partially followed as Article 31(2) of the draft law now mentions the prohibition of membership of any organisation that discriminates but the applicability of this provision to the Secretariat of the Council is not addressed.

¹⁷ Paragraph 57 of the previous Opinion.

¹⁸ Paragraph 58 of the previous Opinion.

¹⁹ Paragraph 59 of the previous Opinion.

²⁰ Paragraph 60 of the previous Opinion.

²¹ Paragraph 62 of the previous Opinion.

²² Paragraph 63 of the previous Opinion.

²³ Paragraph 63 of the previous Opinion.

39. The Venice Commission takes note of the reasons provided in the Explanatory note regarding the importance of keeping fixed time-limits for the applicability of the provisions on removal.²⁴

40. The Venice Commission accepts that Article 26(3) and (4) of the draft law stipulates that the Inquiry Panel and the Disciplinary Panel consist of judges and prosecutors who are *not* Council members.²⁵

41. The previous Opinion recommended clarifying that the HJPC member concerned by allegations of misconduct is allowed to consult the file against him or her and to comment on the file.²⁶ Article 27(3) of the draft law allows the Council member to submit information and evidence in relation to “the facts related to the misconduct” and Article 28(3) to “give statement on the allegations from the report”. However, the recommendation is only partially followed because the provisions still don’t clarify that the HJPC member has the right to examine the evidence against him/her.

42. The recommendation to provide for judicial review of the decision to suspend a Council member²⁷ has not been followed as Article 30 of the draft law does not provide for it. The reasons why this recommendation has not been followed put forward in the Explanatory note (rights and salary are maintained) are not convincing because of the reputation damage resulting from such a suspension.

Conflict of interests

43. The Venice Commission welcomes the new wording of Article 32(1) of the draft law in accordance with its recommendation (it now reads “may reasonably influence”),²⁸ as well as Article 32(7) which clarifies that in case of doubt the Council member can request the opinion of the HJPC whether a conflict exists. The explanatory note explains why paragraph (4) still refers to the Rules of Procedure and the Commission accepts this explanation.

President and Vice-Presidents of the HJPC

44. The Venice Commission recommended that the President and Vice-President of the Council should not be chosen along ethnic lines and that such positions be open to all members of the HJPC.²⁹ The recommendation is partially followed because the position of President is now open to all members (but the Explanatory note should clarify that the Rules of Procedures should not exclude certain members), while the Vice-Presidents still need to be a judge and a prosecutor (Article 36). The Explanatory note should provide clarification why it is important to maintain such a provision. In addition, the adoption of the ethnic approach is still maintained in Article 34(2) which makes reference to Article 4(5) and should be deleted.

Duties of HJPC members

45. Article 43(2) of the draft law clarifies that the President, the two Vice-Presidents, two judicial members and two prosecutorial members “work in the Council on a full-time basis”. The recommendation has been followed.³⁰

²⁴ Paragraph 64 of the previous Opinion.

²⁵ See paragraph 65 of the previous Opinion.

²⁶ Paragraph 65 of the previous Opinion.

²⁷ Paragraph 65 of the previous Opinion.

²⁸ Paragraphs 66 and 167 of the previous Opinion.

²⁹ Paragraph 68 of the previous Opinion.

³⁰ Paragraph 70 of the previous Opinion.

46. With reference to the recommendation to reconsider the prerogative of the executive on the remuneration of part-time members,³¹ the Explanatory note considers that the solution found reflects a balanced approach given that Article 45(3) of the draft law refers to the Council of Ministers “on the proposal of the Council”. The Venice Commission accepts this explanation.

Functional immunity of HJPC members

47. Article 46 has been modified to address the recommendation of the previous Opinion to further develop the concept of “immunity”.³² The current text still does not exclude disciplinary liability for the acts performed in the exercise of the HJPC members’ functions, but it includes criminal liability. The recommendation is only partially followed, especially considering that the wording of Article 46(2) (“in accordance to the law”) should be clarified, at least in the explanatory note. Only failures performed intentionally, with deliberate abuse or, arguably, with repeated or gross negligence should give rise to disciplinary penalties, criminal responsibility, or civil liability.

48. In addition, functional immunity should be explicitly extended to the HJPC and the Office of the Disciplinary Counsel (ODC) staff members, as well as international experts contracted by the Council or seconded by foreign governments, as it is already the case in the HJPC Law currently in force.

Right to abstain

49. Article 48(2) does not follow the recommendation to reconsider the right to abstain³³ and the Venice Commission accepts the explanation provided in the Explanatory note, referring to previous national assessments (Peer review). However, it is still not clear what would be the consequences of abstaining and the Commission notes that mandatory voting is now extended to members of other bodies, such as the disciplinary bodies and the committees for performance appraisal.

2. Mandate of the HJPC (Competencies), working methods and financial matters

50. The Commission recommended dividing the list of competencies in the draft law between the respective formations and bodies of the Council.³⁴ Article 54(2) and (3) of the draft law aims to accommodate that recommendation by explicitly establishing that certain competencies as regards judges (or: prosecutors) shall be exercised by the Judicial Department (or: Prosecutorial department). Yet, the other competencies could be more clearly divided between the Plenary and the other formations (disciplinary bodies, performance appraisals committees and asset declarations department).

51. The phrase “any matter” has been abolished in the draft law and the wording in Article 49(2) sufficiently clarifies that the plenary shall not have the competence to reconsider any decision by a Department.³⁵

52. As to the recommendation to reallocate the competence to decide on “objections in the appointment procedures for judges and prosecutors” (see Article 54(1) sub c)) to a court, for example the Court of Bosnia and Herzegovina, the Commission considers the judicial review provided by Article 80 sufficient, as long as it assesses the conformity with the law and the respect of procedural rules for decision-making.³⁶

³¹ Paragraph 70 of the previous Opinion.

³² Paragraph 71 of the previous Opinion.

³³ Paragraph 73 of the previous Opinion.

³⁴ Paragraph 74 of the previous Opinion.

³⁵ Paragraph 74 of the previous Opinion.

³⁶ Paragraph 76 of the previous Opinion.

a. Working methods of the HJPC

53. The recommendation to ensure that lay members may influence the voting in the Plenary has been partially followed,³⁷ given that Article 49(3) includes all members in the quorum, with no minimum threshold of judges or prosecutors, increasing the potential influence of lay members (still very low counting for 20%). Also, the minimum threshold of judges and prosecutors required in the majority vote has been reduced to limit considerably the risk of outvoting (still possible when the 20 members are present) while allowing some influence of lay members (although limited and potentially excluded). It would however be advisable to include a minimum of one or two lay members in the majority vote, depending on the members present. For example, one lay member when there are between 15 and 17 members present and two lay members when there are more than 18. Likewise, for the Departments, such threshold could be adapted with one lay member for nine or ten present members, and two lay members when there are 11 or more present.

54. The recommendation to explicitly state that the Council's access to information (and the duty for others to provide information) does not extend to documents and files pertaining to pending court cases has not been followed.³⁸ The explanatory note argues that this recommendation was not complied with because the law already limits the Council's power "to the extent necessary for the performance of its competencies" (Article 56(2)). The Venice Commission considers that the phrase used in the draft law does not exclude the possibility at all that the Council deems it necessary for the performance of its competencies to gain access to these documents.

b. Operational and financial matters

55. The recommendation to specify when the Director and Deputy Director can be dismissed³⁹ has been partially followed. Article 59(4) of the draft law refers to the Law on Civil Service in the Institutions of Bosnia and Herzegovina. However, the provision is not limited to specific cases of misconduct.

56. As to the recommendation in respect of the budgetary autonomy of the Council,⁴⁰ the current draft law does not address the issue, which is a very substantial one, and the explanatory note does not provide a clarification in this regard. The Venice Commission reiterates its recommendation.

C. Appointments and security of judges and prosecutors

1. Appointment procedure and (in)eligibility criteria

57. Article 73 of the draft law does not follow the recommendation to refer to a general representation of the peoples, in line with the Constitution,⁴¹ and, on the contrary, it introduces the concept of proportional representation of the constituent peoples and others, which goes in the opposite direction. The Commission reiterates that appointments should be primarily based on merit and considers that the ethnic factor may only exceptionally be taken into account, in case of equal merit between candidates, in light of the general principle mentioned above. The same consideration applies to Articles 93(2)(d) and 105(2) of the draft law regarding the ranking and nomination of candidates in the internal or external competition.⁴²

³⁷ Paragraph 79 of the previous Opinion.

³⁸ Paragraph 80 of the previous Opinion.

³⁹ Paragraph 88 of the previous Opinion.

⁴⁰ Paragraph 91 of the previous Opinion.

⁴¹ Paragraph 97 of the previous Opinion.

⁴² Paragraphs 99 and 103 of the previous Opinion.

58. The recommendations related to the nomination criteria for Entity constitutional courts have been followed by draft Article 133.⁴³

59. Article 135(1)(e) of the draft law did not follow the recommendation to limit the ineligibility of lay judges to the conviction of criminal offences of a certain gravity (excluding for example, traffic offenses)⁴⁴ and the Explanatory note does not provide any explanation.

2. Appraisal of judges and prosecutors

60. Article 148 of the draft law does not elaborate further on how to interpret the criteria for evaluating work ability and professional knowledge of judges and prosecutors, as recommended in the previous Opinion.⁴⁵ The Explanatory note explains that the Book of Rules would give such details that are too specific for the draft law. Yet, the Venice Commission finds it important that the draft law clarifies in this regard that the use of statistics and numerical output of cases should not be applied. Likewise, judges and prosecutors should not be penalised for the reasonable exercise of judicial and prosecutorial discretion.

61. Article 151(1)(c) of the draft law follows the recommendation to limit the sources of information in performance appraisal to the relevant documents.⁴⁶

3. Asset declarations by judges and prosecutors

62. Article 173(2)(e) of the draft law follows the recommendation to limit the declaration of assets to certain vehicles ("subject to registration", that excludes bicycle or similar ones).⁴⁷

63. Article 173(10) does not follow the recommendation to explicitly provide that failure to submit the necessary information on people for whom the judge or prosecutor is obliged to submit the declaration, will be deemed a disciplinary offence unless the judicial office holder is able to give a satisfactory explanation why he/she is unable to provide the information.⁴⁸ An explicit connection should be made with Articles 194(1)(o)(p) and 195 (1)(k)(l) of the draft law, defining a disciplinary offence which could be applied here. The Explanatory note is also silent on the matter.⁴⁹

64. As to the recommendation to extend the list of data regarding asset declaration which shall not be made public, to ensure respect for private life and data protection,⁵⁰ the Venice Commission takes note of the decision⁵¹ of the Bosnian Data Protection Agency finding that the provisions of the current Law on HJPC on the transparency of asset declarations, which are identical in the draft law subject to this Opinion (notably Article 174), are in line with the Law on Protection of Personal Data (2006, amended in 2011). At the same time, the Venice Commission recalls the importance of making sure that the national legislation on data protection is harmonised with the Convention 108+.⁵² In this respect, the Commission underlines that Article 179 of the draft law should also clarify what is the authority in charge of supervising the processing of data by the Asset Declaration Department and the public access to data

⁴³ Paragraph 103 of the previous Opinion.

⁴⁴ Paragraph 103 of the previous Opinion.

⁴⁵ Paragraph 108 of the previous Opinion.

⁴⁶ Paragraph 109 of the previous Opinion.

⁴⁷ Paragraph 112 of the previous Opinion.

⁴⁸ Paragraph 114 of the previous Opinion.

⁴⁹ Note also, GRECO, [4th Evaluation Round](#), Bosnia and Herzegovina, para. 120, recommendation xiii, "(i) developing an effective system for reviewing annual financial statements, including adequate human and material resources, co-operation channels with relevant authorities and *appropriate sanctions for non-compliance with the rules or false reporting*." [Emphasis added].

⁵⁰ Paragraph 115 of the previous Opinion.

⁵¹ Data Protection Agency, decision of 10 January 2025.

⁵² Council of Europe, Convention 108+, Elsinore, 18 May 2018.

provisions.⁵³ In addition, the Venice Commission recommends that the information in Article 174(2)(e) be made available to the public upon individual request, provided that the names and surnames of minors, the national identity numbers and residence addresses of the relevant persons are anonymised.⁵⁴ More generally, the Venice Commission recommends ensuring the harmonisation of this provision with the Law on Freedom of Access to Information at institutional level in Bosnia and Herzegovina (2023), provided that this is compliant with the Tromsø Convention.⁵⁵

65. Article 176(6) follows the recommendation of the previous Opinion to reintroduce the sentence “Resources required for accessing commercial records shall be ensured from the HJPC budget”.⁵⁶

66. Article 181 of the draft law has not been modified to provide for functional independence of experts engaged in the external monitoring mechanism of the asset declaration procedures, as recommended by the Venice Commission.⁵⁷ The Explanatory note does not provide any explanation in this respect, hence, the Commission reiterates its recommendation.

4. Transfers and leave of absence

67. Article 159 of the draft law follows the recommendation of the previous Opinion regarding the transfer without consent.⁵⁸

68. Articles 161 and 162 of the draft law do not enlarge the decision-making power of the court presidents to cover more situations, as suggested in the previous Opinion⁵⁹ and the Explanatory note does not provide any justification. The Commission considers that the national authorities are best placed to assess whether to take this suggestion of a practical nature into consideration.

5. Status: security of tenure, immunity and incompatibilities

69. The Venice Commission recalls its recommendation that the issue of immunity be regulated either in the (draft) law on the HJPC or in the (draft) Law on Courts.⁶⁰

D. Disciplinary liability of judges and prosecutors

70. In the previous Opinion, the Venice Commission recommended to regulate also the disciplinary liability of the members of the Council, including lay members, with specific measures and procedures.⁶¹

71. Article 25 of the draft law provides a list of misconducts of Council members that can be punished by public reprimand or removal from office. In addition, if the member is also a judge or prosecutor and the misconduct corresponds to a disciplinary offence, the disciplinary regime

⁵³ Article 15, Convention 108+, Elsinore, 18 May 2018.

⁵⁴ Note also, GRECO, [4th Evaluation Round](#), Bosnia and Herzegovina, para. 120, recommendation xiii, “ii) considering ensuring the publication of and easy access to financial information, with due regard to the privacy and security of judges, prosecutors and their close relatives”.

⁵⁵ Council of Europe, [Convention on Access to Official Documents](#) (CETS No. 205), Tromsø, 18 June 2009.

⁵⁶ Paragraph 118 of the previous Opinion.

⁵⁷ Paragraph 119 of the previous Opinion.

⁵⁸ Paragraphs 121-122 of the previous Opinion.

⁵⁹ Paragraph 123 of the previous Opinion.

⁶⁰ See, Venice Commission, Bosnia and Herzegovina, [CDL-AD\(2023\)003](#), Opinion on the draft law on Courts of Bosnia and Herzegovina, para. 23, “It appears that the Draft Law contains some provisions which overlap with the provisions of this other legislation (for example, the rules on the immunity of judges are defined both in the Draft Law and in the Law on the HJPC)”.

⁶¹ Paragraph 131 of the previous Opinion, that also refers to earlier Opinions.

applies. The following Articles describe the procedures regulating the initiation, inquiries and decision on the allegation of misconduct of a member.

72. The Commission welcomes the introduction of a specific regime of misconducts that applies to all HJPC members; however, there seems to be a difference in treatment between the lay members, for whom only this specific regime applies, and the judges and prosecutors, for whom the general regime on disciplinary liability also applies when one of the misconducts correspond to a disciplinary offence (Articles 193-195). Such difference in treatment is not justified and the overlap between the two regimes is confusing. HJPC members, in their function as HJPC members, should all be submitted to the same regime which should be different from the one that applies to judge and prosecutors. If a HJPC member is also a judge or prosecutor, he/she will be submitted to the regime that applies to judges and prosecutors when he/she acts in that specific function. The fact that he/she is also a HJPC members would be irrelevant in that respect. The recommendation is therefore only partially followed.

1. Institutional set-up

73. The previous Opinion recommended that the participation of HJPC members in the selection and removal of the chief disciplinary council and other employees should be reconsidered,⁶² while Articles 186 and 187 of the draft law maintained these provisions. The Explanatory note makes reference to the Law on Civil Service in the Institution of BiH and claim that due to the reduction of the number HJPC members in the panels, any conflict of interest is excluded. The Venice Commission therefore takes note of the fact that the legislator considered to maintain the provisions.

74. The previous Opinion recommended not to exclude lay members from participating in disciplinary panels against judges and prosecutors,⁶³ and Article 190 of the draft law has followed this recommendation.

2. What conduct should render a judge liable to disciplinary proceedings?

75. Article 193(1) of the draft law follows the recommendation to qualify negligence with respect to disciplinary liability, as recommended.⁶⁴

76. The recommendation to set rules for applying lighter sanctions to smaller violations⁶⁵ has not been followed (Articles 193, 194 and 195 of the draft law). The provisions at stake do not follow a specific order of seriousness, the punishments are neither gradual nor correlated to specific offences. The Explanatory note makes reference to the principles for determining disciplinary measures indicated in Article 198 and the need to allow for the individualisation of the measure. While the Venice Commission agrees that individualisation of the measure is necessary, and that this must be done according to specific principles without making the text of the law too rigid, the current elements provided by the law leave a margin of discretion that is excessively broad and would need to be tuned. In this respect, the Commission recalls that vague provisions may easily lead to overbroad interpretation and abuse, that is dangerous for the independence of judges,⁶⁶ and recommends to regularly publish disciplinary decisions to clarify the interpretation of legal

⁶² Paragraph 134 of the previous Opinion.

⁶³ Paragraph 135 of the previous Opinion.

⁶⁴ Paragraph 138 of the previous Opinion.

⁶⁵ Paragraph 140 of the previous Opinion.

⁶⁶ CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, 6 December 2024, para. 27. See also, Venice Commission, Bulgaria, Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Code of Ethical Conduct for Prosecutors and Investigators, [CDL-AD\(2024\)005](#), para. 17; Republic of Kazakhstan, Opinion on the Draft Code of Judicial Ethic, [CDL-AD\(2016\)013](#), paras 24-27; [CDL-AD\(2018\)032](#), para 78.

provisions⁶⁷ and to provide further specifications in the Book of Rules on Disciplinary Liability that should support the balancing exercise between the seriousness of the offence and its consequences on the one hand, and the quality and the amount of the sanction on the other.⁶⁸ In addition, the Commission notes that the CCJE has recently taken the view that a reduction of salary as a disciplinary sanction is discouraged.⁶⁹

77. Article 194(1)(c) follows the recommendation to incur in a disciplinary offence only when the judicial office holder does not resolve or manage the conflict of interest.⁷⁰

78. Although Article 194(1)(j) and (k) of the draft law do not clarify the meaning of the provisions prescribing the disciplinary offence “enabling persons not authorised by law to perform judicial functions” and “interfering with the work of a judge or prosecutor contrary to law, with the intention to obstruct or prevent their activities”,⁷¹ the Explanatory note gives some examples that can be considered sufficiently illustrative for the interpretation of these provisions.

79. The text of Article 194(1)(l) of the draft law concerning the disciplinary offence related to commenting on pending cases has not been changed and the Explanatory note does not refer to it. The Commission reiterates that this provision should clarify that it intends to avoid undue interference in pending cases,⁷² and it would not apply to normal consultations between peers about work-related issues. A reference to it in the Explanatory note would be sufficient.

80. Article 194(1)(m) of the draft law, prescribing the disciplinary offence “failure to comply with the books of rules” was not rephrased to exclude too excessive interpretation in accordance with the recommendation of the Venice Commission⁷³ and the Explanatory note does not comment on it.

81. As regards the recommendation to avoid disciplinary responsibility for violation of norms of ethics *per se*,⁷⁴ the Commission welcomes the fact that such blanket reference was cancelled and few offences have been retained, as explained in the Explanatory note. However, the Commission notes that the concept of “demeaning the dignity of judge” (Article 194(1)(h)) and “compromising public confidence” (Article 194(1)(i)) are vague concepts that need to be defined either in the law itself or in the Book of Rules on Disciplinary Liability, as well as through the publication of previous disciplinary decisions (reportedly numerous) that deal with these specific offences. The recommendation is therefore partially followed.

82. The recommendation⁷⁵ to review and amend the disciplinary offence “failure to carry out statutory instructions of a supervising prosecutor unless the carrying out of such instructions would, in itself, constitute a violation of law” (Article 195(1)(p)) has not been followed, and the Commission reiterates that the draft law should specify that any specific instruction of a supervising prosecutor in particular cases should be reasoned, in writing, and subject to public scrutiny. Instructions not to prosecute are prohibited.

⁶⁷ Venice Commission, *op. cit.*, [CDL-AD\(2016\)013](#), para 27.

⁶⁸ Venice Commission, Republic of Moldova, *Amicus Curiae* Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing, [CDL-AD\(2014\)039](#), para 72. CCJE, *op. cit.*, para. 40.

⁶⁹ CCJE, *op. cit.*, para. 40.

⁷⁰ Paragraph 142 of the previous Opinion.

⁷¹ Paragraphs 144 and 145 of the previous Opinion.

⁷² Paragraph 146 of the previous Opinion.

⁷³ Paragraph 147 of the previous Opinion.

⁷⁴ Paragraph 148 of the previous Opinion. See in this respect, Venice Commission, [CDL-AD\(2024\)005](#), *op. cit.*, paras. 16-18.

⁷⁵ Paragraphs 150-151 of the previous Opinion.

3. Disciplinary proceedings

83. Article 203(4) of the draft law does not follow the recommendation to clarify that the Office of the Disciplinary Counsel (hereinafter ODC) shall not have access to individual files on pending cases during disciplinary investigations.⁷⁶ The Explanatory note does not comment on this specific point.

84. The recommendations to (i) provide that all useful acts of investigation may (or should) also be carried out at the request of the accused magistrate, in fulfilment of his or her right of defence, (ii) give enough time to prepare his or her defence, (iii) clarify that decisions shall be reasoned,⁷⁷ have not been followed by Articles 207 and 212 of the draft law. The Explanatory note makes reference to Article 203(6), although this seems unrelated to the issues raised by the Commission, providing that “ODC shall investigate and ascertain, with the same diligence, not only the facts that incriminate the judge or prosecutor but also the ones that benefit them”.

85. The Venice Commission welcomes the new Article 207(2) and (3) providing that the judge or prosecutor shall promptly be given access to evidence that supports their case and shall be afforded to propose “facts and evidence benefitting them”.

86. Article 199(1) of the draft law maintains the one-year ban on appointment or transfer of a judge or prosecutor who has been reprimanded, a provision that the Commission found draconian;⁷⁸ hence the recommendation was not followed.

87. The recommendation to exclude the possibility that a disciplinary case automatically lapses after failure to establish disciplinary liability within two years⁷⁹ can be considered as implemented, given that Article 201(1), while reducing the timeframe for ending the disciplinary proceedings to one year, provides the possibility to extend this period when justified. It may be wise to give the possibility to extend also the deadline of six months for dismissal of the complaint in Article 204(4), if there are reasons related to the complexity of the assessment.

88. As regards the case when several cases are brought against the same judge or prosecutor, which should be conducted as a single disciplinary investigation (Article 203(2) of the draft law), the recommendation of the Venice Commission to include the possibility to prioritise the more serious charges⁸⁰ has not been followed. The Explanatory note makes reference to the lack of distinction between minor or serious offences, explaining that all minor offences will be covered together. The Commission does not find this explanation satisfactory as this recommendation is consistent with the one regarding Articles 193-195 of the draft law (see above)⁸¹, namely, to follow a specific order of seriousness and establish gradual punishments.

89. Article 204(3)(b) has been modified in line with the recommendation of the Venice Commission⁸² as it now foresees that anonymous complaints are dismissed where they are incomprehensible, or they lack sufficient grounds for investigation.

IV. Conclusion

90. By letter of 21 November 2024, the Minister of Justice of Bosnia and Herzegovina, Mr Davor Bunoza requested a follow-up opinion of the Venice Commission on the draft law on the High Judicial and Prosecutorial Council that is a revised version of the draft law submitted to the Venice

⁷⁶ Paragraph 153 of the previous Opinion.

⁷⁷ Paragraph 154 of the previous Opinion.

⁷⁸ Paragraph 155 of the previous Opinion.

⁷⁹ Paragraph 156 of the previous Opinion.

⁸⁰ Paragraph 157 of the previous Opinion.

⁸¹ Paragraph 140 of the previous Opinion.

⁸² Paragraph 158 of the previous Opinion.

Commission in May 2024. In this Follow-up Opinion, the Venice Commission limits itself to assess to which extent its recommendations provided in the previous Opinion have been followed and analyses the new provisions that have been added.

91. The Venice Commission welcomes the efforts of the authorities to address the recommendations of its previous Opinion and notes that this new draft is a step forward towards the alignment to European standards. However, the Commission provides in appendix a list summing-up the recommendations that are still to be addressed.

92. In addition, the Venice Commission wishes to bring to the attention of the authorities some of these recommendations concerning the composition of the HJPC.

93. The Commission considers that the overall number of the HJPC members should be increased by adding three lay members, who would better counterbalance the judicial and prosecutorial components (7 out of 23 in the Plenary, 7 out of 15 in the Department); this would also allow to have an uneven number to avoid tie votes. As to the lay members appointed by the parliament, an anti-deadlock mechanism must be put in place if the two-third majority is not reached (that is not reducing the threshold), and the process should be simplified by requiring only the vote of the House of Representatives.

94. Moreover, as concerns the concept of minimum representation of the different ethnicities, the Commission underlines that, in a long-term perspective, the ultimate aim should be that the ethnicity is not anymore a relevant factor in the appointment of members of the HJPC (or any other judicial positions). However, in consideration of the specificities of Bosnia and Herzegovina, a specific transitional phase with a 'sunset clause' could be considered. Yet, the provision providing for a drawing lot procedure to ensure the gender and ethnic representation (Article 5(9) of the draft law) is not clear and does not provide enough elements to assess the method of selection and the relevance of the ethnic factor. The Venice Commission considers that the ethnic factor should therefore only be exceptionally and temporarily taken into consideration. Similarly, in the appointment of judges and prosecutors, the ethnic factor may only exceptionally be taken into account, in case of equal merit between candidates.

95. The Venice Commission remains at the disposal of the authorities of Bosnia and Herzegovina for further assistance in this matter.

Appendix

SUM-UP LIST OF PENDING RECOMMENDATIONS ON THE DRAFT LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

(Further details on these recommendations are to be found in the text of the opinion)

General remarks

- Provide the HJPC with a constitutional status and implement the overall process of reform of the judiciary in line with a proper sequencing of the reforms.
- Ensure that all contributions to the law-making process be taken into account or addressed at least in the Explanatory note.
- As to the transitional and closing provisions:
 - o establish a system for staggering terms of office, for example by holding elections of judges and prosecutors in two different points in time, and subsequently proceeding to the selection and appointment of lay members;
 - o clarify, at least in the Explanatory note, that Article 233(2) only refers to positions that became vacant before the draft law enters into force;
 - o provide for more flexibility as regards the deadlines for adoption of by-laws (Article 234(1) and (2)).

Composition and elections of the members of the HJPC

- Modify the provisions related to the minimum representation of the different ethnicities by considering a specific transitional phase with a “sunset clause”, with the ultimate aim that ethnicity is not anymore a relevant factor in the appointment of members of the HJPC (or any other judicial position).
- Clarify the procedure in Article 5(9) for ensuring the gender and ethnic representation, and if a drawing lot procedure has to be maintained, provide that this is carried out in a transparent fashion with the possibility for monitoring by the public.
- Increase by three the number of lay members, which would also ensure an overall uneven number of members of the HJPC (Article 5) and possibly consider the appointment by other neutral bodies/entities.
- Article 6(6) on the ineligibility criteria should nuance the severity of the criminal conduct and exclude persons that are not yet convicted but simply subject to criminal proceedings.
- Attribute the decision on the objection election procedure to the respective Department of judges or prosecutors and delete the last if-sentence from Article 16(6) of the draft law, ensuring that members of the Election Committee always recuse themselves.
- Further define the eligibility criteria for selecting lay members to be elected by the parliament in Article 5(8).
- Put in place an anti-deadlock mechanism if the two-third majority for the election of the lay members by parliament is not reached and simplify the process by requiring only the vote of the House of Representatives (Article 5(5)).
- Modify Article 24(1) by limiting the cooling off clause following the end of the HJPC mandate to a ban on applying for more senior judicial positions.
- Clarify what is meant by “worthy” in Article 29(1)(f) and refer to a threshold of gravity.
- Clarify the notion “seriously damages the reputation of the Council” (Article 25(4)).
- Clarify, at least in the Explanatory note, that an incompatibility shall not be a reason for removal if the member gives up the other position which gave rise to the incompatibility.
- Extend to the Secretariat of the Council the provision of Article 31(2) on the prohibition to be a member of any organisation that discriminates on any basis.
- Clarify that a HJPC member undergoing inquiries for allegations of misconducts has the right to examine the evidence against him/her (Articles 27 and 28).
- Provide for judicial review of the decision to suspend a Council member (Article 30).

- Clarify, at least in the Explanatory note, that the Rules of Procedures should not exclude certain members from being appointed as President of the HJPC and why the Vice-Presidents needs to be a judge and a prosecutor (Article 36).
- Article 34(2) making reference to the ethnic factor should be deleted.
- Exclude disciplinary liability for the acts performed in the exercise of the HJPC members' functions (Article 46).
- As regards immunity, clarify, at least in the Explanatory note, that only failures performed intentionally, with deliberate abuse or, arguably, with repeated or gross negligence should give rise to disciplinary penalties, criminal responsibility, or civil liability (Article 46(2)).
- Extend functional immunity to the HJPC and the Office of the Disciplinary Counsel (ODC) staff members, as well as international experts contracted by the Council or seconded by foreign governments.
- Clarify what would be the consequences of abstaining from voting (Article 48(2)).

Mandate of the HJPC (Competencies), working methods and financial matters

- Clearly divide all competencies between the Plenary and the other formations (Article 54).
- Make sure that the judicial review provided by Article 80 assesses the conformity with the law and the respect of procedural rules for decision-making.
- Include a minimum of one or two lay members in the majority vote of the Plenary upon proposal of the Departments, depending on the members present (Article 49).
- Explicitly state that the HJPC's access to information (and the duty for others to provide it) does not extend to documents and files pertaining to pending court cases (Article 56(2)).
- Set a limitation to specific cases of misconduct for which the Director and Deputy Director can be dismissed (Article 59(4)).
- Entrust the Council with the power of elaborating its own budget, which should be submitted directly to the Parliamentary Assembly.

Appointments and security of judges and prosecutors

- Explicitly state that appointments should be primarily based on merit and that the ethnic factor may only exceptionally be taken into account, in case of equal merit between candidates (Articles 73, 93(2)(d) and 105(2) of the draft law).
- Limit the ineligibility of lay judges to the conviction for criminal offences of a certain gravity (Article 135(1)(e)).
- Elaborate further on how to interpret the criteria for evaluating work ability and professional knowledge of judges and prosecutors (Article 148), making sure that the use of statistics and numerical output of cases are applied with regard to the situation of the magistrate in practice and do not penalise judges and prosecutors for the reasonable exercise of judicial and prosecutorial discretion.
- Explicitly provide that failure to submit the necessary information on people for whom the judge or prosecutor is obliged to submit the asset declaration, will be deemed a disciplinary offence unless the judicial office holder is able to give a satisfactory explanation why he/she is unable to provide the information (Article 173(10)).
- As to the transparency of asset declarations:
 - o Clarify what is the authority in charge of supervising the data processing and the public access to data provisions, and make sure that the national legislation on data protection is harmonised with the Convention 108+.
 - o Make available to the public the information in Article 174(2)(e) upon individual request, provided that the names and surnames of minors, the national identity numbers and residence addresses of the relevant persons are anonymised.
 - o Ensure the harmonisation of Article 174 with the Law on Freedom of Access to Information at institutional level in Bosnia and Herzegovina (2023), provided that this is compliant with the Tromsø Convention.

- Provide for functional independence of experts engaged in the external monitoring mechanism of the asset declaration procedures (Article 181).
- Regulate the issue of immunity either in the (draft) law on the HJPC or in the (draft) Law on Courts.

Disciplinary liability of judges and prosecutors

- Delete Article 25(2), Article 193(2) and the sentence “as well as Council members from the ranks of judges and prosecutors” in Article 193(1).
- Set rules for applying lighter sanctions to smaller violations (Articles 193, 194 and 195), and correlate punishments to specific offences.
- Regularly publish disciplinary decisions to clarify the interpretation of legal provisions and provide further specifications in the Book of Rules to support the balancing exercise between the seriousness of the offence and its consequences on the one hand, and the quality and the amount of the sanction on the other.
- Clarify, at least in the Explanatory note, that Article 194(1)(l) intends to avoid undue interference in pending cases, and it would not apply to normal consultations between peers about work-related issues.
- Rephrase the disciplinary offense “failure to comply with the books of rules” in order to exclude a too excessive margin for interpretation (Article 194(1)(m)).
- Define the concepts of “demeaning the dignity of judge” (Article 194(1)(h)) and “compromising public confidence” (Article 194(1)(i)) either in the law itself or in the Book of Rules.
- Explicitly state that any specific instruction of a supervising prosecutor in particular cases should be reasoned, in writing, and subject to public scrutiny (Article 195(1)(p)). Instructions not to prosecute should be prohibited.
- Clarify that the ODC shall not have access to individual files on pending cases during disciplinary investigations (Article 203(4)).
- In Articles 207 and 212:
 - o provide that all useful acts of investigation may (or should) also be carried out at the request of the accused magistrate, in fulfilment of his or her right of defence,
 - o give enough time to prepare his or her defence,
 - o clarify that decisions shall be reasoned.
- Reduce the one-year ban on appointment or transfer of a judge or prosecutor who has been reprimanded (Article 199(1)).
- Give the possibility to extend the deadline of six months for dismissal of the complaint in Article 204(4), if there are reasons related to the complexity of the assessment.
- When several cases against the same judge or prosecutor are conducted as a single disciplinary investigation (Article 203(2)), include the possibility to prioritise the more serious charges.