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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**DRAFT LAW**

**ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL**

**OF BOSNIA AND HERZEGOVINA**

**DRAFT**

Pursuant to Article IV 4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the \_\_\_\_ session of the House of Representatives held on \_\_\_\_\_ 2013, and at the \_\_\_\_ session of the House of Peoples held on \_\_\_\_\_ 2013, enacted the following

**LAW****ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL  
OF BOSNIA AND HERZEGOVINA****CHAPTER I - GENERAL PROVISIONS****Article 1****(Subject Matter)**

This Law defines the operation, organization, competencies and powers of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: "the Council"); the requirements and term for serving as a judge or a prosecutor; appointment of judges and prosecutors; disciplinary responsibility of judges and prosecutors; suspension of judges and prosecutors from duty; conflict of duties of judges or prosecutors and other duties; cessation of the term of office of judges and prosecutors; and any other issues related to the operation of the Council.

**Article 2****(Financing of the Council)**

(1) The Council shall be financed from the Budget of Bosnia and Herzegovina Institutions and international obligations of Bosnia and Herzegovina.

(2) The Council may receive funds from international donors for the operating budget of the Council and for special judicial reform projects which are outside the operating budget of the Council. These funds shall be paid to a special account with the Central Bank of Bosnia and Herzegovina. The funds shall be spent at the order of the Director of the Secretariat, in line with the rules on the execution of donor funds adopted by the Council and in line with the terms of the donation agreement signed with the donor.

**Article 3****(Independence and Autonomy)**

(1) The Council shall be independent and autonomous in its operation, and its task shall be to ensure an independent, impartial and professional judiciary.

(2) The Council shall have a stamp, in accordance with the Law on Stamps of Bosnia and Herzegovina Institutions ("Official Gazette of BiH", No. 12/98, 14/03 and 62/11).

**CHAPTER II - MEMBERS AND ORGANIZATION OF THE COUNCIL****Article 4****(Membership)**

(1) The Council shall have 20 members.

(2) Nine Council members shall be elected from among the judges, as follows:

- a) one judge of the High Court of Bosnia and Herzegovina or the Court of Bosnia and

- Herzegovina;
- b) one judge of the Supreme Court of the Federation of Bosnia and Herzegovina;
  - c) one judge of the Supreme Court of the Republika Srpska;
  - d) one judge of the Appellate Court of Brčko District or the Municipal Court of Brčko District;
  - e) one judge of Cantonal Courts in the Federation of Bosnia and Herzegovina and two judges of Municipal Courts in the Federation of Bosnia and Herzegovina;
  - f) one judge of a District Court in the Republika Srpska or the High Commercial Court and one judge of a Primary Court or a District Commercial Court in the Republika Srpska;
- (3) Nine Council members shall be elected from among the prosecutors, as follows:
- a) one prosecutor of the Prosecutor's Office of Bosnia and Herzegovina;
  - b) one prosecutor of the Federal Prosecutor's Office of the Federation of Bosnia and Herzegovina;
  - c) one prosecutor of the Republic Prosecutor's Office of the Republika Srpska;
  - d) one prosecutor of the Prosecutor's Office of Brčko District of Bosnia and Herzegovina;
  - e) three prosecutors of Cantonal Prosecutor's Offices in the Federation of Bosnia and Herzegovina;
  - f) two prosecutors of District Prosecutor's Offices in the Republika Srpska, including the Special Prosecutor's Office for Organized Crime and Serious Economic Crimes;
- (4) Two Council members shall be elected as follows:
- a) one member on behalf of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina;
  - b) one member on behalf of the Council of Ministers of Bosnia and Herzegovina.
- (5) Members of the Council referred to under Paragraph (4) hereof shall have qualifications and experience relevant to the operation of the Council; an elected member cannot be a person who holds a justice office, an executive office at any level, or an elected public office in a legislative body at any level.
- (6) One Council member may be elected from one Cantonal or District Prosecutor's Office, as well as from one Municipal or Primary Court or Cantonal or District Court.
- (7) No person shall be elected as a Council member for more than two consecutive terms.
- (8) A judge of the High Court of Bosnia and Herzegovina and a judge of the Court of Bosnia and Herzegovina shall be elected in alternation as a Council member referred to under Paragraph (2) Item a) hereof.
- (9) A judge of the Appellate Court of Brčko District of Bosnia and Herzegovina and a judge of the Principal Court of Brčko District of Bosnia and Herzegovina shall be elected in alternation as a Council member referred to under Paragraph (2) Item d) hereof.
- (10) Members of the Council shall be persons of high moral, technical and professional qualities.
- (11) At least six members from each of the constituent peoples and an appropriate number of members from among others shall be elected on the Council. The composition of the Council shall ensure equal representation of the sexes.
- (12) Reserve judges cannot be elected as members of the Council, nor can be the following persons: a judge or a prosecutor or a person referred to under Paragraph (4) hereof who was

subject to a disciplinary measure within the last four years.

(13) Unless specified otherwise, provisions of this Law that refer to judges and prosecutors shall be construed to include judges, prosecutors, presidents of the court, chief prosecutors and deputy chief prosecutors.

(14) When a president of the court, chief prosecutor or deputy chief prosecutor is elected as a Council member, their term of office as the president of the court, chief prosecutor or deputy chief prosecutor shall cease upon taking up their duties on the Council.

(15) For the duration of their term on the Council, Council members elected from among judges or prosecutors cannot be elected to an office in the judiciary which is at a higher level than the one they hold.

#### **Article 5 (Judicial and Prosecutorial Subcouncil)**

(1) Council members elected from among the judges and the Council member referred to under Article 4, Paragraph (4) Item a) hereof constitute the Judicial Subcouncil.

(2) Council members elected from among the prosecutors and the Council member referred to under Article 4, Paragraph (4) Item b) hereof constitute the Prosecutorial Subcouncil.

(3) The Judicial and Prosecutorial Subcouncils shall ensure representation of the constituent peoples and others in Bosnia and Herzegovina, and shall have competencies defined under this Law.

#### **Article 6 (Competence for the Election of Council Members )**

(1) Election and appointment of Council members referred to under Article 4, Paragraphs (2) and (3) hereof shall be carried out by the Parliamentary Assembly of Bosnia and Herzegovina (hereinafter: the Parliamentary Assembly).

(2) The election procedure for Council members, including the procedures required to ensure compliance with applicable provisions of the Constitution and laws of Bosnia and Herzegovina, shall be defined in a separate regulation adopted by the Parliamentary Assembly.

(3) Appointment of Council members referred to under Article 4, Paragraph (4) Item a) hereof shall be done, at the request of the Council, by the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, and appointment referred to under Item b) shall be done by the Council of Ministers of Bosnia and Herzegovina at the recommendation of the Minister of Justice of Bosnia and Herzegovina.

#### **Article 7 (Nominating Members of the Council)**

(1) At the request of the Council, the court and prosecutor's office referred to under Article 4, Paragraphs (2) and (3) hereof, which have up to 15 judges or prosecutors on their staff, shall nominate two candidates, whereas the court and the prosecutor's office with more than 15 judges or prosecutors shall nominate three candidates each. The nomination shall be made by secret ballot, with each judge or prosecutor having the right to nominate and be nominated.

(2) The courts and prosecutor's offices which nominate a Council member shall submit a list of candidates nominated in accordance with Paragraph (1) hereof to the Council, and the Council shall forward a consolidated list for all vacant positions to the Joint Collegium of both Houses of the Parliamentary Assembly.

(3) The Joint Collegium referred to under Paragraph (2) hereof shall form a Commission, which shall conduct a procedure based on criteria defined by the Parliamentary Assembly and determine the final list of candidates for members of the Council, taking into account the appropriate representation of justice institutions referred to under Article 4, Paragraphs (2) and (3) hereof.

**Article 8  
(Electing Members of the Council)**

(1) The Parliamentary Assembly shall elect members of the Council from the list determined by the Commission referred to under Article 7, Paragraph (3) hereof.

(2) From among the elected members of the Council, the Parliamentary Assembly shall elect three members who shall serve as the rotating President and two Vice Presidents of the Council, during the term for which they were elected as Council members.

(3) The President and Vice Presidents of the Council shall rotate as President every 16 months.

(4) In order to achieve equal representation of the peoples, the President and Vice Presidents cannot be from the same constituent people or from among others.

**Article 9  
(Term of Office of Council Members)**

(1) Council members shall serve a term of four years and may be re-elected for another term.

(2) Upon the expiry of four (4) years from the end of the second term, the same person may be re-elected as a Council member.

(3) If the term of office of a Council member referred to under Article 4, Paragraphs (2) and (3) hereof ceases before the expiry of the period for which he/she was elected, the Parliamentary Assembly shall elect within 60 days a new Council member from among the nominated candidates as determined by the Commission referred to under Article 7, Paragraph (3) hereof, for a term of office referred to under Paragraph (1) hereof.

(4) If the term of office of a Council member referred to under Article 4, Paragraph (4) hereof ceases before the expiry of the period for which he/she was elected, a new member shall be elected within 60 days, for a term of office referred to under Paragraph (1) hereof, by the competent authority.

**Article 10  
(Cessation of the Term of Office)**

(1) The term of office of a Council member shall cease:

- a) by cessation of the function by virtue of which he/she was appointed as a Council member;
- b) upon the expiry of the period for which the member was elected or appointed;
- c) by resignation;
- d) if the member fails to perform his/her duties in a proper, effective or impartial manner;
- e) if the member fails to fulfill the obligations arising from the function he/she performs due to illness or for other reasons;
- f) when the member commits an act due to which he/she no longer merits to perform the duties on the Council;
- g) when the member is finally convicted for a criminal offense for which the law provides a prison sentence, in which case the term of office shall automatically cease when the conviction becomes final.

(2) In the case defined under Paragraph (1) Item (c) hereof, the term of office of a Council member shall cease on the day the Council submits his/her written resignation to the

Parliamentary Assembly, and in cases defined under Paragraph (1) Items (d), (e) and (f) hereof, it shall cease on the day the Parliamentary Assembly dismisses the member.

(3) The decision to dismiss a Council member for reasons listed under Paragraph (1) Items (d), (e) and (f) hereof shall be made by the Parliamentary Assembly on the recommendation of the Council.

(4) The term of office of the President and Vice Presidents of the Council may cease by resignation or by decision of the Parliamentary Assembly. Resignation as the President or Vice President of the Council shall not terminate the term as a member of the Council. In the event of resignation, the term shall cease on the day the Council Secretariat submits the written resignation to the Parliamentary Assembly, and in the event the Parliamentary Assembly makes a decision to terminate the term of office, the term shall cease on the day such decision is made.

#### **Article 11**

##### **(Suspension from Duty)**

(1) A Council member shall be suspended from duty *ex lege* in the following cases:

- a) if the member is suspended from the duty by virtue of which he/she was elected or appointed on the Council; or
- b) if the member is detained.

(2) The document on suspension shall be adopted by the Council President, and in the event the Council President is suspended such document shall be adopted by one of the Vice Presidents, which shall be specified in the Council Rules of Procedure.

(3) The Council may suspend a member from duty:

- a) for reasons which may result in termination of his/her term of office; or
- b) due to circumstances under which a judge or a prosecutor may be suspended from duty in accordance with this Law.

(4) The document on suspension from duty, in accordance with Paragraph (3) hereof, shall be adopted by two-thirds majority of all members of the Council.

#### **Article 12**

##### **(New Members of the Council)**

(1) At least three months before the expiry of the term of each Council member, the Council shall notify the bodies referred to under Article 4, Paragraphs (2) and (3) hereof to allow them to nominate their candidates to the Council.

(2) At least three months before the expiry of the term of a Council member referred to under Article 4, Paragraph (4) hereof, the Council shall notify the House of Representatives of the Parliamentary Assembly or the Council of Ministers and request election of a new member.

(3) In the event the term of a Council member does not cease due to expiry but for other reasons, and if a new member needs to be elected, the Council shall notify the body referred to under Paragraphs (1) and (2) hereof not later than within 10 days of becoming aware of the need to elect the new member.

#### **Article 13**

##### **(Full Time Employment)**

(1) The President and Vice Presidents of the Council shall work in the Council on the basis of full time employment, and shall receive their salary, benefits and other labor-related rights in the Council in an amount provided for the President of the High Court of Bosnia and Herzegovina under the Law on Salaries and Other Benefits in Courts and Prosecutor's Offices at Bosnia and

Herzegovina Level.

(2) During their term of office, the President and the Vice President of the Council shall take an unpaid leave of employment at the institution they come from.

(3) The operation of the Council shall be governed by the Rules of Procedure, adopted by the Council and published in the "Official Gazette of BiH".

#### **Article 14**

##### **(Conflict of Duties and Immunity)**

(1) Members of the Council or its Commissions or any members of the Council staff shall not hold any office or perform any duties in a political party, or in any associations or foundations associated with political parties. These persons shall also refrain from participating in any activities of political parties.

(2) Upon assuming his/her duties on the Council, the member shall sign a declaration of no conflict of interest, as prescribed by the Council Rules of Procedure.

(3) Members of the Council and members of Commissions within the Council shall not be liable for opinions expressed or decisions made within the scope of their official duties.

#### **Article 15**

##### **(Presidency of the Council)**

(1) The President and Vice Presidents of the Council constitute the Presidency as a working body of the Council, the competencies and operation of which shall be governed by the Rules of Procedure, and which shall be responsible for the Council's operation.

(2) Professional and administrative support to the Presidency shall be provided by the Secretariat of the Council.

(3) The President of the Council shall prepare agendas for Council meetings; convene and preside over the meetings; and oversee the operation of the Council and the Secretariat. The President shall act as an agent and representative of the Council before third parties and shall perform any other duties in accordance with the Council Rules of Procedure.

(4) Vice Presidents shall assist the President in the performance of duties to ensure efficient and proper operation of the Council. In accordance with the Council Rules of Procedure, one of the Vice Presidents shall substitute the President during his/her absence.

#### **Article 16**

##### **(Chairperson and Deputy Chairperson of the Subcouncils)**

(1) The Chairperson and the Deputy Chairperson of the Judicial Subcouncil shall be elected from among the judges by members of the Judicial Subcouncil for a period of one year with the option of re-election.

(2) The Chairperson and the Deputy Chairperson of the Prosecutorial Subcouncil shall be elected from among the prosecutors by members of the Prosecutorial Subcouncil for a period of one year with the option of re-election.

(3) The Chairperson of the Subcouncil shall prepare agendas for Subcouncil meetings, and shall convene and preside over Subcouncil meetings.

(4) In a Council meeting, the Chairperson of the Subcouncil shall provide Subcouncil arguments about a candidate nominated for appointment.

(5) Deputy Chairpersons of the Subcouncil shall assist the Chairperson for the efficient and proper operation of the Subcouncil.

(6) Duties of the Chairperson and Deputy Chairpersons of the Subcouncil shall be defined in the Council Rules of Procedure, and the professional and administrative support shall be provided by the Council Secretariat.

#### **Article 17**

##### **(Commissions)**

(1) The Council shall act and decide as a single body.

(2) In order to perform its tasks and obligations defined hereunder in an efficient manner, the Council may set up Commissions with at least three members and a majority of judges and prosecutors, who shall be empowered to make decisions and perform tasks in accordance with the Council Rules of Procedure. The operation and powers of Commissions shall be defined in the Rules of Procedure.

(3) During the setting up of Commissions and Departments, equal representation of the constituent peoples and others and gender considerations shall be taken into account.

(4) Decisions on appointment of judges and prosecutors cannot be delegated to Commissions.

#### **Article 18**

##### **(Experts)**

(1) The Council may hire judges, prosecutors and other persons who are experts in a particular field and are not members of the Council, to take part in the operation of the Council, as well as Commissions and other working bodies of the Council.

(2) Persons hired in accordance with Paragraph (1) of this Article shall not be entitled to vote on issues decided by the Council or the Subcouncils, except in cases provided for by this Law.

(3) Experts hired by the Council shall be entitled to remuneration in accordance with the Decision on assessing remuneration for members of management boards, supervisory and other boards, and other working bodies under the remit of Bosnia and Herzegovina institutions ("Official Gazette of BiH" No. 19/09).

#### **Article 19**

##### **(Quorum and Voting)**

(1) At Council meetings, the quorum shall be at least 14 members, and decisions shall be made by majority vote of all members, unless otherwise stipulated by this Law.

(2) At the meetings of the Judicial and Prosecutorial Subcouncils, the quorum shall be at least eight members, and a draft decision shall be confirmed if voted for by the majority of the members present.

(3) The Council shall make a decision on the election of judges by the majority vote of all members, and the decision will be made if voted for by at least seven judges.

(4) The Council shall make a decision on the election of prosecutors and the list of candidates for the Chief Prosecutor by the majority vote of all members, and the decision will be made if voted for by at least seven prosecutors.

#### **Article 20**

##### **(The Secretariat and the Office of the Disciplinary Counsel)**

(1) Internal organizational units of the Council are the Secretariat and the Office of the



Disciplinary Counsel.

(2) The Secretariat shall conduct professional, financial and administrative affairs of the Council and shall report regularly to the Council Presidency on its activities.

(3) The Office of the Disciplinary Counsel shall act as a prosecutor in relation to allegations made concerning violation of duties by a judge or a prosecutor.

(4) The Secretariat shall be run by a Director and a Deputy Director, and the Office of the Disciplinary Counsel shall be run by a Director, and they cannot be from the same constituent people or from among others.

(5) Persons referred to under Paragraph (4) hereof shall have the status of a Secretary and shall be appointed by the Council in accordance with provisions of the Law on Civil Service in Bosnia and Herzegovina Institutions.

(6) The Deputy Director of the Secretariat shall substitute the Director in his/her absence and shall perform activities assigned by the Director.

(7) The Director and the Deputy Director of the Secretariat shall be entitled to attend all Council meetings as non-voting participants and to express their opinion on all items on the agenda, and may propose and include items on the agenda of a Council meeting.

#### **Article 21**

##### **(Internal Organization of the Secretariat and the Office of the Disciplinary Counsel)**

(1) Directors of organizational units shall ensure lawful, proper and efficient conduct of affairs within the competence of the Secretariat and the Office of the Disciplinary Counsel.

(2) The Directors shall be responsible to the Council for their work and the work of organizational units they manage.

(3) The work, internal organization and systematization of jobs in the Secretariat and the Office of the Disciplinary Counsel shall be governed by regulations that apply to administrative bodies of Bosnia and Herzegovina.

(4) For the purposes of this Law, employees of the Secretariat and the Office of Disciplinary Counsel shall include professional staff which performs legal, financial, administrative and other technical tasks, as well as others which perform support jobs and technical jobs.

(5) Salaries, benefits and other labor-related rights of the professional staff of the Secretariat and the Office of Disciplinary Counsel are stipulated by the Law on Salaries and Other Benefits in Courts and Prosecutor's Offices at Bosnia and Herzegovina Level ("Official Gazette" No. 90/05).

(6) Salaries and benefits of other employees in the Secretariat and the Office of Disciplinary Counsel are stipulated by the Law on Salaries and Benefits in Bosnia and Herzegovina Institutions ("Official Gazette of BiH", No. 50/08, 35/09 and 75/09).

#### **Article 22**

##### **(Regulation on Internal Organization)**

(1) The number of employees, systematization of jobs, job descriptions, powers and responsibilities, required qualifications and other requirements for employment in the Council shall be defined separately in a regulation on internal organization and systematization of jobs.

(2) The Directors shall determine criteria for assessing the number of professional staff and employees required for timely and efficient conduct of affairs.

(3) The regulation referred to under Paragraph (1) hereof shall be adopted by the Council, subject to prior approval of the Ministry of Finance and Treasury of Bosnia and Herzegovina and the Ministry of Justice of Bosnia and Herzegovina.

(4) The organizational units of the Council shall ensure appropriate ethnic representation of the constituent peoples and others, as well as representation of the sexes among the professional staff and employees, in line with the ethnic structure of the population as determined in the last population census in Bosnia and Herzegovina.

(5) For the implementation of judicial reform projects funded by donors and with activities of a temporary nature, the Council may hire persons on temporary service contracts.

### **CHAPTER III - COMPETENCE AND POWERS**

#### **Article 23**

##### **(Competence)**

(1) The Council shall have competence to act on a nomination by the competent Subcouncil and:

a) appoint judges, including Presidents of the courts, lay judges and reserve judges in all courts at state, Entity, Cantonal, District, primary and municipal levels in Bosnia and Herzegovina, including Brčko District of Bosnia and Herzegovina, with the exception of the Constitutional Courts of the Entities of Bosnia and Herzegovina;

b) appoint prosecutors in all prosecutor's offices at state, Entity, Cantonal and District levels in Bosnia and Herzegovina, including Brčko District of Bosnia and Herzegovina; define a list of successful candidates for vacant Chief Prosecutor positions in all Prosecutor's Offices; submit the list to the competent government or executive authority, which shall recommend appointment of the Chief Prosecutor to the competent legislative authority; and, if necessary, appoint acting Chief Prosecutors in all Prosecutors' Offices in Bosnia and Herzegovina;

c) provide nominations of candidates to the competent authorities regarding the election of judges to the Constitutional Court of the Republika Srpska and the appointment of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina. In exercising their competencies defined under this Item, the Council shall seek a written opinion of the respective Constitutional Court before providing a nomination;

d) decide on the suspension of judges, lay judges, reserve judges and prosecutors;

e) supervise professional training of judges and prosecutors and provide advice to Entity Judicial and Prosecutorial Training Centers and the Judicial Commission of Brčko District of Bosnia and Herzegovina in relation to the adoption of the professional training curriculum for judges and prosecutors;

f) determine the minimum scope of professional training that each judge and prosecutor must achieve during the year;

g) determine initial training for persons elected for judges or prosecutors and supervise the implementation of such training;

h) decide on the issue of conflict of other duties performed by judges and prosecutors and their duties as judges and prosecutors;

i) decide on temporary assignments of judges and prosecutors to others courts or prosecutor's offices;

j) decide on the absence of judges and prosecutors;

k) take part in the drafting of and approve Rules of Procedure for courts and prosecutor's offices in Bosnia and Herzegovina;

l) determine criteria for assessing the performance of judges and prosecutors;

m) determine criteria for the operation of courts and prosecutor's offices, and launch investigations related to conduct in the field of administration and finance;

- n) determine the number of judges, prosecutors and deputy chief prosecutors for the courts and prosecutor's offices within its competence, following consultations with the President of the Court or the Chief Prosecutor, the body responsible for the budget and the relevant Ministry of Justice;
- o) provide its opinion on complaints submitted by a judge or a prosecutor who consider that their rights, provided for under this Law or any other law, or their independence, are at risk;
- p) receive complaints against judges and prosecutors; conduct disciplinary proceedings; establish disciplinary responsibility and impose disciplinary measures against judges, lay judges, reserve judges and prosecutors;
- r) decide on appeals in disciplinary proceedings;

(2) The Council shall also have competence to:

- a) approve the annual reports of Management Boards of the Entity Judicial and Prosecutorial Training Centers and the Judicial Commission of Brčko District of Bosnia and Herzegovina to the extent they relate to the initial training and professional training of judges and prosecutors;
- b) take part, at its own discretion, in the development of annual budgets for courts and prosecutor's offices;
- c) make recommendations, at its own discretion, in relation to the annual budget proposed by government bodies and/or governments for courts and prosecutor's offices;
- d) make and provide, at its own discretion, recommendations to amend the budgets proposed by state authorities and/or governments and/or the Judicial Commission of Brčko District of Bosnia and Herzegovina, to the relevant legislative bodies;
- e) collect and analyze reports and the required information on budgets and income for courts and prosecutor's offices in order to provide statistical data for efficient operation of courts and prosecutor's offices;
- f) oversee and advise courts and prosecutor's offices on appropriate and efficient techniques and procedures related to the budget, management and administration, and initiate training in this regard;
- g) launch, oversee and coordinate projects related to the improvement of management affairs in courts and prosecutor's offices, including seeking funds from domestic and international sources;
- h) work on adequate and continuous funding of courts and prosecutor's offices in Bosnia and Herzegovina;
- i) manage, coordinate and oversee the use of information technologies in courts and prosecutor's offices;
- j) collect information and maintain documentation on the professional status of judges and prosecutors;
- k) give its opinion on draft laws, regulations and important issues that may affect the judiciary; launch initiatives to amend laws and regulations; and provide guidance to courts and prosecutor's offices under the competence of the Council;
- l) publish codes of ethics of judges and prosecutors, and carry out any other responsibilities defined by this Law or any other law.

## **Article 24**

### **(Obligation to Comply with Inquiries and Requests)**

(1) Courts, prosecutor's office and state authorities, as well as judges, presidents of courts, prosecutors, chief prosecutors and deputy chief prosecutors, lay judges, reserve judges and employees of courts and prosecutor's offices shall comply with Council's requests for information, documents and other materials in connection with the exercise of Council's competencies, and shall attend meetings as requested by the Council in connection with the exercise of Council's competencies.

(2) To the extent necessary for the exercise of competencies under this Law or any other law, the Council and its representatives shall have access to all premises and records of courts and prosecutor's offices.

**Article 25****(Annual Budget and Annual Report)**

(1) In accordance with provisions of the Law on Financing of Bosnia and Herzegovina Institutions and the Law on the Budget of Bosnia and Herzegovina Institutions and International Obligations of Bosnia and Herzegovina, before the beginning of each budget year, the Council shall prepare a draft annual budget and submit it to the Ministry of Justice, which will forward the draft budget along with its opinion to the Ministry of Finance and Treasury of Bosnia and Herzegovina.

(2) Not later than 01 May each year, the Council shall prepare an annual report listing its activities and describing the state of the judiciary and prosecution, including recommendations for improvement. The annual report of the Council shall be open to public.

(3) The Council shall submit its annual report to the Parliamentary Assembly, which may remove, in case the report receives a negative assessment, the Presidency or a member of the Presidency from the Council.

(3) At the invitation of the Parliamentary Assembly or another body referred to under the preceding Paragraph, the President or any other authorized representative of the Council will attend a session and directly explain the report and answer any questions of parliamentary representatives or members of the other body. Discussion of the report and conclusions may be result in assessments, suggestions and proposals which do not challenge the independence of the Council.

**CHAPTER IV - REQUIREMENTS AND TERM OF OFFICE****Article 26****(General Requirements)**

(1) A person must satisfy the following requirements in order to be appointed to the office of a judge or a prosecutor:

a) that he/she is a national of Bosnia and Herzegovina;

b) that he/she is medically fit to hold the judicial or prosecutorial office;

c) that he/she has completed:

- level VII education at a faculty of law in Bosnia and Herzegovina or in the former Socialist Federative Republic of Yugoslavia before 06 April 1992; or

- under the education system in line with the Bologna process, a four-year study at the faculty of law in Bosnia and Herzegovina, provided that he/she has acquired at least 240 ECTS credits;

or

- another faculty of law, provided that the degree certificate issued by such faculty of law has been validated in accordance with law, provided that he/she has acquired at least 240 ECTS credits;

(d) that he/she has passed the bar examination in Bosnia and Herzegovina or a bar examination outside Bosnia and Herzegovina which is recognized by the competent authority in Bosnia and Herzegovina;

(f) that he/she is not subject to any criminal proceedings.

(2) Persons appointed as judges and prosecutors shall be of high moral, technical and professional qualities.

**Article 27****(Courts of Bosnia and Herzegovina)**

(1) Judges of the Court of Bosnia and Herzegovina must have at least eight (8) years of experience serving as judges, of which at least three (3) years as judges of an appellate or third

instance court, or as prosecutors, lawyers, public attorneys, or have other relevant legal experience after passing the bar examination.

(2) Judges of the High Court must have at least eight (8) years of experience serving as judges, of which at least five (5) years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, or as prosecutors, lawyers, public attorneys, or have other relevant legal experience after passing the bar examination.

(3) An exception to Paragraph (1) hereof are judges of the Court of Bosnia and Herzegovina who hold the office on the day this Law enters into force.

(4) The Presidents of the Court of Bosnia and Herzegovina and the High Court of Bosnia and Herzegovina shall be judges appointed to these courts, which shall have proven managerial and organizational skills relevant to the operation of these courts.

(5) The Presidents of the courts referred to under Paragraph (4) hereof shall be appointed for a term of four years and may be re-appointed for another term, and their terms may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined in this Law.

(6) After two consecutive terms of office, the Presidents of these courts cannot be appointed before four years have passed since the end of their previous term.

#### **Article 28**

#### **(The Constitutional Court of the Republika Srpska and the Constitutional Court of the Federation of Bosnia and Herzegovina)**

(1) Competencies related to the appointment of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of the Republika Srpska shall be exercised by the Council and the Judicial Subcouncil in accordance with the Constitution of the Federation of Bosnia and Herzegovina and the Constitution of the Republika Srpska.

(2) When making recommendations to competent authorities regarding the nomination and election of judges to the Constitutional Court of the Republika Srpska and selection of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina, as provided for in the Constitution in force, the following criteria shall be taken into account:

- a) years of experience which the candidate has serving as a judge, prosecutor, lawyer, or other relevant legal experience after passing the bar examination;
- b) academic experience and achievements of the candidate;
- c) other information which the Judicial Subcouncil and the Council deem relevant to the eligibility of candidates to serve as judges of the respective Constitutional Court.

(3) In accordance with other provisions of this Paragraph, at a recommendation of the Judicial Subcouncil, the Council may recommend professors and assistant professors of faculties of law in Bosnia and Herzegovina teaching Constitutional Law, International Law, Criminal Law and Criminal Procedure Law, Civil Law and Civil Procedure Law, Administrative Law, Commercial Law and Family Law to be appointed as judges of the Constitutional Court without having passed the bar examination, provided they have at least 10 years of experience serving as professors or assistant professors.

(4) The President of the Constitutional Court shall be one of the judges appointed to the Constitutional Court, and shall have proven managerial and organizational skills relevant to the operation of such court.

**Article 29****(The Supreme Court of the Republika Srpska and the Supreme Court of the Federation of Bosnia and Herzegovina)**

(1) Judges of Entity Supreme Courts must have at least eight years of experience serving as judges, of which at least five years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or have other relevant legal experience after passing the bar examination. Judges shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(2) An exception to Paragraph (1) hereof are judges who hold the office on the day this Law enters into force.

(3) The President of the Supreme Court shall be one of the judges appointed to the Supreme Court, and shall have proven managerial and organizational skills relevant to the operation of such court. The President shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.

(4) After two consecutive terms of office, the Presidents of these courts cannot be re-appointed before four years have passed since the end of their previous term.

**Article 30****(The Appellate Court of Brčko District of Bosnia and Herzegovina)**

(1) Judges of the Appellate Court of Brčko District of Bosnia and Herzegovina must have at least eight years of experience serving as judges, of which at least three years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or have other relevant legal experience after passing the bar examination. Judges shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(2) An exception to Paragraph (1) hereof are judges who hold the office on the day this Law enters into force.

(3) The President of the Appellate Court shall be one of the judges appointed to the Appellate Court, and shall have proven managerial and organizational skills relevant to the operation of such court. The President shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.

(4) After two consecutive terms of office, the Presidents of these courts cannot be re-appointed before four years have passed since the end of their previous term.

**Article 31****(District Courts in the Republika Srpska and Cantonal Courts in the Federation of Bosnia and Herzegovina)**

(1) Judges of District Courts in the Republika Srpska and Cantonal Courts in the Federation of Bosnia and Herzegovina must have at least five years of experience serving as judges, prosecutors, lawyers, or have other relevant legal experience after passing the bar examination. Judges shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(2) The President of the District or Cantonal Court shall be one of the judges appointed to such court, and shall have proven managerial and organizational skills relevant to the operation of such court. The Presidents shall be appointed for a term of four years and may be re-appointed for another term, and their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(3) After two consecutive terms of office, the Presidents of these courts cannot be re-appointed before four years have passed since the end of their previous term.

#### **Article 32**

##### **(Principal Courts in the Republika Srpska and the Principal Court of Brčko District of Bosnia and Herzegovina and Municipal Courts in the Federation of Bosnia and Herzegovina)**

(1) Judges of Principal Courts in the Republika Srpska, the Principal Court of Brčko District of Bosnia and Herzegovina, and Municipal Courts in the Federation of Bosnia and Herzegovina must have at least three years of experience in working on legal matters after passing the bar examination. Judges shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(2) The President of the Principal or Municipal Court shall be one of the judges appointed to such court, and shall have proven managerial and organizational skills relevant to the operation of such court.

(3) The President shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.

(4) After two consecutive terms of office, the Presidents of these courts cannot be re-appointed before four years have passed since the end of their previous term.

#### **Article 33**

##### **(Commercial Courts)**

(1) Judges of the High Commercial Court in the Republika Srpska must have at least five years of experience serving as judges, prosecutors, lawyers, or have other relevant legal experience after passing the bar examination. Judges shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(2) The President of the High Commercial Court in the Republika Srpska shall be one of the judges appointed to such court, and shall have proven managerial and organizational skills relevant to the operation of such court. The President shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.

(3) After two consecutive terms of office, the President of the High Commercial Court cannot be re-appointed before four years have passed since the end of his/her previous term.

(4) Judges of District Commercial Courts in the Republika Srpska must have at least three years of experience in working on legal matters after passing the bar examination. Judges shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(5) The President of a District Commercial Court shall be one of the judges appointed to such

court, and shall have proven managerial and organizational skills relevant to the operation of such court. The President shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.

(6) After two consecutive terms of office, the Presidents of these courts cannot be re-appointed before four years have passed since the end of their previous term.

#### **Article 34**

##### **(Chief Prosecutor, Deputy Chief Prosecutors and Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina)**

(1) The Chief Prosecutor and Deputy Chief Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina must have at least eight years of experience serving as judges, of which at least five years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or have other relevant legal experience after passing the bar examination, as well as proven managerial and organizational skills relevant to the operation of such prosecutor's office.

(2) The Chief Prosecutor shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.

(3) After two consecutive terms of office, the Chief Prosecutor cannot be re-appointed before four years have passed since the end of his/her previous term.

(4) The term of office of Deputy Chief Prosecutors is linked to and follows the term of office of the Chief Prosecutor, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(5) Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina must have at least five years of experience serving as judges, of which at least three years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or working on similar legal matters after passing the bar examination. Prosecutors shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(6) An exception to Paragraphs (1) and (5) hereof are prosecutors who hold the office on the day this Law enters into force.

#### **Article 35**

##### **(The Prosecutor's Office of the Republika Srpska and the Prosecutor's Office of the Federation of Bosnia and Herzegovina)**

(1) The Chief Prosecutor of the Republika Srpska, the Chief Prosecutor of the Federation of Bosnia and Herzegovina, Deputy Chief Prosecutors of the Republika Srpska and Deputy Chief Prosecutors of the Federation of Bosnia and Herzegovina must have at least eight years of experience serving as judges, of which at least five years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or have other relevant legal experience after passing the bar examination, as well as proven managerial and organizational skills relevant to the operation of such prosecutor's office.

(2) The Chief Prosecutor shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.



(3) After two consecutive terms of office, the Chief Prosecutor cannot be re-appointed before four years have passed since the end of his/her previous term.

(4) The term of office of Deputy Chief Prosecutors is linked to and follows the term of office of the Chief Prosecutor, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(5) Prosecutors of Entity Prosecutor's Offices must have at least five years of experience serving as judges, of which at least three years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or have other relevant legal experience after passing the bar examination. Prosecutors shall be appointed for an indefinite term of office, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(6) An exception to Paragraphs (1) and (5) hereof are prosecutors who hold the office on the day this Law enters into force.

### **Article 36**

#### **(District and Cantonal Prosecutor's Offices)**

(1) District and Cantonal Chief Prosecutors and Deputy Chief Prosecutors must have at least five years of experience serving as judges, of which at least three years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or have other relevant legal experience after passing the bar examination, as well as proven managerial and organizational skills relevant to the operation of such prosecutor's office.

(2) District and Cantonal Chief Prosecutors shall be appointed for a term of four years and may be re-appointed for another term, and their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(3) After two consecutive terms of office, District and Cantonal Chief Prosecutors cannot be re-appointed before four years have passed since the end of their previous term.

(4) The term of office of District and Cantonal Deputy Chief Prosecutors is linked to and follows the term of office of the Chief Prosecutor, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(5) District and Cantonal Prosecutors must have at least four years of experience in working on legal matters after passing the bar examination, and shall be appointed for an indefinite term, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(6) An exception to Paragraphs (1) and (5) hereof are prosecutors who hold the office on the day this Law enters into force.

### **Article 37**

#### **(The Chief Prosecutor and Prosecutors of the Prosecutor's Office of Brčko District of Bosnia and Herzegovina)**

(1) The Chief Prosecutor and the Deputy Chief Prosecutor of the Prosecutor's Office of Brčko District of Bosnia and Herzegovina must have at least five years of experience serving as judges, of which at least three years as judges of the Court of Bosnia and Herzegovina or an appellate or third instance court, as prosecutors, lawyers, or have other relevant legal experience after passing the bar examination, and proven managerial and organizational skills relevant to the operation of such prosecutor's office.

(2) The Chief Prosecutor shall be appointed for a term of four years and may be re-appointed for another term, and his/her term may cease in the event of resignation or if he/she reaches the mandatory retirement age, or is relieved of duty for reasons defined by law.

(3) After two consecutive terms of office, the Chief Prosecutor cannot be re-appointed before four years have passed since the end of his/her previous term.

(4) The term of office of Deputy Chief Prosecutors is linked to and follows the term of office of the Chief Prosecutor, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(5) Prosecutors of the Prosecutor's Office of Brčko District of Bosnia and Herzegovina must have at least four years of experience in working on legal matters after passing the bar examination, and shall be appointed for an indefinite term, provided that their term may cease in the event of resignation or if they reach the mandatory retirement age, or are relieved of duty for reasons defined by law.

(6) An exception to Paragraphs (1) and (5) hereof are prosecutors who hold the office on the day this Law enters into force.

### **Article 38**

#### **(Reserve Judges)**

A reserve judge must satisfy professional requirements defined for judges of the court where the reserve judge is being appointed.

### **Article 39**

#### **(Lay Judges – Requirements and Term of Office)**

(1) A person must satisfy the following requirements in order to serve as a lay judge:

- a) that he/she is a national of Bosnia and Herzegovina;
- b) that he/she has the intellectual and physical capacity to perform judicial or prosecutorial functions;
- c) that he/she has reached the age of twenty-five (25) at the time of applying for the vacant position;
- d) that he/she has high moral qualities and professional impartiality;
- e) that he/she has not been convicted of a criminal offense;
- f) that he/she can provide a certificate of no criminal proceedings against him/her; and
- g) that he/she has a place of residence in the territory of the court to which he/she is being appointed.

(2) For deciding cases that concern minors, a lay judge must have appropriate professional qualifications or experience related to minors.

(3) A lay judge shall be appointed for a term of eight years and may be re-appointed. The term may cease by virtue of resignation, the reaching of the mandatory retirement age, or due to relief of duty for reasons defined by law. Even after the expiry of his/her term of office, resignation or reaching the mandatory retirement age for lay judges, a lay judge shall complete his/her participation in a case in which proceedings have started, if this is necessary to render a proper decision in such case.

### **Article 40**

#### **(Professional Associates, Senior Professional Associates and Professional Advisers)**

(1) All the competencies that the Council has with respect to judges and prosecutors shall also apply to expert associates, senior expert associates and expert advisers in courts and prosecutor's offices.

(2) Unless otherwise provided, provisions of this Law which relate to judges and prosecutors shall also apply to expert associates, senior expert associates and expert advisers in courts and prosecutor's offices.

(3) A graduated legal professional with the bar examination passed may be appointed as an expert associate.

(4) A graduated legal professional with the bar examination passed and three years of experience in legal matters may be appointed as a senior expert associate.

(5) A graduated legal professional with the bar examination passed and five years of experience in legal matters may be appointed as an expert adviser or a senior expert adviser.

(6) Powers of expert associates, senior expert associates and expert advisers shall be defined by laws on courts and prosecutor's offices in Bosnia and Herzegovina.

## **CHAPTER V – APPOINTMENT**

### **Article 41**

#### **(Appointment Procedure)**

In its Rules of Procedure, the Council shall define the procedure for announcing vacancies, applying, nominating and appointing judicial officials.

### **Article 42**

#### **(Public Announcement)**

(1) A public announcement of vacant positions, which shall be conducted by the Council, shall precede the appointment of judges, including presidents of courts, reserve judges, chief prosecutors and prosecutors. The announcement shall be published in the "Official Gazette of BiH", in at least three widely-circulated daily newspapers available in the entire Bosnia and Herzegovina, and on the official website of the Council.

(2) For positions in a court or a prosecutor's office which become vacant within 24 months of the previously announced vacancy, the Council may appoint a candidate from the previous list of successful candidates which was determined for such court or prosecutor's office by the Judicial or Prosecutorial Council.

(3) The appointment procedure in accordance with Paragraph (2) hereof shall be defined in the Rules of Procedure.

(4) Provisions of Paragraph (2) hereof do not apply to the positions of the president of the court and chief prosecutor.

### **Article 43**

#### **(Departments for Nomination of Candidates for Appointment at the Level of Bosnia and Herzegovina and in Brčko District of Bosnia and Herzegovina)**

(1) The Judicial and Prosecutorial Subcouncils shall have departments for nomination of candidates for vacated positions in courts and prosecutor's office at Bosnia and Herzegovina level and in Brčko District of Bosnia and Herzegovina.

(2) The department for nomination of candidates for judicial positions at Bosnia and Herzegovina level and in Brčko District of Bosnia and Herzegovina shall consist of five members of the Judicial Subcouncil, as follows:

- a) a member who is a judge of the High Court of Bosnia and Herzegovina or the Court of Bosnia and Herzegovina;
- b) a member who is a judge of the Appellate Court of Brčko District of Bosnia and

- Herzegovina or the Principal Court of Brčko District of Bosnia and Herzegovina;
- c) a member who is a judge of the Supreme Court of the Republika Srpska;
  - d) a member who is a judge of the Supreme Court of the Federation of Bosnia and Herzegovina;
  - e) a member elected in accordance with Article 4, Paragraph (4) Item a) hereof.

(3) The department for nomination of candidates for prosecutorial positions at Bosnia and Herzegovina level and in Brčko District of Bosnia and Herzegovina shall consist of five members of the Prosecutorial Subcouncil, as follows:

- a) a member who is a prosecutor of the Prosecutor's Office of Bosnia and Herzegovina;
- b) a member who is a prosecutor of the Prosecutor's Office of Brčko District of Bosnia and Herzegovina;
- c) a member who is a prosecutor of the Federal Prosecutor's Office of the Federation of Bosnia and Herzegovina;
- d) a member who is a prosecutor of the Republic Prosecutor's Office of the Republika Srpska;
- e) a member elected in accordance with Article 4, Paragraph (4) Item b) hereof.

#### **Article 44**

##### **(Departments for Nomination of Candidates for Appointment in the Entities)**

(1) The Judicial and Prosecutorial Subcouncils shall have departments for nomination of candidates for appointment to judicial and prosecutorial positions in the Entities.

(2) The department for nomination of candidates to judicial positions in the Republika Srpska shall consist of four members of the Judicial Subcouncil, as follows:

- a) a member who is a judge of the Supreme Court of the Republika Srpska;
- b) a member who is a judge of a District Court or the High Commercial Court;
- c) a member who is a judge of a Principal Court or a District Commercial Court;
- d) a member elected in accordance with Article 4, Paragraph (4) Item a).

(3) The department for nomination of candidates to prosecutorial positions in the Republika Srpska shall consist of four members of the Prosecutorial Subcouncil, as follows:

- a) a member who is a prosecutor of the Republic Prosecutor's Office of the Republika Srpska;
- b) two members who are prosecutors of a District Prosecutor's Office in the Republika Srpska;
- c) a member elected in accordance with Article 4, Paragraph (4) Item b) hereof.

(4) The department for nomination of candidates to judicial positions in the Federation of Bosnia and Herzegovina shall consist of four members of the Judicial Subcouncil, as follows:

- a) a member who is a judge of the Supreme Court of the Federation of Bosnia and Herzegovina;
- b) a member who is a judge of a Cantonal Court;
- c) a member who is a judge of a Municipal Court;
- d) a member elected in accordance with Article 4, Paragraph (4) Item a) hereof.

(5) The department for nomination of candidates to prosecutorial positions in the Federation of Bosnia and Herzegovina shall consist of four members of the Prosecutorial Subcouncil, as follows:

- a) a member who is a prosecutor of the Federal Prosecutor's Office of the Federation of Bosnia and Herzegovina;
- b) two members who are prosecutors of a Cantonal Prosecutor's Office in the Federation of Bosnia and Herzegovina;
- c) a member elected in accordance with Article 4, Paragraph (4) Item b) hereof.

## **Article 45**

### **(Written Qualifying Test)**

(1) Written qualifying testing shall be carried out for the position of a judge or prosecutor, an expert associate, senior expert associate and expert adviser.

(2) The testing shall serve to test the expertise of candidates in accordance with the criteria defined on the basis of this Law, and may include the following areas:

- (a) Constitutional Law of Bosnia and Herzegovina;
- (b) Criminal Law;
- (c) Criminal Procedure Law;
- (d) Civil Law;
- (e) Civil Procedure Law;
- (f) Administrative Law and Administrative Procedure Law;
- (g) Commercial Law;
- (h) European Convention for the Protection of Human Rights and Fundamental Freedoms, and other international documents, treaties and human rights agreements signed by Bosnia and Herzegovina;
- (i) Ethical principles for serving as a judge or a prosecutor; and
- (j) Other matters relevant to one's office.

(3) Written qualifying testing shall be conducted with codes assigned to applicants, and members of the competent department performing the assessment of written qualifying tests may not know the identity of the tested person during the assessment process.

(4) Persons who satisfy general and special requirements stipulated by this Law for appointment to a position they are applying for shall be invited for written qualification testing for positions referred to under Paragraph (1) hereof.

(5) A candidate who has previously taken a written qualifying test shall not be asked to retake the test before the expiry of a period defined by the Council in its Rules of Procedure, and in such case the candidate's earlier result shall be taken into account, unless the candidate expressly requests to retake the test.

(6) A candidate whose application has not been considered or has been rejected, or a candidate who has not been invited to a written qualifying test, may appeal to the Presidency of the Council within three days of receipt of the notification of his/her application being rejected.

## **Article 46**

### **(Interview with Candidates)**

(1) No person may be appointed to serve as a judge or a prosecutor without having been interviewed.

(2) The candidates who have achieved appropriate results at the written qualifying testing, as defined in the Council Rules of Procedure, shall be invited for an interview.

(3) A candidate who was previously interviewed in the last 24 months for a position of the same level shall not be invited for another interview, and in such case the candidate's earlier result shall be taken into account, unless the candidate expressly requests to be re-interviewed.

(4) Departments for nomination of candidates shall conduct interviews with candidates and shall rate the candidates at the interview.

(5) During the interview with candidates, the department shall assess the candidate's motivation to work in the judiciary at a position he/she applied for; the candidate's ability to perform the function he/she applied for responsibly, independently and impartially; his/her understanding of

the importance of judicial and prosecutorial ethics; communication and presentation skills; analytical capabilities and the ability to solve legal problems.

(6) The interviews and the written qualifying tests of candidates shall be audio-visually recorded. The audio-visual recording of the interview shall be available only to the body responsible for deciding on appointment appeals.

#### **Article 47**

##### **(Opinion on Candidates)**

(1) On the basis of a report of the competent department, the Judicial and Prosecutorial Subcouncils shall make a final list of successful candidates with a nomination of candidates for appointment to the vacant justice office, which shall be submitted to the Council.

(2) The Judicial and Prosecutorial Subcouncils may ask other bodies or institutions to provide written opinions or information on professional and other qualifications of candidates.

(3) The Judicial and Prosecutorial Subcouncils shall obtain information necessary for the assessment of candidates' abilities as defined hereunder, such as data on criminal convictions, including convictions which are deleted from the criminal record, details of disciplinary measures or breaches of duty, as well as any other relevant information.

(4) In the vacancy procedure, the candidate must provide details of the circumstances referred to under Paragraph (3) hereof.

#### **Article 48**

##### **(Rights of Candidates)**

Each candidate has the right to review his/her application materials submitted to the Council, which concern his/her application; to request and receive notifications, provided that such notifications do not involve confidential information; with respect to the application and the nomination process, to review and make comments on the opinion about the candidate submitted to the Council; and to send comments to the Council regarding issues that affect the candidate's application.

#### **Article 49**

##### **(Criteria)**

(1) The criteria for appointment to the position of a judge or a prosecutor are:

- (a) results of the written qualifying test;
- (b) results of the interview;
- (c) professional qualifications demonstrated through professional training, publication of scientific papers and other activities in the profession;
- (d) the work and past performance, as well as the length of experience in the judiciary and the profession;

(2) For candidates who apply for the position of a president of the court and a chief prosecutor, and who already hold a managerial office in the justice system, the following criteria shall also apply in addition to the criteria referred to under Paragraph (1) hereof:

- (a) professional ability to perform managerial tasks, which shall be determined based on the following sub-criteria:
  - 1) past performance as a president of the court, chief prosecutor and deputy chief prosecutor;
  - 2) past performance of the court or the prosecutor's office in which the candidate holds a managerial office;
  - 3) reputation and recognition of the candidate in the justice community.

(3) For candidates who apply for the position of a president of the court and a chief prosecutor, and who do not hold a managerial office in the judiciary, the following additional criteria shall also apply in addition to the criteria referred to under Paragraph (1) hereof:

(a) ability to perform managerial tasks, which shall be determined based on the following sub-criteria:

- 1) knowledge of judicial and prosecutorial management affairs;
- 2) organizational skills;
- 3) professional training in management;
- 4) reputation and recognition of the candidate in the professional community he/she comes from.

#### **Article 50**

##### **(Scoring of Candidates)**

(1) The assessment of the written qualifying test and of the interview, as well as the scoring of candidates in accordance with the criteria defined hereunder, shall be further defined in the Council Rules of Procedure, including details of the minimal result a candidate must achieve in order to be appointed, or to be placed on the list of successful candidates.

(2) The maximum number of points that may be awarded for each of the criteria defined hereunder shall also be defined, with the number of points awarded for the criterion of professional ability constituting at least 80% of the total number of points.

(3) The scoring of candidates shall be done by the competent department based on the results of the written qualifying test and the interview, while the competent Subcouncil shall have access to documents and shall rank candidates including nominations for appointment.

(4) When nominating candidates for the chief prosecutor, and when nominating candidates for the appointment of judges and prosecutors, the Judicial and Prosecutorial Subcouncils shall take into account, in addition to points awarded based on the criteria defined hereunder, all the circumstances that may make the candidate unsuitable for a judicial or prosecutorial office. The Chairman of the Subcouncil shall provide reasoning to the Council in support of the Subcouncil's opinion on the nominated candidate, and also on other successful candidates if necessary.

(5) A list of candidates with awarded grades and points, including those candidates who have not achieved satisfactory results, shall be published in a protected part of the Council website, and shall only be available to the candidates who participated in the vacancy procedure.

#### **Article 51**

##### **(Appointment)**

(1) When appointing presidents of courts, chief prosecutors, judges, prosecutors and reserve judges, equal representation of the constituent peoples and of others according to the last census in Bosnia and Herzegovina and representation of the sexes shall be ensured.

(2) The Council shall ensure that:

a) the Court of Bosnia and Herzegovina comprises at least eight judges from each of the constituent peoples and an appropriate number of judges from among others;

b) the High Court of Bosnia and Herzegovina comprises an equal number of judges from each of the constituent peoples and an appropriate number of judges from among others;

a) the Prosecutor's Office of Bosnia and Herzegovina comprises at least 25% of prosecutors from each of the constituent peoples and an appropriate number of prosecutors from among others;

d) The President of the Court of Bosnia and Herzegovina, the President of the High Court of Bosnia and Herzegovina and the Chief Prosecutor of Bosnia and Herzegovina cannot be from the same constituent people or from among others.

(3) The Council shall make a written reasoned decision on the appointment of a candidate for a president of the court, a judge or a prosecutor.

(4) The Council may reverse a decision on appointment if, after the decision was made and before the appointed judge or prosecutor takes office, it obtains information which, had it been known at the time of appointment, would constitute a reason for the Council not to make the decision on appointment. The Council may, if it deems necessary, postpone the date of the taking of office of a judge or a prosecutor to whom such information refers, in order for the competent Subcouncil to appropriately verify such information.

(5) If the Council reverses a decision on appointment, it shall appoint another person from the group of applicants to such office in accordance with this Law and at the recommendation of the competent Subcouncil, or the vacancy shall be announced again.

(6) A decision on appointment may be appealed to the Council within three days of receipt of the decision.

(7) The appeal against the decision on appointment may challenge the regularity of the procedure, written qualifying test and interview, and the scoring procedure.

(8) Decisions on appeals in accordance with this Article shall be governed by the Rules of Procedure.

## **Article 52**

### **(Decision on Nomination and Appointment of the Chief Prosecutor)**

(1) At a proposal of the Prosecutorial Subcouncil, the Council shall define a list of successful candidates with the nomination of a candidate for the chief prosecutor, and shall deliver the list without delay to the competent government or executive authority which will, within 15 days of delivery, submit the list with its nominated candidate to the competent legislative body in Bosnia and Herzegovina for the election and appointment of the chief prosecutor.

(3) The decision on appointment of the chief prosecutor shall be made by the competent legislative body within 90 days of the nomination being submitted.

(4) The competent legislative body may reverse a decision on appointment if, after the decision was made and before the appointed chief prosecutor takes office, it obtains information which, had it been known at the time of appointment, would constitute a reason not to make the decision on appointment. The competent legislative body may, if it deems necessary, postpone the date of the taking of office of the chief prosecutor to whom such information refers, in order for the competent Prosecutorial Subcouncil to appropriately verify such information.

(5) If the competent legislative body reverses a decision on appointment, it shall appoint another person from the list of successful candidates to such office in accordance with this Law, or shall request that the vacancy be announced again.

(6) If the competent legislative body fails to make a decision on appointment within the period referred to under Paragraph (3) hereof, the Council will decide on appointment of an acting chief prosecutor, whose term shall last until a final decision on appointment is made.

(7) The decision of the competent legislative body on the appointment of the chief prosecutor is final and the competent legislative body shall submit the decision to the Council.



### **Article 53**

#### **(Selection of Deputy Chief Prosecutors)**

- (1) The chief prosecutor shall select deputy chief prosecutors from among the appointed prosecutors in the prosecutor's office who satisfy the requirements stipulated in this Law.
- (2) The chief prosecutor shall make a written reasoned decision on the selection of deputy chief prosecutors.
- (3) The chief prosecutor shall notify the decision referred to under Paragraph (2) hereof to the Council, the competent legislative body which appointed the chief prosecutor, and the appropriate Ministry of Justice.
- (4) The chief prosecutor shall post the decision in the premises of the prosecutor's office in a place accessible to the public and the decision shall enter into force on the day following such posting.
- (5) In addition to the decision referred to under Paragraph (2) hereof, the chief prosecutor shall submit to the Prosecutorial Subcouncil a written consent of the prosecutor to the taking of office of a deputy prosecutor.
- (6) The term of office of the deputy chief prosecutor is linked to the term of the chief prosecutor, and may cease before its expiry in cases defined under this Law.

### **Article 54**

#### **(Publication of the Decision on Appointment)**

- (1) The Council shall notify its decision on appointment to all the candidates, the appropriate court or prosecutor's office, as well as the appropriate Ministry of Justice.
- (2) The Council shall post the decision on appointment in its premises in a place accessible to the public and the decision shall enter into force on the day following such posting in the Council premises.
- (3) The decision on appointment shall be published in the "Official Gazette of BiH", and for a chief prosecutor in the official gazette at the level for which the appointment was made.

### **Article 55**

#### **(Taking of Office)**

- (1) A person appointed to the office of a judge or a prosecutor shall take office on a date determined by the Council.
- (2) If, for reasons that are not justified, the appointed person fails to take office within the period determined by the Council, the Council shall reverse the decision on appointment. The Council shall appoint another person from the group of applicants at the recommendation of the competent Subcouncil, or shall announce the vacancy again.
- (3) If, for reasons that are not justified, the appointed deputy chief prosecutor fails to take office within the period determined by the chief prosecutor, the chief prosecutor shall reverse the decision on appointment and shall appoint another person from among the elected prosecutors.
- (4) If, for reasons that are not justified, the appointed chief prosecutor fails to take office within the period determined by the Council, the Council shall notify the legislative body which made the decision on appointment, and the legislative body shall appoint another person from the list of successful candidates, or shall decide to announce the vacancy again.

**Article 56****(Oath of Office)**

(1) Before taking the office, judges and prosecutors shall take an oath of office as follows: "I hereby declare that I shall perform my duties in accordance with the Constitution and law; that I shall make decisions according to my best knowledge, conscientiously, responsibly and impartially in order to uphold the rule of law; and that I shall protect the freedoms and rights of individuals guaranteed by the Constitution of Bosnia and Herzegovina."

(2) A person appointed to the office of a judge or a prosecutor shall take the oath of office orally and by signing the oath before the President of the Council or a member of the competent Subcouncil authorized by the President of the Council, while a person appointed to the office of a chief prosecutor shall take the oath of office in the manner defined by the legislative body which appointed such person.

**Article 57****(Appointment of Reserve Judges)**

(1) The Council may, at the proposal of the Judicial Subcouncil, temporarily appoint persons to serve as reserve judges, in order to provide assistance to courts in reducing the backlog, or if due to a prolonged absence of a judge an additional number of judges is required at the court. The Council may, at the proposal of the Judicial Subcouncil, appoint reserve judges at the request of the president of the court, provided that the request is accompanied by evidence indicating the need for appointment of a reserve judge, as well as available resources.

(2) Before taking office, the reserve judge shall take an oath of office in accordance with Article 56 hereof. The President of the Council may delegate this task to the president of the court in which the reserve judge is taking office.

(3) The term of office of a reserve judge may be a minimum of three and a maximum of six years.

(4) At the proposal of the Judicial Subcouncil, the Council may decide to renew the term of a reserve judge provided that the conditions referred to under Paragraph (1) hereof have been satisfied, and taking into account the performance of such reserve judge.

(5) If, after the expiry of six years, the court needs the reserve judge, the Council will review the need to increase the number of judges, and will make a final decision on this matter.

**Article 58****(Appointment of Lay Judges)**

(1) At the proposal of the Judicial Subcouncil, the Council shall appoint lay judges to a court, after it receives a list of nominated candidates from the president of the court.

(2) Lay judges shall be entitled to compensation of reasonable expenses incurred in the course of their duties as well as a remuneration. The requirements for performing the duty of lay judges, and the amount of compensation and remuneration, shall be determined by the competent Ministry of Justice after consultations with the Council.

(3) Before taking office, a lay judge shall take an oath of office taken by judges and prosecutors in accordance with this law. The President of the Council may delegate this task to the president of the court in which the lay judge is taking office.

**Article 59****(Assignment to Another Court with the Consent of the Judge)**

(1) Judges including reserve judges may, with their consent, be assigned to serve as judges to another court of the same or lower level:

- a) for a period of not more than six months, if the court to which the judge is temporarily assigned to does not have enough judges;
- b) for a period of not more than 12 months, if the court at which the judge regularly serves as a judge has had a temporary reduction in workload;
- c) for a period of not more than 12 months, in order to assist in reducing the backlog in the court to which the judge is temporarily assigned to;
- d) for an indefinite period, if the judge is assigned to another court in order to work on a particular case or cases, because a judge in that court was disqualified and it was necessary to make a temporary assignment of a judge from another court to work on this case or cases;
- e) for an indefinite period, if a judge in the court to which the assignment is being made is absent for a long period.

(2) A judge cannot be temporarily assigned to another court for more than two consecutive times, unless in the meantime such judge has served as a judge in the court in which he was appointed for a period of at least 12 months.

#### **Article 60**

##### **(Assignment without the Consent of the Judge)**

(1) A judge may be temporarily assigned to another court without his/her consent only if the requirements defined in this Article have been satisfied.

(2) A judge may be assigned to another court without his/her consent to serve as a judge for a period of not longer than three months in the event that such assignment is made to take part in an individual case in the court to which the assignment is made, or in the event that none of the other judges has consented to such assignment.

(3) A judge may not be temporarily assigned to another court without his/her consent if he/she has been temporarily assigned to another court during the previous 12 months.

#### **Article 61**

##### **(Procedure for Temporary Assignment)**

At a proposal of the Judicial Subcouncil, the Council shall decide on a request for temporary assignment to another court at the request of the president of a court who wants a judge to be temporarily assigned to his/her court. The Judicial Subcouncil shall consult with the president of the court which filed the request, with the judge considered for temporary assignment and with the president of the court in which the judge regularly serves as a judge.

#### **Article 62**

##### **(Temporary Assignment of Prosecutors)**

Temporary assignment of prosecutors shall be arranged in accordance with provisions of the law on prosecutor's offices which applies to the respective prosecutor's office.

#### **Article 63**

##### **(Assessment of Performance)**

(1) Judges and prosecutors shall be assessed at least once every two years based on their performance, in accordance with criteria defined by the Council.

(2) The decision assessing the performance of a judge shall be made by the president of the court, while the decision assessing the performance of the president of the court shall be made by the president of the directly superior court.

(3) The performance of the President of the High Court of Bosnia and Herzegovina, the President of the Court of Bosnia and Herzegovina, and the performance of the President of the Supreme Court of the Federation of Bosnia and Herzegovina, the Supreme Court of the

Republika Srpska and the Appellate Court of Brčko District of Bosnia and Herzegovina shall be assessed by the Judicial Subcouncil.

(4) The decision assessing the performance of prosecutors, including the deputy chief prosecutor, shall be made by the chief prosecutor, while the performance of chief cantonal and district prosecutors shall be assessed by the chief entity prosecutor.

(5) The performance of the Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Chief Prosecutors of the Federal Prosecutor's Office of the Federation of Bosnia and Herzegovina, the Republic Prosecutor's Office of the Republika Srpska and the Prosecutor's Office of Brčko District of Bosnia and Herzegovina shall be assessed by the Prosecutorial Subcouncil.

(6) The assessment decision may be appealed by the judge or the prosecutor to the Judicial or the Prosecutorial Council. The decision of the Judicial and Prosecutorial Subcouncils on an appeal is final and no remedies shall be available.

(7) The assessment decision referred to under Paragraphs (3) and (5) hereof may be appealed to the Council. The decision of the Council on an appeal is final and no remedies shall be available.

(8) The assessment of performance of holders of justice offices shall be taken into consideration when making appointments to senior positions, when renewing terms of office of reserve judges, and when establishing disciplinary responsibility.

(9) The term of office of a president of the court who was given one of the lowest two performance rates in accordance with criteria defined by the Council shall cease and he/she shall be transferred from the office of the president of the court to serve as a judge.

(10) The assessment of a chief prosecutor who was, in accordance with criteria defined by the Council, given one of the lowest two performance rates shall be submitted by the Council to the legislative body which appointed the chief prosecutor for their decision.

(11) At the proposal of the competent Subcouncils, the Council shall adopt the Criteria for Assessing the Performance of Holders of Justice Offices in Bosnia and Herzegovina in order to define all matters which are not defined by this Law in connection with the assessment, including the assessment process and decisions on assessment appeals.

## **CHAPTER VI - DISCIPLINARY RESPONSIBILITY OF JUDGES AND PROSECUTORS**

### **Article 64**

#### **(General Provisions on Disciplinary Responsibility for Disciplinary Offenses)**

Judges, prosecutors, reserve judges or lay judges, including presidents of courts, chief prosecutors and their deputies, shall be disciplinarily responsible for statutory disciplinary offenses committed intentionally or negligently.

## **Article 65**

### **(Competence for Conducting Disciplinary Proceedings)**

(1) Through its disciplinary bodies, the Council shall exercise its powers in disciplinary proceedings.

(2) Disciplinary proceedings shall be conducted by:

- a) the first instance disciplinary commission;
- b) the second instance disciplinary commission;

(3) The first and the second instance disciplinary commissions are independent and have competence for resolving disciplinary matters. A commission member who took part in resolving a case on the first instance commission cannot participate in the same case on the second instance commission.

(4) The first instance disciplinary commission shall be composed of three members, one of which shall be a member of the competent Subcouncil, while the other two shall be appointed from a list of judges or prosecutors who may be appointed as members of disciplinary commissions, which shall be drawn up by the competent Subcouncil.

(5) The second instance disciplinary commission shall be composed of three members, one of which shall be a member of the competent Subcouncil, while the other two shall be appointed from a list of judges or prosecutors who may be appointed as members of disciplinary commissions, which shall be drawn up by the competent Subcouncil.

(6) In disciplinary proceedings against judges, members of the commission in both the first and the second instance shall be judges, and in disciplinary proceedings against prosecutors, members of the commission in both the first and the second instance shall be prosecutors.

(7) In disciplinary proceedings against a chief prosecutor, one member in the first instance disciplinary commission and one member in the second instance disciplinary commission shall be a representative of the legislative body which appointed the chief prosecutor; one member shall be from the Prosecutorial Subcouncil; and one member shall be appointed from the list of prosecutors who may be appointed as members of disciplinary commissions, which shall be drawn up by the Prosecutorial Subcouncil.

(8) At least one member of the disciplinary commission, in both the first and the second instance, shall be a judge of the same or the higher level as that of the judge against whom the proceedings are being conducted. At least one member of the disciplinary commission, in both the first and the second instance, shall be a prosecutor of the same or the higher level as that of the prosecutor against whom the proceedings are being conducted.

(9) Members of disciplinary commissions who are not members of the Council shall be entitled to remuneration in accordance with the Decision on assessing remuneration for members of management boards, supervisory and other boards, and other working bodies under the remit of Bosnia and Herzegovina institutions.

(10) A member of the disciplinary commission in both the first and the second instances cannot be a judge or a prosecutor from the same court or prosecutor's office as the judge or prosecutor against whom the proceedings are being conducted.

(11) Members of the Council elected in accordance with Article 4, Paragraph (4) hereof cannot be elected as members of a disciplinary commission.

**Article 66****(Disciplinary Offenses of Judges)**

Disciplinary offenses of judges are:

- a) violation of the principle of impartiality;
- b) acting partially and with prejudice while performing official duties on account of race, color, sex, religion, ethnic background, national origin, sexual orientation or social and economic status of the party;
- c) patent violation of the obligation of proper treatment of parties to the proceedings, their legal representatives, witnesses or others;
- d) disclosing confidential information arising from the performance of duties of a judge;
- e) accepting gifts or remuneration intended to improperly influence decisions or actions of a judge, including when such gifts or remuneration only create the appearance of improper influence;
- f) using the office of a judge in order to obtain unjustified benefits for oneself or others;
- g) failure to seek one's own disqualification from proceedings in cases when there is a conflict of interest;
- h) negligence or carelessness in the performance of official duties;
- i) making decisions which are in patent violation of the law or in persistent and unjustified violation of the rules of procedure;
- j) unjustified delays in making decisions or other actions in connection with the performance of the duties of a judge or any other repeated disregard of the duties of a judge;
- k) engaging in inappropriate contact with a party to the proceedings or his/her representative;
- l) enabling persons who are not authorized by law to serve as judges;
- m) interfering with actions of judges or prosecutors with the intent to obstruct or demean their activities; 14. conviction for a criminal offense which makes one unfit for the duties of a judge;
- n) making any comments while the case is deliberated in court, which may be reasonably expected to interfere with or harm the equitable proceedings or trial, or failing to take appropriate steps to ensure that court employees subordinated to him/her also refrain from making comments;
- o) engaging in activities that are in conflict with the duties of a judge;
- p) failure, for no good cause, to comply with decisions, orders or requests of the Council;
- r) failure to respond to an inquiry in connection with a disciplinary matter, except if such failure occurred for legitimate reasons;
- s) deliberately providing false, misleading or insufficient information in connection with job applications, disciplinary matters, promotion and career advancement issues, or any other issues that are the responsibility of the Council;
- t) failure to satisfy the obligation to take part in mandatory professional training or other statutory obligations;
- u) failure to comply with a decision on temporary assignment to another court;
- v) conduct in the court and out of the court, which harms the reputation of the judicial office, or any other conduct which constitutes a serious violation of official duties or which compromises public confidence in the impartiality and credibility of the judiciary.

**Article 67****(Disciplinary Offenses of Prosecutors)**

Disciplinary offenses of prosecutors are:

- a) violation of the principle of impartiality;
- b) acting partially and with prejudice while performing official duties on account of race, color, sex, religion, ethnic background, national origin, sexual orientation or social and economic status of the party;
- c) patent violation of the obligation of proper treatment of a judge in the proceedings, parties, their legal representatives, witnesses or others;
- d) disclosing confidential information arising from the performance of duties of a prosecutor;

- e) accepting gifts or remuneration intended to improperly influence decisions and actions of a prosecutor, including when such gifts or remuneration only create the appearance of improper influence;
- f) using the office of a prosecutor in order to obtain unjustified benefits for oneself or others;
- g) failure to seek one's own disqualification from proceedings in cases when there is a conflict of interest;
- h) negligence or carelessness in the performance of official duties;
- i) unjustified delays in conducting actions in connection with the performance of the duties of a prosecutor or any other repeated disregard of the duties of a prosecutor;
- j) engaging in inappropriate contact with the judge or a party to the proceedings;
- k) enabling persons who are not authorized by law to serve as prosecutors;
- l) interfering with actions of judges or prosecutors with the intent to obstruct or demean their activities;
- m) conviction for a criminal offense which makes one unfit for the duties of a prosecutor;
- n) making any comments while the case is deliberated in court, which may be reasonably expected to interfere with or harm the equitable proceedings or trial, or failing to take appropriate steps to ensure that prosecutor's office employees subordinated to him/her also refrain from making comments;
- o) failure to comply with instructions of a superior prosecutor, unless such compliance would constitute a violation of law or the provisions of this Article;
- p) engaging in activities that are in conflict with the duties of a prosecutor;
- r) failure, for no good cause, to comply with decisions, orders or requests of the Council;
- s) failure to respond to an inquiry in connection with a disciplinary matter, except if such failure occurred for legitimate reasons;
- t) deliberately providing false, misleading or insufficient information in connection with job applications, disciplinary matters, promotion and career advancement issues, or any other issues that are the responsibility of the Council;
- u) failure to satisfy the obligation to take part in mandatory professional training or other statutory obligations;
- v) failure to comply with a decision on temporary assignment to another prosecutor's office;
- z) conduct in the court or prosecutor's office and out of the court or prosecutor's office, which harms the reputation of the prosecutorial office, or any other conduct which constitutes a serious violation of official duties or which compromises public confidence in the impartiality and credibility of the prosecution.

(2) Upon receiving a report or information of an offense referred to under Paragraph (1) hereof committed by a chief prosecutor, the Council shall inform the competent legislative body which appointed such chief prosecutor.

(3) Upon receiving a report or information of an offense referred to under Paragraph (1) hereof committed by a deputy chief prosecutor, the Council shall inform the chief prosecutor who selected the deputy.

## **Article 68**

### **(Types of Disciplinary Measures)**

(1) One or more of the following disciplinary measures may be imposed for a disciplinary offense:

- a) written reprimand which is not made public;
- b) public reprimand;
- c) reduction of wage by up to 50 %, for a period of up to one year;
- d) temporary or permanent assignment to another court or prosecutor's office;
- e) transfer from the position of a president of the court to the position of a judge, or from the position of a chief prosecutor or deputy chief prosecutor to the position of a prosecutor;
- f) dismissal.

(3) All rights and privileges arising from employment as a judge, president of the court, deputy chief prosecutor or prosecutor who was dismissed on the basis of disciplinary proceedings, shall cease with the dismissal. A judge or prosecutor who has been dismissed in accordance with this Article shall not be allowed to continue to serve as a judge or prosecutor.

(4) A decision on the imposition of disciplinary measures against a chief prosecutor shall be submitted by the Council to the competent legislative body which appointed such chief prosecutor.

(5) A decision on the imposition of disciplinary measures against a deputy chief prosecutor shall be submitted by the Council to the chief prosecutor who selected the deputy.

(5) All rights and privileges arising from employment as a chief prosecutor who is dismissed by the competent legislative body which appointed him/her, on a proposal and based on completed disciplinary proceedings, shall cease with his/her dismissal by such legislative body. The chief prosecutor who has been dismissed in accordance with this Article shall not be allowed to continue to serve as a prosecutor.

#### **Article 69**

##### **(Principles for Imposing Measures)**

The imposing of disciplinary measures shall be guided by the principle of proportionality. Before imposing disciplinary measures for disciplinary offenses, the disciplinary commissions shall consider the following facts:

- a) the number and seriousness of the disciplinary offenses and their consequences;
- b) the degree of responsibility;
- c) the circumstances under which the disciplinary offense was committed;
- d) previous work and conduct of the offender; and
- e) any other circumstances which may affect the decision on the severity and type of disciplinary measures, including the degree of remorse and/or cooperation by the judge or prosecutor displayed during disciplinary proceedings.

(2) The disciplinary measure of dismissal shall be imposed only in cases in which a serious disciplinary offense has been established, and the severity of the offense clearly shows that the offender is unfit or unworthy of continuing to perform his/her duty.

#### **Article 70**

##### **(Conducting Disciplinary Proceedings and Appeal)**

(1) The conduct of disciplinary proceedings shall be defined by the Regulation on Disciplinary Responsibility of Holders of Justice Offices (hereinafter: the Regulation on Disciplinary Responsibility), in accordance with this Law.

(2) In all matters which relate to disciplinary proceedings and which are not covered by this Law and the Regulation on Disciplinary Responsibility, provisions of the Criminal Procedure Code of Bosnia and Herzegovina shall apply.

(3) The first instance commission shall in the first instance establish disciplinary responsibility and impose measures.

(4) The second instance commission shall decide on appeals against decisions of the first instance disciplinary commission. In the appellate procedure, the second instance disciplinary commission may confirm, reverse or modify the decision or disciplinary measures imposed by the first instance disciplinary commission.



(5) The decision of the second instance disciplinary commission imposing the measure of dismissal may be appealed to the Council. Members of the first instance and second instance disciplinary commissions are not entitled to take part in the decision on appeal.

(6) The execution of decisions made in disciplinary proceedings and of imposed disciplinary measures shall be defined in the Regulation on Disciplinary Responsibility.

#### **Article 71**

##### **(Appointment and Term of Office of Members of the Disciplinary Commissions)**

(1) Each court and prosecutor's office, at a general meeting or a collegium meeting, shall nominate a judge or a prosecutor who may be appointed as a member of a disciplinary commission.

(2) The Judicial and the Prosecutorial Subcouncils shall determine a list of judges and prosecutors who may be appointed as members of the disciplinary commissions, on the basis of nominations submitted by courts and prosecutors' offices.

(3) From the list referred to under Paragraph (2) hereof, the Council shall appoint, for a term of four years, three first instance and two second instance disciplinary commissions to conduct disciplinary proceedings against judges, and three first instance and two second instance disciplinary commissions to conduct disciplinary proceedings against deputy chief prosecutors and prosecutors.

(4) Assignment of disciplinary cases to the disciplinary commissions shall be done in the order pre-selected by a Council decision. The Council may introduce an automated system for assigning cases to the disciplinary commissions.

(5) The Prosecutorial Subcouncil shall, in accordance with Paragraph (3) hereof, appoint two members each to one first instance and one second instance disciplinary commission to conduct disciplinary proceedings against chief prosecutors. In disciplinary proceedings conducted against a chief prosecutor, the Council shall request that the legislative body which appointed the chief prosecutor appoints one member to each of the disciplinary commissions.

#### **Article 72**

##### **(Disciplinary Counsel)**

(1) The Office of the Disciplinary Counsel, an Office within the Council, shall act as prosecutor in connection with allegations concerning violations of the duty of a judge or prosecutor, in accordance with this Law and the Regulation on Disciplinary Responsibility.

(2) The Office of the Disciplinary Counsel shall act on complaints or on its own initiative and shall be responsible for assessing the legal validity of complaints, for investigating allegations of violation of duty made against judges or prosecutors, and for launching disciplinary proceedings and representing cases of disciplinary offenses before the disciplinary commissions of the Council.

(3) The Council shall appoint as the Chief Disciplinary Counsel of the Office of the Disciplinary Counsel a person who has at least five years of experience in legal matters after passing the bar examination, and a person of high moral character and a legal expert. Assistance in the work of the disciplinary counsel shall be provided by prosecutors and investigators in his/her office. The Chief Disciplinary Counsel may authorize prosecutors from his/her office to represent cases before the Council and its disciplinary commissions.

(4) In the event of a conflict of interest or in cases in which the chief prosecutor would have to disqualify him/herself from investigation or proceedings in a disciplinary matter before the Council or its disciplinary commissions, the Council shall hire a legal professional outside the Office of the Disciplinary Counsel to conduct an investigation and act on the disciplinary matter.

**Article 73****(Keeping Records and Reporting to the Council)**

(1) The Office of the Disciplinary Counsel shall keep records of complainees filed and of actions taken in acting on complaints, investigations and disciplinary cases.

(2) The Council shall have access to the records. The Office of the Disciplinary Counsel shall submit to the Council, at its request, copies of complaints, investigation reports or other relevant documents.

(3) The Office of the Disciplinary Counsel shall report periodically in writing to the Council on its activities.

(4) The Office of the Disciplinary Counsel shall submit to the legislative body which appointed a chief prosecutor copies of complaints, investigation reports or other relevant documents, and shall report periodically in writing on the activities taken.

(5) The Office of the Disciplinary Counsel shall submit to the chief prosecutor who selected a deputy chief prosecutor copies of complaints, investigation reports or other relevant documents, and shall report periodically in writing on the activities taken.

**Article 74****(Examining Allegations)**

(1) The Office of the Disciplinary Counsel may initiate examination of allegations of violation of duty or incapacity of a judge or a prosecutor to perform the duty.

(2) All courts, prosecutor's offices and state authorities, as well as judges, prosecutors, reserve judges, lay judges and employees of courts or prosecutor's offices shall comply with requests of the Office of the Disciplinary Counsel with respect to providing information, documents or any other material in connection with examining allegations.

(3) The Office of the Disciplinary Counsel may submit a request to a disciplinary commission to seek that persons or bodies that are not covered by Paragraph (2) hereof be issued an order to provide information, documents or any other material in connection with examining allegations.

(4) If a judge or a prosecutor refuses to provide information, documents or any other material in compliance with a request of the Office of the Disciplinary Counsel, the Office may ask a disciplinary commission to issue an order to compel the judge or the prosecutor to provide the requested information, documents or any other material.

**Article 75****(Launching Disciplinary Proceedings and Filing Requests)**

(1) The Office of the Disciplinary Counsel shall launch disciplinary proceedings before the first instance disciplinary commission by filing a request for disciplinary action, if it considers that a judge or a prosecutor has violated his/her duty.

(2) A request for disciplinary action shall include alleged disciplinary offenses and must meet the requirements of the Regulation on Disciplinary Responsibility.

(3) If a decision is made not to launch disciplinary proceedings, the party who filed the request may submit a complaint to the Office of the Disciplinary Counsel, which shall be further defined in the Regulation on Disciplinary Responsibility.

**Article 76****(Rights of Parties during Disciplinary Proceedings)**

Disciplinary proceedings shall be conducted in a fair and transparent manner. During disciplinary proceedings, the judge or the prosecutor who is subject to the proceedings shall

enjoy the following rights which must be guaranteed by the Regulation on Disciplinary Proceedings, adopted by the Council:

- (a) the right to be properly informed of the alleged disciplinary offense and of evidence of these allegations, as well as the right to reply in writing or orally for the record;
- (b) the right to a fair and public hearing within a reasonable period before an independent and impartial commission established by law. The media and the public may be excluded from all or part of the hearing in the interest of morals, public order or national security in a democratic society, when this is in the interest of minors or for the protection of privacy of the parties, or when in the opinion of the commission this is necessary under special circumstances, where a public hearing would prejudice the interests of justice;
- (c) the right not to answer any questions that might incriminate him/her and the right to attend every hearing, and to defend him/herself against charges with the aid of a legal counsel of his/her choice;
- (d) the right to have any decisions made public and/or otherwise made available to the public;
- (e) the right to file an appeal against a negative decision rendered against him/her.

#### **Article 77**

##### **(Agreement on Admission of Responsibility)**

- (1) The Office of the Disciplinary Counsel and the person against whom a request for disciplinary action was filed may make, before the proceedings are finally concluded, a voluntary agreement on disciplinary violations listed in the request for disciplinary action, or may conclude an agreement on admission of responsibility.
- (2) The content of and actions taken under such agreement shall be defined in the Regulation on Disciplinary Responsibility.
- (3) A decision to reject such agreement may not be appealed.

#### **Article 78**

##### **(Confidentiality)**

- (1) All proceedings or actions that relate to allegations of violation of duty or incapacity to perform duty, which had been taken before the Office of the Disciplinary Counsel has filed a request for disciplinary action, shall be confidential, unless the judge or the prosecutor who is the subject of such allegations waives the right to confidentiality in writing.
- (2) Information on a decision of the Office of the Disciplinary Counsel not to launch disciplinary proceedings in a particular case may be published with the consent of the judge or the prosecutor who was the subject of such case.
- (3) If the public becomes aware of an investigation into possible violation of duty or incapacity to perform duty before a request for disciplinary action is filed, the Office of the Disciplinary Counsel may issue a statement to confirm that an investigation is underway, to explain procedural aspects of the disciplinary proceedings, to explain the rights of judges and prosecutors to a fair hearing with the presumption of innocence, or to state that the judge or the prosecutor denies allegations, or to correct erroneous information that has been available to the public.

#### **Article 79**

##### **(Secrecy and Immunity)**

Any complaint or letter received in the Office of the Disciplinary Counsel stating violation of duty by a judge or a prosecutor, as well as any information gathered during the investigation shall be secret, except for the Council at its request, and for the legislative body which appointed the chief prosecutor.

**Article 80****(Statute of Limitations for Launching Disciplinary Proceedings)**

Disciplinary proceedings may not be launched against a judge or a prosecutor after more than five (5) years have passed since the date on which the alleged offense was committed, or, in the case of criminal matters, after more than one (1) year has passed since the date a final decision was rendered in criminal proceedings.

**Article 81****(Statute of Limitations for Conducting Disciplinary Proceedings)**

The procedure for establishing disciplinary responsibility must be completed within one year of the date of the request for disciplinary action being filed with the disciplinary committee.

**Article 82****(Keeping Records and Publishing Final Disciplinary Decisions)**

(1) The Council shall keep records of all disciplinary measures imposed.

(2) The disciplinary measure of dismissal shall be published in the "Official Gazette of BiH", and for a chief prosecutor also in the official gazette at the level for which the appointment was made.

**CHAPTER VII - SUSPENSION FROM DUTY OF JUDGES OR PROSECUTORS UNTIL CRIMINAL PROCEEDINGS, DISCIPLINARY PROCEEDINGS OR DISMISSAL PROCEEDINGS ARE COMPLETED****Article 83****(Mandatory Suspension from Duty)**

(1) A judge or a prosecutor who has been detained shall be suspended from the duties of a judge or a prosecutor. Such suspension shall last until the person is held detained.

(2) The Council may extend the suspension from duty as defined under Article 84 hereof if the judge or the prosecutor has been released from detention.

**Article 84****(Discretionary Suspension from Duty)**

A judge or a prosecutor may be suspended from duty:

- a) if an investigation has been launched in criminal proceedings against the judge or the prosecutor;
- b) if a competent prosecutor has indicted his/her for a criminal offense;
- c) if a non-final decision has been rendered against him/her imposing the measure of dismissal;
- d) if disciplinary proceedings have been launched for a disciplinary offense, and the Council finds that disciplinary responsibility cannot be properly established without the judge or the prosecutor being suspended from duty during the proceedings; or
- e) if the performance of official duties is impaired due to his/her mental, emotional, or physical condition.
- f) if disciplinary proceedings have been launched against the judge or the prosecutor for a disciplinary offense, the nature and gravity of which is such that his/her performance of the justice function until the completion of disciplinary proceedings would severely affect the reputation of the justice system.

**Article 85****(Launching the Procedure for Suspension from Duty)**

(1) The first instance disciplinary commission of the Council may suspend a judge or prosecutor *ex officio* at the request of the Office of the Disciplinary Counsel or at the request of the legislative body which appointed the chief prosecutor or at the request of the president of the

court or the chief prosecutor who is the superior of the judge or the prosecutor.

(2) Upon becoming aware of the circumstances referred to under Articles 83 and 84 hereof, the president of the court or the chief prosecutor shall immediately forward such information to the Council.

(3) If the information referred to under Paragraph (2) hereof concerns a chief prosecutor, the Council shall forward such information without delay to the legislative body which appointed the chief prosecutor.

#### **Article 86**

##### **(Decisions on Suspension from Duty and Appeals)**

(1) The decision on suspension from duty in accordance with provisions of Articles 83 and 84 hereof shall be made by the first instance disciplinary commission of the Council.

(2) An appeal against the decision on suspension from duty shall be submitted to the second instance disciplinary commission of the Council. An appeal shall not stay the execution of the decision referred to under Paragraph (1) hereof.

(3) The decision of the second instance disciplinary commission may be challenged by filing a complaint with the Court of Bosnia and Herzegovina within 15 days of receipt of the decision.

(4) The suspended judge or prosecutor shall be entitled to receive 70% of the salary for the duration of suspension.

(5) If the disciplinary proceedings do not establish responsibility or the disciplinary proceedings result in a disciplinary measure imposed as referred to under Article 68, Paragraph 1, Items a) – c) hereof, the judge or the prosecutor shall be entitled to receive the difference of unpaid salaries and other benefits for the duration of the effects of the decision on suspension from duty.

(6) A judge or a prosecutor against whom an investigation has been suspended or who has been finally acquitted in criminal proceedings, or against whom criminal charges have been dropped, and who was suspended from duty due to these circumstances, shall be entitled to receive the difference of unpaid salaries and other benefits for the duration of the effects of the decision on suspension from duty.

#### **Article 87**

##### **(Limitation of the Duration of Suspension from Duty)**

(1) A judge or a prosecutor may be suspended from duty not longer than until the end of disciplinary proceedings that served as a basis to make the decision on suspension.

(2) The first instance disciplinary commission may, at its own discretion, reconsider the decision on suspension of a judge or a prosecutor which was made pursuant to Article 84 hereof and modify, reverse or confirm such decision.

#### **Article 88**

##### **(Appointing a Deputy to Carry out the Duty during Suspension)**

(1) In the event of a president of the court being suspended, the Council shall act on a recommendation of the Judicial Subcouncil and appoint a judge of that court who shall serve as the president of the court for the duration of suspension.

(2) In the event of a chief prosecutor being suspended, the Council shall act on a recommendation of the Prosecutorial Subcouncil and appoint a deputy chief prosecutor or one of the prosecutors of the prosecutor's office in which no deputy chief prosecutor has been

appointed, to serve as the chief prosecutor for the duration of suspension, and the information on this shall be immediately submitted to the legislative body which appointed the chief prosecutor.

## **CHAPTER VIII - CONFLICT OF DUTIES OF JUDGES AND PROSECUTORS WITH OTHER DUTIES, AND IMMUNITY**

### **Article 89**

#### **(General Prohibition of Conflicting Duties)**

(1) A judge or a prosecutor shall not perform any duty that is in conflict with his/her duty, or any duty which may be deemed to interfere with proper and impartial performance of his/her duty as a judge or a prosecutor, or which may have a negative impact on the independence or reputation of the judicial or prosecutorial duties, or which may cast doubt on his/her ability to act impartially, or which may harm the reputation of the judicial or prosecutorial duties.

(2) A judge or a prosecutor shall not be a member of or perform any duty in political parties, or associations or foundations associated with political parties, and shall refrain from taking part in any activities of political parties of a public nature.

(3) A judge or a prosecutor shall not be a member of any organization which discriminates on the basis of race, color, sex, sexual orientation, religion or ethnic background or national origin, nor may he/she agree to use any facilities of such organizations, and must withdraw from such organizations immediately upon becoming aware of their actions as such.

### **Article 90**

#### **(Prohibition of Public Duty, Legal Duty and Other Duties)**

(1) A judge or a prosecutor shall not perform any other public duty that is in conflict with the performance of judicial or prosecutorial duties, unless otherwise provided by law.

(2) A judge or a prosecutor may not be a lawyer, notary, or perform any other tasks which are paid for and which are in conflict with the performance of the duties of a judge or a prosecutor, unless otherwise provided by law. Exceptionally, a judge or a prosecutor may be involved in academic, teaching or similar activities to educate the public and may be remunerated for them.

(3) A judge or a prosecutor shall not be a member of any management or supervisory board of a public or private company or any other legal entity.

(4) A judge or a prosecutor shall not perform any other duties that may interfere with the performance of the duties of a judge or a prosecutor.

### **Article 91**

#### **(Reference to the Council)**

If the president of a court or a chief prosecutor believe that a judge or a prosecutor is performing activities that are prohibited under this Law, the judge or the prosecutor shall be notified of this, and the president of the court or the chief prosecutor shall refer the matter to the Council, which shall make a binding decision thereon. The procedure shall be defined in the Council Rules of Procedure.

### **Article 92**

#### **(Opinion on Activities of a Judge or a Prosecutor)**

A judge or a prosecutor shall seek opinion of the Council on whether the activities he/she intends to undertake are in conflict with his/her duties and provisions of this Law. Such request shall include details of the activities in question. The Council shall respond to such request in writing within a reasonable period after receiving such request. The Council's response delivered in accordance with provisions of this Paragraph shall be binding.

**Article 93**

**(Reporting on Activities to the High Judicial and Prosecutorial Council)**

Judges and prosecutors shall submit to the Council an annual financial report which shall state, among other things, the activities they have carried out outside their duty of a judge or a prosecutor, including any amounts they charged. The financial report shall include information on the spouse and children who live in the same household and who hold shares of stock or participate in the management of private or public companies and associations, including political parties. The Council shall provide forms for financial reports and may request additional information.

**Article 94**

**(Immunity of Judges and Prosecutors)**

(1) A judge or a prosecutor cannot be prosecuted, arrested or detained, or held liable in civil proceedings for an opinion given or a decision made as part of his/her official duty.

(2) The immunity shall not prevent or delay an investigation in criminal or civil proceedings that are underway in accordance with law on some matter against a judge or a prosecutor.

**CHAPTER IX - CESSATION OF DUTY**

**Article 95**

**(Cessation of Term of Office)**

(1) The term of office of a judge or a prosecutor shall cease:

- a) upon reaching the mandatory retirement age;
- b) in the event of resignation;
- c) in the event of appointment to another court or prosecutor's office;
- d) due to a permanent loss of capacity to perform the duty of a judge or a prosecutor;
- e) if he/she was sentenced to prison by a final verdict;
- f) if he/she is dismissed by the Council as a result of disciplinary action.

(2) The term of office of a president of the court, chief prosecutor or deputy chief prosecutor shall cease:

- a) in the event of termination of office as a judge or a prosecutor;
- b) in the event of appointment to another court or prosecutor's office;
- c) upon the expiry of the period for which he/she was appointed;
- d) in the event of resignation as president of the court, chief prosecutor or deputy prosecutor;
- e) in the event of a transfer from the position of a president of the court to the position of a judge, or from the position of a chief prosecutor or deputy chief prosecutor to the position of a prosecutor, as a result of disciplinary action;
- f) in the event of a transfer from the position of a president of the court to the position of a judge, or from the position of a chief prosecutor or deputy chief prosecutor to the position of a prosecutor, as a result of a negative assessment of his/her performance;
- g) upon taking the office as a Council member in full-time employment.

(3) When a judge or a prosecutor reaches the mandatory retirement age, his/her term shall automatically cease. A judge or a prosecutor may request that his/her term ceases in order to retire before he/she reaches the age defined by this Law provided he/she satisfies the requirements to be entitled to old-age pension in accordance with regulations on pension and disability insurance.

(4) A resignation by a judge or a prosecutor shall be submitted in writing to the Council. The decision to terminate the term of office of a judge or a prosecutor shall be made by the Council,

on a recommendation of the competent Subcouncil, within 30 days of receipt of the resignation. The term of office shall cease on the date of the decision or the date established by the Judicial or Prosecutorial Subcouncil on a proposal of the judge or the prosecutor who resigned. If the resignation is not decided within 30 days, the term of office shall be deemed terminated upon the expiry of 30 days from the date of resignation.

(5) A resignation by a deputy chief prosecutor shall be submitted in writing to the chief prosecutor, while the chief prosecutor shall submit his/her resignation to the competent legislative body which appointed him/her. The term of office shall cease on the date of the decision, but not later than within 30 days of receipt of the resignation. If the resignation is not decided within 30 days, the term of office shall be deemed terminated upon the expiry of 30 days from the date of resignation.

(6) The term of office of a judge or a prosecutor to serve in the court or the prosecutor's office to which he/she was previously appointed shall cease upon appointment to a justice office in another court or prosecutor's office, as of the date of taking office, and the period for taking the office cannot be longer than 60 days from appointment.

(7) The decision to terminate the term of office in accordance with Paragraph (1) Item d) hereof shall be made by the Council, at the recommendation of the competent Subcouncil, on the basis of a final decision of a competent authority establishing the loss of capacity to perform duty. The decision to terminate the term of office in accordance with Paragraph (1) Item d) hereof on the basis of a final decision of a competent authority establishing the loss of capacity to perform the duty of a deputy chief prosecutor shall be made by the chief prosecutor, and for the chief prosecutor by the competent legislative body which appointed him/her. The term of office shall cease on the date of the decision, but not later than within 30 days of receipt of the decision of the competent authority.

(8) The term of office of a judge or a prosecutor in accordance with Paragraph (1) Item (e) hereof shall automatically cease upon the verdict sentencing him/her to a prison sentence becoming final. The term of office shall cease on the date established by the Council for judges or prosecutors, by the chief prosecutor for the deputy chief prosecutor, and by the competent legislative body which appointed him/her for the chief prosecutor.

(9) If a president of the court or a chief prosecutor is aware in advance that the term of office of a judge or a prosecutor under his supervision will cease, the president of the court or the chief prosecutor shall immediately notify the Council thereof in order to launch a new procedure for the appointment to the future vacancy.

(10) In the case referred to under Paragraph (2) Item b) hereof, the term of office of the president of the court, the chief prosecutor or a deputy prosecutor shall cease on the date of taking office in another court or prosecutor's office, and the period for taking the office in another court or prosecutor's office cannot be longer than 60 days from appointment.

(11) The term of office of the president of the court and the deputy chief prosecutor in accordance with Paragraph (2) Items (e) and (f) hereof shall cease on the date established by the Judicial or Prosecutorial Subcouncil, and in the case referred to under Paragraph (2) Item g) hereof, on the date of taking office in the Council.

(12) A president of the court may submit resignation in accordance with Paragraph (4) hereof.

(13) Upon the expiry of the term of office of the president of the court, the chief prosecutor or a deputy prosecutor, such person shall continue to serve as a judge or a prosecutor in the same court or the prosecutor's office.



(14) A chief prosecutor must be dismissed by the competent legislative body which appointed him in the event the report on the operation of his/her prosecutor's office is not approved.

#### **Article 96**

##### **(Temporary Extension of the Term of Office)**

(1) A president of the court, a chief prosecutor or a deputy prosecutor whose term of office to which he/she was appointed has ceased shall continue to serve as an acting president, chief prosecutor or deputy prosecutor, with all the associated rights and obligations, until a new president of the court, chief prosecutor or deputy prosecutor is appointed, but not longer than six months.

(2) In other cases of the cessation of the term of office of a president of the court, chief prosecutor or deputy prosecutor, the Council shall act on the recommendation of the competent Subcouncil and appoint a judge or a prosecutor who shall serve as the president of the court or the chief prosecutor or a deputy prosecutor, with all the rights and obligations, until a new president of the court, prosecutor or deputy prosecutor is appointed.

#### **Article 97**

##### **(Mandatory Retirement Age)**

(1) The mandatory retirement age for judges and prosecutors shall be the age of 70.

(2) An exception to Paragraph (1) hereof is the appointment of reserve judges and lay judges, who may be appointed until they reach the age of 72.

### **CHAPTER X - FINAL PROVISIONS**

#### **Article 98**

##### **(Term of Office and New Obligations of the Council)**

(1) Members of the Council appointed before the entry into force of this Law shall remain in office until members of the Council are elected pursuant to the procedure defined in this Law.

(2) The Council shall suspend all vacancy procedures started before the entry into force of this Law.

(3) The Council shall, within 60 days of this Law entering into force, conduct the procedure in accordance with Article 7, Paragraphs (1) and (2) hereof and shall submit the list of candidates for members of the Council to the Joint Collegium of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina.

(4) The Commission referred to under Article 7, Paragraph (3) hereof shall conduct the procedure without delay and define a final list of candidates and submit it to the House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, which will elect members of the Council at their next session, but not later than within 60 days.

(5) Members of the Council referred to under Article 4, Paragraph (4) hereof shall be appointed by the competent authorities within 60 days of this Law entering into force.

#### **Article 99**

##### **(Previous Terms of Office of Presidents of the Court, Chief Prosecutors and Deputy Chief Prosecutors)**

(1) The term of office of presidents of the court, chief prosecutors and deputy chief prosecutors

provided for in this Law shall be deemed to have started on the day of taking office as president of the court or the chief prosecutor or the deputy prosecutor, before the entry into force of this Law.

(2) Presidents of the court, chief prosecutors and deputy chief prosecutors who were appointed before the entry into force of this Law shall remain in office until the expiry of their term of office as defined in this Law.

(3) Immediately after the Council is established, a vacancy shall be announced for presidents of the court and chief prosecutors whose term of office as defined under this Law has expired between the date of appointment and the date of entry into force of this Law.

(4) Presidents of the court and chief prosecutors, whose term has expired in accordance with this Law, shall perform their duty until the president or the chief prosecutor has been appointed to such court or prosecutor's office.

#### **Article 100**

##### **(Harmonization of Laws)**

(1) Immediately after the Council is established, any suspended vacancy procedures which started before the entry into force of this Law shall be conducted in accordance with this Law.

(2) The Council shall adopt new or harmonize existing secondary legislation which is not in harmony with this Law.

#### **Article 101**

##### **(Superseding of Previous Laws)**

Upon entering into force, this Law shall supersede the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina ("Official Gazette of BiH" No. 25/04, 93/05, 15/08 and 48/07).

#### **Article 102**

##### **(Publication and Entering into Force)**

This Law shall enter into force on the eight day of being published in the "Official Gazette of BiH."

PA of BiH, number \_\_\_\_\_/13  
\_\_\_\_\_2013

**S a r a j e v o**

**CHAIRPERSON**

*of the House of Representatives  
of the Parliamentary Assembly of BiH*

**CHAIRPERSON**

*of the House of Peoples  
of the Parliamentary Assembly of BiH*