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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

BOSNIA AND HERZEGOVINA

DRAFT LAW
ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL
OF BOSNIA AND HERZEGOVINA

AND

EXPLANATORY NOTE

DRAFT

LAW
ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL
OF BOSNIA AND HERZEGOVINA

PART I - GENERAL PROVISIONS**Article 1****(Subject Matter)**

This Law prescribes the composition, procedure and conditions for the selection of members of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, its work, organisation, competencies, responsibility, powers, the conditions and mandate for the holding of judicial and prosecutorial office, the appointment and transfer of judges and prosecutors, temporary transfer of judges and prosecutors, performance appraisal of judges and prosecutors, disciplinary liability of judges and prosecutors, temporary suspension from office of judges and prosecutors, the incompatibility of judicial and prosecutorial service with other functions, termination of mandate of judges and prosecutors and other issues related to the work of the High Judicial and Prosecutorial Council (hereinafter: the Council).

Article 2**(Aim of the Law)**

The aim of the Law is to ensure functioning of the Council as an autonomous and independent institution of Bosnia and Herzegovina with the task and competencies required to ensure independent, impartial, accountable, efficient and professional judiciary.

Article 3**(Seat)**

- (1) The seat of the Council shall be in Sarajevo.
- (2) The Council shall have legal personality.
- (3) The Council shall have its stamp, in accordance with the Law on Stamps of the Institutions of Bosnia and Herzegovina (Official Gazette of BiH, 12/98, 14/03 and 62/11);

- (4) The name, coat of arms and flag of Bosnia and Herzegovina shall be displayed on the building where the Council is seated.

Article 4

(The Use of Words That Denote Masculine or Feminine Gender)

All words herein in the masculine gender shall be deemed to include the feminine gender without discrimination.

PART II - MEMBERS AND ORGANISATION OF THE COUNCIL

CHAPTER I COMPOSITION AND ELECTION OF COUNCIL MEMBERS

Article 5

(Principles)

- (1) The Council shall perform its duties in accordance with the Constitution of Bosnia and Herzegovina and this Law.
- (2) The Council shall independently and efficiently perform its function in the exercise of prescribed competences.
- (3) The Council shall be responsible for the legal and proper implementation of this Law, on which it submits a report and information in accordance with the Law.
- (4) Council members shall be persons of high moral standings who, due to their expertise and professionalism, shall ensure independent and impartial action and decision-making of the Council.
- (5) The composition of the Council shall reflect the diversity of the peoples of Bosnia and Herzegovina in terms of ethnic, gender and other participation.¹
- (6) The work of the Council shall be public and everyone has the right to access information in accordance with the regulations on freedom of access to information.

Article 6²

(Composition of the Council)

- (1) The Council shall have 18 members.

¹ Provision aligned with the Opinion of the Venice Commission on the Law on Courts.

² Composition of the Council as proposed by the Working Group

- (2) Eight Council members shall be elected from among judges, as follows:
- a) one judge from the Court of Bosnia and Herzegovina or the Appellate Court of Bosnia and Herzegovina, elected by the judges of the Court of Bosnia and Herzegovina and Appellate Court of Bosnia and Herzegovina;
 - b) one judge of the Appellate or the Basic Court of the Brcko District, elected by the judges of the Basic and the Appellate Court of the Brcko District BiH;
 - c) one judge from the Supreme Court of the Federation of Bosnia and Herzegovina, elected by the judges of the Supreme Court of the Federation of Bosnia and Herzegovina;
 - d) one judge from a cantonal court of the Federation of Bosnia and Herzegovina, elected by the judges of the cantonal courts;
 - e) one judge from a municipal court of the Federation of Bosnia and Herzegovina, elected by the judges of the municipal courts;
 - f) one judge from the Supreme Court of Republika Srpska, elected by the judges of that Court;
 - g) one judge from a district court of Republika Srpska or from the High Commercial Court, elected by the judges of the district courts and the High Commercial Court;
 - h) one judge of a basic court or of a district commercial court of Republika Srpska, elected by the judges of the basic and district commercial courts.
- (3) Eight Council members shall be elected from among prosecutors, as follows:
- a) one prosecutor from the Prosecutor's Office of Bosnia and Herzegovina, elected by the prosecutors of the Prosecutor's Office of Bosnia and Herzegovina;
 - b) one prosecutor from the Prosecutor's Office of the Brcko District of Bosnia and Herzegovina, elected by the prosecutors of the Prosecutor's Office of the Brcko District;
 - c) one prosecutor of the Prosecutor's Office of the Federation of Bosnia and Herzegovina, elected by the prosecutors of the Prosecutor's Office of the Federation of Bosnia and Herzegovina;
 - d) two prosecutors from cantonal prosecutor's offices of the Federation of Bosnia and Herzegovina, elected by the prosecutors of the cantonal prosecutor's offices;
 - e) one prosecutor of the Prosecutor's Office of Republika Srpska, elected by the prosecutors of the Prosecutor's Office of Republika Srpska;
 - f) two prosecutors of the district prosecutor's offices of Republika Srpska, elected by the prosecutors of the district prosecutor's offices.
- (4) One Council member shall be appointed by the Council of Ministers of Bosnia and Herzegovina upon the proposal of the Minister of Justice of Bosnia and Herzegovina.

- (5) One Council member shall be appointed by the Parliamentary Assembly of Bosnia and Herzegovina upon the proposal of the Joint Collegium of both Houses.³
- (6) Council member from paras (4) and (5) of this Article, who does not have ineligibilities under Article 7, paragraph (2) of this Law, is chosen from among attorneys who have passed the bar exam, who have a high reputation as a legal expert in the public, private or non-governmental sector.

OR

Article 6⁴

(Members of the Council)

- (1) The Council shall have 24 members.
- (2) 12 Council members shall be elected from among judges, as follows:
 - a) **one judge from the Court of Bosnia and Herzegovina** or Appellate Court of Bosnia and Herzegovina, elected by the judges of the Court of Bosnia and Herzegovina and the High Court of Bosnia and Herzegovina;
 - b) **one judge of the Appellate Court of the Brcko District** or the Basic Court of the Brcko District, who shall be elected by the judges of the Basic and the Appellate Court of the Brcko District BiH;
 - c) **one judge from the Supreme Court of the Federation** of Bosnia and Herzegovina, elected by the judges of the Supreme Court of the Federation of Bosnia and Herzegovina;
 - d) **three cantonal court judges** from the Federation of Bosnia and Herzegovina, as follows:
 - one judge elected by the judges of the Cantonal Court in Sarajevo, the Cantonal Court in Gorazde, the Cantonal Court in Zenica and the Cantonal Court in Novi Travnik,
 - one judge elected by the judges of the Cantonal Court in Mostar, the Cantonal Court in Livno, the Cantonal Court in Siroki Brijeg,
 - one judge elected by the judges of the Cantonal Court in Tuzla, the Cantonal Court in Odzak, the Cantonal Court in Bihac;
 - e) **one municipal court judge** from the Federation of Bosnia and Herzegovina who receives the most votes expressed as a percentage of the number of voters from:
 - municipal courts in the Central-Bosnia Canton, Zenica-Doboj Canton, Sarajevo Canton and Bosnia-Podrinje Canton,

³ Representatives of the RS MoJ and of the FBiH MoJ propose one representative each, who shall be appointed by the governments and parliaments of the Entities.

⁴ Composition of the Council as proposed by the Ministry of Justice of BiH

- municipal Courts in Herzegovina-Neretva Canton, the Western Herzegovina Canton and Canton 10,
 - municipal courts in Posavina Canton, Tuzla Canton and Una-Sana Canton;
- f) one judge from the Supreme Court of Republika Srpska, elected by the judges of that Court;
- g) **tree district court judges** from Republika Srpska, as follows:
- one judge elected by the judges of district courts in Prijedor and Banja Luka and judges of the High Commercial Court in Banja Luka;
 - one judge elected by the judges of the district courts in Doboj, Bijeljina and Zvornik,
 - one judge elected by the judges of the district courts in Sarajevo and Trebinje;
- h) **one basic court judge** Republika Srpska who receives the most votes expressed as a percentage of the number of voters from:
- basic courts that fall under the territorial jurisdiction of the district courts in Prijedor, Banja Luka and district commercial courts,
 - basic courts that fall under the territorial jurisdiction of district courts in Doboj, Bijeljina and Zvornik,
 - basic courts that fall under the territorial jurisdiction of district courts in Istocno Sarajevo and Trebinje;
- (3) **10 Council members shall be elected from among prosecutors, as follows:**
- a) **one prosecutor from the Prosecutor's Office of Bosnia and Herzegovina**, who shall be elected by the prosecutors of the Prosecutor's Office of Bosnia and Herzegovina;
- b) **one prosecutor from the Prosecutor's Office of the Brcko District BiH**, who shall be elected by the prosecutors of the Prosecutor's Office of the Brčko District BiH;
- c) **one prosecutor of the Prosecutor's Office of the Federation** of Bosnia and Herzegovina, who shall be elected by the prosecutors of the Prosecutor's Office of the Federation of Bosnia and Herzegovina;
- d) **three prosecutors** from the cantonal prosecutor's offices in the Federation of Bosnia and Herzegovina, as follows:
- one prosecutor elected by the prosecutors from the Cantonal Prosecutor's Office in Sarajevo, the Cantonal Prosecutor's Office in Gorazde, the Cantonal Prosecutor's Office in Zenica and the Cantonal Prosecutor's Office in Novi Travnik,
 - one prosecutor elected by the prosecutors from the Cantonal Prosecutor's Office in Mostar, Cantonal Prosecutor's Office in Livno and the Cantonal Prosecutor's Office in Siroki Brijeg,

- one prosecutor elected by the prosecutors from the Cantonal Prosecutor's Office in Tuzla, the Cantonal Prosecutor's Office in Odzak and Cantonal Prosecutor's Office in Bihac;
- e) **one prosecutor of the Prosecutor's Office** of Republika Srpska, who shall be elected by the prosecutors from the Prosecutor's Office of Republika Srpska;
- f) **three prosecutors** of district prosecutor's offices in Republika Srpska, as follows:
 - one prosecutor elected by the prosecutors of the district prosecutor's offices in Prijedor and Banja Luka,
 - one prosecutor elected by the prosecutors of the district prosecutor's offices in Doboj, Bijeljina and Zvornik,
 - one prosecutor is elected by the prosecutors of the district prosecutor's offices in Istocno Sarajevo and Trebinje;
- (4) one member elected by the Parliamentary Assembly of Bosnia and Herzegovina;
- (5) one member appointed by the Council of Ministers of Bosnia and Herzegovina upon the proposal of the Minister of Justice of Bosnia and Herzegovina;
- (6) Council member from paras (4) and (5) of this Article, who does not have ineligibilities under Article 7, paragraph (2) of this Law, is chosen from among attorneys who have passed the bar exam, who have a high reputation as a legal expert in the public, private or non-governmental sector.

Član 7.

(Ineligibility for the Membership in the Council)

- (1) No person who has previously served two terms as a Council member shall be elected a Council member.
- (2) The following persons may not be elected Council members referred to in Article 6, paragraph (2) and (3):
 - a) court presidents, chief prosecutors or deputy chief prosecutors;
 - b) judges or prosecutors who have less than five years of experience as a judge or prosecutor;
 - c) judges or prosecutors whose last performance appraisal is lower than "successful";
 - d) judges or prosecutors who have been subject to a disciplinary measure in the last five years;
 - e) judges or prosecutors who have not completed a period of four years from the end of the previous term in the Council.

- (3) A judge from the same court from which the Council member was previously elected may not be appointed in the following mandate as a Council member under Article 6, paragraph (2) point d), e) g) and h).
- (4) A prosecutor from the same prosecutor's office from which the Council member was previously elected may not be appointed in the following mandate as a Council member under Article 6, paragraph (2), point d) and f).
- (5) The following persons may not be elected Council members referred to in Article 6, paragraph (4) and (5):
 - a) judicial office holder;
 - b) executive office holder at any level, publicly elected official in legislative body at any level, or person who has held these offices in the last five years;
 - c) person who has been subject to a disciplinary measure in the last five years;
 - e) person who has not completed a period of four years from the end of the previous term in the Council.
- (5) Deadlines from para (2) items b), d) and e) and para (5) items b), c) and d) are counted until the day of publication of the call for nominations of Council members.

Article 8

(Composition of the Council Rules)

- (1) A judge of the Appellate Court of Bosnia and Herzegovina and the Court of Bosnia and Herzegovina, as well as a judge of the Appellate Court of the Brcko District BiH and the Basic Court of the Brcko District BiH shall be elected alternately as members of the Council referred to in Article 6, para (1) items a) and b).
- (2) Judges of courts from the same canton may not be elected Council members under Article 6, paragraph (2), items d) and e).
- (3) Judges of courts from the territorial jurisdiction of one district court may not be elected Council members under Article 6, paragraph (2), items g) and h). The provisions of this paragraph shall not apply to the High Commercial Court of Republika Srpska.
- (4) Only one Council member may be elected from the same cantonal or district prosecutor's office.

Article 9

(Election Procedure)

- (1) The procedure for nomination and election of the Council members referred to in Article 6 of the Law shall be conducted in accordance with this Law and the Book of Rules on the procedure for election of the Council members adopted by the Council.

- (2) Nomination and election of the Council members referred to in Article 6, paragraphs (4) and (5) of this Law shall be conducted in accordance with this Law and regulations of the bodies and services in charge of nomination and election process.

Article 10

(Public Call for Nominations)

- (1) The Council shall post a public call for nominations on its website no later than six months prior to the expiration of the Council members' term.
- (2) Judicial institutions, that is the bodies referred to in Article 6, paragraphs (4) and (5) of this Law, shall be notified of the public call for nominations immediately following its announcement.
- (3) The Council, courts and prosecutor's offices responsible for the conduct of elections shall form electoral bodies within 15 days from the date of the public call.

Article 11

(Electoral Bodies)

- (1) Bodies for the election of the Council members referred to in Article 6, paragraph (2) and (3) of this Law shall be election committees (hereinafter: committees) and electoral boards.⁵
- (2) The committee for the election of Council members from among judges shall be appointed by the Judicial Department.
- (3) The committee for the election of Council members from among prosecutors shall be appointed by the Prosecutorial Department.
- (4) Electoral boards in each court and prosecutor's office are appointed by the court president or chief prosecutor, on the proposal of the general session or collegium.
- (5) Electoral bodies are formed for each election process in accordance with the Book of Rules on the procedure for election of Council members under Article (9) of this Law.

⁵ (After this law goes into effect, the Council will choose the principles that will guide its decision-making process and constitute the election committee from Articles 11 and 12 of this Law among the present Council members in order to elect the first new convocation of the HJPC.

Article 12

(Composition of Electoral Bodies)

- (1) The committee for the election of Council members from among judges shall consist of five members from the Judicial Department, of which four judges and one member who is not judicial office holder.
- (2) The committee for the election of Council members from among prosecutors shall consist of five members from the Prosecutorail Department, of which four prosecutors and one member who is not judicial office holder.
- (3) Electoral boards in courts shall consist of three members, of which two judges and one member who is not judicial office holder.
- (4) Electoral boards in prosecutor's offices shall consist of three members, of which two prosecutors and one member who is not judicial office holder.
- (5) A member of the electoral board may not be the court president or the chief prosecutor, nor may they be a judge or prosecutor who intends to run for a member of the Council or if they have a conflict of interest that may cast doubt on their impartiality.
- (6) In a court or prosecutor's office in which, due to the small number of judicial office holders, electoral boards cannot be formed in accordance with this Article, legal associates or staff members of the court or prosecutor's office may be appointed to the electoral boards pursuant to the Book of Rules on the procedure for electing Council members under Article 9 para (1) of this Law.
- (7) Chair of the electoral bodies shall be a judicial office holder who is elected by the members of that electoral body.

Article 13

(Tasks of Electoral Bodies)

- (1) The committee shall be responsible to:
 - a) open candidate applications and determine whether the applications are timely and eligible, in terms of Article 14, paras (1) and (2) of this Law;
 - c) create lists of candidates and submit them to competent electoral boards together with the candidates' CVs;
 - e) inform the Council if one candidate has been registered for election to a specific position;
 - d) form the electoral roll individually for each court, that is, the prosecutor's office;
 - e) submit the electoral roll with a sufficient number of correctly numbered ballots to the competent electoral boards and record the submission;
 - f) collect the voting material from the competent electoral boards and record the accuracy of the information in the minutes;

- f) determine the number of valid, invalid and unused ballots for each polling station;
 - g) count the votes from each polling station, for each candidate, and tally the votes and state the results of the election;
 - h) submit to the Council a notice on the results of the election along with a report on the conducted election process;
 - h) receive objections to the process of candidacy and election of Council members, and collect the information regarding the allegations.
- (2) The electoral board shall be responsible for the technical preparation of the election and shall ensure the regularity and anonymity of voting by undertaking the following at its level:
- a) determines the polling station;
 - b) supervises and controls the regularity of voting;
 - c) ensures the secrecy of the vote;
 - d) ensures the integrity of ballots;
 - e) seals the ballot boxes and submits them to the committee, together with the unused ballots, the electoral roll and the record of the conducted election process at the polling station;
 - f) performs other tasks upon instruction of the committee.
- (3) The Book of Rules on the procedure for election of the Council members from Article 9, para (1) of this Law regulates issues related to the work of committees and electoral boards that are not regulated by this Law, in particular the content of the minutes, closing, verification, delivery and collection of materials before and after voting, as well as monitoring the electoral process and counting votes.

Article 14

(Nomination for a Council Member

from the Ranks of Judges and Prosecutors)

- (1) Every judge or prosecutor who is eligible for membership in the Council under Article 7 of this Law and is not covered by the rule from Article 8, para (1) of this Law, has the right to run for the membership in the Council.
- (2) The candidate for a member of the Council shall submit his/her application within fifteen days from the date of announcement of the public call on the Council's website. Along with his/her application, the candidate shall submit a CV containing all the information he/she considers relevant for his/her nomination.
- (3) The application is submitted to the competent committee in the Council by mail.

Article 15

(Election of Council Members from the Judiciary)

- (1) Within 60 days of the public call being announced, elections shall take place in courts and/or prosecutor's offices at a time and day decided by the Council.
- (2) The notification of the election date shall be posted on the Council website and emailed to judges, prosecutors and electoral bodies at least ten days before the election.
- (3) The lists of candidates, along with their biographies, are published in addition to the notification mentioned in the preceding paragraph.
- (4) All judges and prosecutors shall have the right to vote, in accordance with Article 6 paragraphs (2) and (3) of this Law.
- (5) The voting shall be by secret ballot, based on a previously determined lists of candidates.
- (6) The form and content of the ballots shall be prescribed by the Council. Every ballot shall be numbered with a unique identification number, and the Council shall make sure that enough ballots are printed for every judge and prosecutor who is eligible to vote in the elections.

The Council entrusts each election committee referred to in Article 12, paras (1) and (2) of this Law with a sufficient number of numbered ballots in accordance with the number of voters, and the election committees entrust electoral boards within their jurisdiction with ballots.

Article 16

(Election Results and Notification of the Election Conducted)

- (1) The chair of the competent election committee informs the Council about the election results no later than eight days after the day of the election. Along with the notification of the election results, the chair of the competent election committee submits a detailed report on the conducted elections.
- (2) The candidate receiving the highest number of votes shall be deemed elected. In the event that two candidates from the same list receive the same number of votes, the candidate having more years of work experience as a judge or prosecutor shall be deemed elected.
- (3) When electing Council members from among the cantonal or district prosecutor's offices, two candidates from the list of candidates receiving the highest number of votes shall be deemed elected. In the event that the two best ranked candidates are prosecutors from the same prosecutor's office, the first-ranked candidate and the next-ranked candidate who is not the prosecutor of the same prosecutor's office as the first-ranked candidate shall be deemed elected.
- 4) If the best ranked candidates on the lists of candidates for the election of Council members under Article 6 para (2) items d) and e) of this Law are cantonal and municipal court judges from the same canton, the candidate with the highest percentage of votes in relation

to the number of judges who voted and the next best ranked candidate from another list of candidates who is not a judge in the court from the same canton as the first ranked candidate shall be deemed elected.

- 4) If the best ranked candidates on the lists of candidates for the election of Council members under Article 6 para (2) items g) and h) of this Law are district and basic court judges or district commercial court judges from the territorial jurisdiction of the same district court, the candidate with the highest percentage of votes in relation to the number of judges who voted and the next best ranked candidate from another list of candidates who is not a judge in the court from the same territorial jurisdiction as the first ranked candidate shall be deemed elected.
- (6) In the event that there is only one candidate running for election as a Council member, that is two candidates running on behalf of the cantonal or district prosecutor's offices, a public call shall be re-announced.
- (7) In the event that there is only one candidate, that is two candidates for election of a Council member on behalf of the cantonal or district prosecutor's offices running at the re-announced public call, that candidate or candidates shall be deemed elected without holding elections.

Article 17

(Objection to the Election Procedure)

- (1) Each candidate as well as each judge or prosecutor who participates in voting has the right to file an objection to irregularities in the procedure for nomination and election of a Council member.
- (2) The Book of Rules referred to in Article 9 para (1) of the Law shall stipulate the irregularities within the meaning of para (1) of this Article.
- (3) The objection is submitted to the competent election committee, which submits the objection along with a written statement to the Council without delay. An objection filed after the expiry of the period of three days from the day of the election is considered untimely, and shall be dismissed.
- (4) Acting on the objection or at the request of the competent committee, the Council may reject the objection and confirm the election of a Council member or accept the objection and order measures to eliminate the identified irregularity in the candidacy and election process or accept the objection and annul the election of the Council member in whose election process an irregularity was found during the election and announce a new public call for that position.
- (5) The Council shall ex officio annul the election of a Council member if, on the basis of the submitted report of the committee, it is established that there were other irregularities in the nomination and election of a Council member that could affect election result.

Article 18**(Shortened Deadlines)**

- (1) In the event that elections need to be repeated or a Council member replaced, the Council may shorten the deadlines stipulated by law for the application and elections.
- (2) If the term of a Council member terminates before the expiration of the period to which he/she is elected, the Council shall without delay, and no later than within eight-day period, announce a public call and notify the election body of the need to replace a Council member.
- (3) Unless otherwise provided for, the procedure for the replacement of a Council member shall be subject to provisions governing the election of Council members.

Article 19**(Election of Other Members of the Council)**

- (2) The bodies responsible for election of Council members under Article 6, paras (4) and (5) shall notify the Council of the election conducted no later than 60 days from the day of the submission of the call for election.

CHAPTER II MANDATE OF THE COUNCIL MEMBER AND CONFLICT OF INTEREST**Article 20****(Mandate of the Council Member)**

- (1) A Council member shall serve a five-year mandate and may not be elected for another consecutive mandate.
- (2) Council members can serve a maximum of two mandates.
- (3) If a Council member's mandate terminates before the expiry of the period for which he/she has been elected, another member shall be elected to replace them and serve the rest of the unexpired mandate.

Article 21**(Prior Verification)**

- (1) The verification of asset and interest declarations, in line with the provisions of this law governing declaration of assets and interests, shall take place prior to their taking of office in the Council.

- (2) Elected members of the Council may assume office only if the outcome of checks conducted under Articles 165 and 166 of this law is positive.
- (3) If the asset and interest declaration of the elected member of the Council for the previous year was already checked under Article 166 of this law and the outcome was positive, it shall not be subject to a new check.

Article 22

(Obligation to Submit Asset Declarations)

- (1) Council members other than judges or prosecutors shall submit their initial declarations on assets and interests under Article 163 of this law within 30 days of being notified of their election.
- (2) Council members who are judges or prosecutors shall submit their annual declarations on assets and interests under Article 163 of this law within 30 days of being notified of their election, unless they have already done so in line with a rule from Article 163, paragraph 6 of the law.

Article 23

(Annulment of Election)

- (1) In the event of a negative outcome of asset and interest declaration check, the election of a member of the Council shall be annulled.
- (2) In the case referred to in paragraph (1) of this Article, the Council shall, without delay, and no later than eight days after receiving notification of the negative outcome of an additional check, publish a public call for nominations for a Council member, i.e. notify the authority in charge of the election of the need to elect a new member of the Council.

Article 24

(Commencement of Council Member's Mandate)

- (1) Elected Council members' mandate shall commence on the first working day following the day of expiry of the previous Council's mandate.
- (2) Save for paragraph (1) of this Article, if the election of a Council member or an additional check of the asset and interest declaration of the elected Council member is not completed by the end of the mandate of the previous Council member, the taking of office by the newly elected Council member shall be postponed.
- (3) In the case referred to in paragraph (2) of this Article, the elected member of the Council shall take office on the day when the Council receives notification of the positive outcome of the check referred to in Article 165 of this law.

- (4) The duration of an additional check until taking office in the Council shall be calculated as part of the mandate.
- (5) A member of the Council elected through a repeated call or as a replacement under Article 20, paragraph (3) of this law shall take office on the day the Council receives notification of the positive outcome of an additional check referred to in Article 166 of this law.

Article 25

(Ban on applying for vacant positions during and after the end of the Council member's mandate)

- (1) One year following the end of their mandate, a member of the Council may not apply for or be elected to a vacant position in the judiciary either through internal or external competition procedure, including the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of Republika Srpska. They also may not apply for a vacant position of Chief Disciplinary Counsel or Deputy Disciplinary Counsel in the Office of the Disciplinary Counsel or of Director or Deputy Director in the Secretariat of the HJPC.
- (2) During their mandate, Council members may not apply for or be elected to the positions referred to in paragraph (1) of this Article, nor may they apply to a call or be transferred in accordance with the provisions of the law governing transfer.

Article 26

(Termination of Council Member's Mandate)

- (1) The mandate of a Council member shall terminate:
 - a) upon cessation of office by virtue of which he/she was appointed to the Council;
 - b) upon expiry of period for which he/she has been elected;
 - c) by resignation;
 - d) in the event of violation of a prohibition referred to in Article 25, paragraph (2) of this Law;
 - e) by decision on removal of a Council member in accordance with Article 23 of this Law;
 - f) in the event of a disciplinary measure imposed on him/her while performing the office by virtue of which he/she was elected to the Council;
 - g) in the event he/she has been finally convicted of a criminal offence;
- (2) In cases referred to in paragraph (1) item c) of this Article, the mandate of a Council member shall terminate on the day following the receipt of written resignation.

- (3) In cases referred to in paragraph (1) item d) of this Article, the mandate shall terminate when he/she submits an application for a vacant position.
- (4) In cases referred to in paragraph (1) item e) of this Article, the mandate shall terminate on the day when decision on removal is issued.
- (5) In cases referred to in items (f) and (g) of this Article, the mandate shall terminate with the finality of the conviction that is of the disciplinary measure.

Article 27

(Removal of Council Members)

- (1) A Council member shall be removed from office:
 - a) if, by violating this Law or by other action, he/she seriously damages the reputation of the Council;
 - b) b) in case of incompatible duties;
 - c) in case of absence from their duties as Council members for periods longer than three months continually, or longer than six months continually due to illness.
- (2) The procedure for removal of a Council member shall be initiated upon a motion that may be filed by any judge, prosecutor or member of the Council who is aware of the existence of the reasons referred to in paragraph (1) of this Article.
- (3) Motion to initiate the removal procedure shall be filed with the Council.
- (4) When the Council receives the motion and determines that it is necessary to initiate the procedure for establishing the facts regarding the circumstances referred to in paragraph (1) of this Law, it shall form a special commission of five members to establish relevant facts and propose a decision to the Council.
- (5) The commission referred to in paragraph (4) of this Article shall have at least two members of the Council from the ranks of judges or prosecutors, and three members shall be judicial office holders; however, judges or prosecutors from the same court or prosecutor's office as the member of the Council who is subject to removal procedure may not sit in the commission.
- (6) The establishment of the commission and removal procedure shall be regulated in more detail by the Rules of Procedure.
- (7) A decision on removal shall be taken by a two-thirds majority of all Council members.
- (8) The decision referred to in paragraph (7) of this Article shall contain a detailed explanation of the reasons for removal and it shall be published on the Council's website.
- (9) An administrative dispute against the decision referred to in paragraph (8) of this Article may be initiated by a complaint before the Court of Bosnia and Herzegovina.
- (10) The complaint referred to in paragraph (9) of this Article shall be lodged within eight days from the date of publication of the decision on removal on the Council's website.

- (11) The respondent shall deliver their response to the complaint within eight days of receiving the complaint, while the Court shall decide within eight days of receiving the response.

Article 28

(Suspension from Office of Council members)

- (1) A Council member shall be suspended, by virtue of law, in the following cases:
- a) if he/she has been suspended from office by virtue of which they were elected or appointed to the Council, or to office they perform outside the Council;
 - b) b) if pre-trial detention is ordered against him/her;
 - c) if an indictment is confirmed against him/her alleging a criminal offence.
- (2) In case of suspension from office in accordance with paragraph (1) of this Article, the decision on suspension shall be made by the President of the Council, and if the President of the Council is being suspended, the decision shall be made by the Vice-President of the Council.
- (3) The Council may suspend its member in the following cases:
- a) if a procedure to remove him/her from the office of Council member has been initiated;
 - b) if disciplinary proceedings have been initiated;
 - c) if a criminal investigation has been initiated.
- (4) In accordance with paragraph (3) of this Article, a two-thirds majority of all Council members shall be required for a suspension from office.
- (5) In case when disciplinary proceedings have been initiated against a member of the Council elected in accordance with Article 6 paragraphs (4) and (5) of the Law, the authority responsible for the conduct of those proceedings shall inform the Council thereof.
- (6) The Office of Disciplinary Counsel shall be notified of the reasons for suspending the Council member.

Article 29

(Incompatible Offices)

No Council member may hold any office or perform any duty in a political party, an association or foundation affiliated with political parties and must refrain from participating in political party activities.

Article 30

(Conflict of Interest)

- (1) A Council member shall be deemed to be in conflict of interest in situations in which they have private interest which influence or may influence the legal, transparent, objective and impartial performance of their duties in the Council, i.e. in which private interest is detrimental or may be detrimental to the public interest or public trust.
- (2) Within the meaning of paragraph (1) of this article, "private interest" refers to any material or non-material benefit for a member of the Council, his or her relative, spouse or common-law partner, regardless of whether the marriage or common-law union has been dissolved or not, and his or her relative and interest-related natural or legal person, including, but not limited to, business and political relations.
- (3) Within the meaning of paragraph (2) of this Article:
 - a) A Council member's relatives include blood relatives in the direct line up to any degree, adoptive parents and adopted children, and blood relatives in the lateral line up to the fourth degree;
 - b) relatives of a married or common-law partner include his or her relatives up to the second degree, regardless of whether the marriage or common-law union has been dissolved or not.
 - c) an interest-related person is any person having private, business or any other ties with a Council member that may interfere with their legal, transparent and impartial performance of their duties as Council members.
- (4) The Rules of Procedure of the Council shall regulate in more detail the cases in which a conflict of interest of a Council member is assumed to exist, as well as the grounds and procedure for disqualification of a Council member.
- (5) In performing their duties in the Council, Council members shall avoid any situation that may give rise to a conflict between their private and public interests, paying particular attention to the public's trust in their personal integrity and the integrity of the Council. Council members shall identify the conflict of interest and take the necessary steps to prevent it, including the renunciation of private interests, disclosure of private interests and seeking disqualification from decision-making on issues within the competence of the Council in accordance with the Rules of Procedure.

CHAPTER III COMPETENCIES OF THE COUNCIL

Article 31

(Organisation of the Council)

- (1) The Council shall be composed of all members of the Judicial Department and the Prosecutorial Department, as stipulated by this Law.
- (2) The Judicial Department shall have 10 members and shall be comprised of Council members elected in accordance with Article 6, paragraphs (2), (4) and (5) of this Law.
- (3) The Prosecutorial Department shall have 10 members and shall be comprised of Council members elected in accordance with Article 6, paragraphs (3), (4) and (5) of this Law.

Article 32

(President and Vice Presidents of the Council)

- (1) The Council shall have a President and two Vice-Presidents.
- (2) President and Vice-Presidents shall not belong to the same Constituent People. No more than one of them shall be from the ranks of Others.
- (3) The mandate of the President of the Council shall be five years or until their mandate terminates due to other reasons in accordance with law, whichever comes first.
- (4) The mandate of the Vice-Presidents shall last until the end of the mandate of the President or until the end or termination of the mandate of the Vice-President due to other reasons in accordance with Article 38 of the Law, whichever comes first.

Article 33

(Election of the President)

- (1) The Council shall elect its President from among its members who are judges and prosecutors.
- (2) The procedure for the election of the President of the Council shall be regulated in detail with the Rules of Procedure.

Article 34

(Election of Vice-Presidents)

- (1) One Vice-President of the Council shall be elected by the Judicial Department from among the Council members who are judges.

- (2) One Vice-President of the Council shall be elected by the Prosecutorial Department from among the Council members who are prosecutors.
- (3) The Vice President of the Council referred to in paragraph (1) of this Article shall preside over the Judicial Department. The Vice President of the Council referred to in paragraph (2) of this Article shall preside over the Prosecutorial Department.
- (4) Vice-Presidents shall be assisted by their deputies in managing the work of the Judicial Department and the Prosecutorial Department, respectively.
- (5) The procedure for the election of Vice-Presidents of the Council and their deputies shall be regulated in detail with the Rules of Procedure.

Article 35

(Taking Office as President and Vice-President)

The taking of office by a Council member elected to the position of President or Vice-President whose declaration on assets and interests for the previous year has not been checked shall be postponed until the completion of an additional check with a positive outcome, in accordance with Article 166.

Article 36

(Duties of the President of the Council)

- (1) The President of the Council shall have the following duties:
 - a) representing the Council;
 - b) convening sessions of the Council, establishing a proposal agenda and chairing the Council sessions;
 - c) signing decisions of the Council;
 - d) organising and overseeing the work of the Council and coordinating the work of the Judicial Department and the Prosecutorial Department, as well as of the committees and working bodies established by the Council;
 - e) other duties in accordance with the Law and the by-laws adopted on the basis of this law;
- (2) During any leave of absence or in the event of the incapacitation of the President to perform their duties, they shall be replaced by one of the Vice-Presidents in accordance with a decision of the President.
- (3) The President may decide to delegate some duties and authorities from paragraph (1) of this Article to a Vice-President of the Council.
- (4) When neither the President nor the Vice-Presidents are able to carry out their duties, the President may designate another Council member to fill in.

- (5) The Cabinet of the President shall provide professional and administrative support to the President of the Council, while the scope and method of operation of the Cabinet shall be regulated in detail with the Book of Rules on Internal Organisation.

Article 37

(Duties of the Vice-Presidents)

Aside from the duties and authorities outlined in Article 36, paragraphs (2) and (3) of the law, the Vice-Presidents of the Council shall assist the President in carrying out his/her duties, manage the activities of the Judicial Department and the Prosecutorial Department and sign their decisions, and perform other tasks as assigned by the Council.

Article 38

(Termination of Mandate of President and Vice Presidents)

- (1) Mandate of the President or Vice- President shall terminate when:
- a) their mandate as Council members terminates;
 - b) their mandate as President or Vice-President expires;
 - c) they resign from the position of President or Vice-President of the Council;
 - d) the Council makes a decision removing the President, that is when the relevant department makes a decision removing the Vice- President.
- (2) In cases referred to in paragraph (1) items (c) and (d) of this Article, the mandate of the President/Vice Presidents of the Council shall terminate on the day following the receipt of their written resignation, or on the day the decision to remove them from office is made.

Article 39

(Removal of the President)

- (1) The President of the Council may be removed from office if they do not execute their duties from Article 36 of the Law or if they do not execute their duties properly, lawfully and efficiently.
- (2) The procedure for the removal of the President of the Council shall be initiated upon a motion by one third of the members of the Council.
- (3) In the event that a procedure for the removal of the President is initiated, the Council shall form a panel consisting of three members of the Council, one from among the judges, one from among the prosecutors and one appointed pursuant to Article 6, paragraphs (4) and (5) of this Law, which shall establish the facts in connection with the performance of the President and present them to the Council.

- (4) The Council shall adopt a decision on the removal of the President of the Council by a two-thirds majority of all Council members.
- (5) Decision from paragraph (4) of this Article shall contain the reasoning.

Article 40

(Removal of the Vice-President)

- (1) A Vice- President of the Council may be removed from office if they do not execute their duties from Article 37 of the Law or if they do not execute their duties properly, lawfully and efficiently.
- (2) The procedure for the removal of a Vice-President of the Council shall be initiated upon a motion by one third of the members of the Council or one-half of the department members he/she manages.
- (3) In the event that a procedure for the removal of a Vice-President is initiated, the Council shall form a panel consisting of three members of the Council, two of whom shall be from the department the Vice-President is the head of and one designated by the Council, which shall establish the facts in connection with the performance of the Vice-President and present them to the Council.
- (4) The Council shall adopt a decision on the removal of the Vice-President of the Council by a two-thirds majority of all Council members.
- (5) Decision from paragraph (4) of this Article shall contain the reasoning.

Article 41

(Duties of Council Members)

- (1) Members of the Council shall regularly participate in the work of the Council, its departments and committees and other working bodies and execute the tasks as assigned by the Council.
- (2) Apart from the President and Vice-Presidents, at least one Council member from among the judges and at least one Council member from among the prosecutors may work in the Council on a full-time basis.
- (3) In the performance of their duties, Council members shall act independently and impartially, and shall uphold the Constitution of Bosnia and Herzegovina, the Law, the Rules of Procedure, Code of Ethics and other by-laws, as well as the Council's decisions. Council members shall behave in accordance with the dignity of their position as a Council member, and shall protect the independence and reputation of the Council and the judiciary as a whole.
- (4) Upon assuming office at the Council and throughout the duration of their mandate, Council members shall provide all information and reports relevant for holding office with the Council in the manner as prescribed with the law and the Rules of Procedure.

- (5) The duties of the Council members, and the terms of reference of the Council members working on a full-time basis shall be regulated in more detail by decisions and internal regulations of the Council.
- (6) Council duties for members who do not work on a full-time basis shall take precedence over their regular duties.
- (7) The Council shall render a code of ethics which Council members shall be required to follow.

Article 42

(The Rights of Council Members Working on a Full-Time Basis)

- (1) The President, Vice-Presidents and full-time Council members shall be entitled to receive salary, benefits and shall have other employment rights in the Council as provided by the Law on Salaries and Benefits in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina (Official Gazette of BiH, no. 90/05, 32/07 and 77/20), where:
 - (a) the President of the Council shall have the rights specified for the President of the Appellate Court of Bosnia and Herzegovina;
 - (b) Vice-Presidents and full-time Council members shall be entitled to the rights as specified for judges of the High Court of Bosnia and Herzegovina.
- (2) The President, Vice-Presidents and full-time Council members shall be entitled to accommodation and double household allowance, as provided by the Law on Salaries and Benefits in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina.
- (3) Members of the Council shall be on leave from their judicial office for the duration of their work in the Council on a full-time basis and their status shall remain inactive throughout this period.
- (4) If the salary of a member of the Council in the position from which they were elected to the Council exceeds that specified in paragraph (1) of this Article, the member of the Council shall be paid the higher amount.

Article 43

(The Rights of Other Council Members)

- (1) Members who are not with the Council on a full-time basis shall have the right to:
 - a) leave from their Office for the duration of their Office with the Council;
 - b) travel allowance for expenses incurred in the execution of their duties with the Council;
 - c) an award for their work in the Council.

- (2) For the duration of leave pursuant to paragraph (1), item (a) of the Article, Council members whose salaries are provided with the budget shall have the right to a salary and other allowances from their employers.
- (3) An allowance pursuant to paragraph (1), item (b) of this Article shall be regulated by the Council with a separate regulation, while an award pursuant to paragraph (1), item (c) of this Article shall be regulated by the Council of Ministers of BiH on the proposal of the Council.

Article 44

(Immunity)

Members of the Council and members of committees within the framework of the Council shall not be civilly liable for any opinion expressed or decision rendered within the scope of their official duties.

Article 45

(Financial Statements of the Council Members)

The provisions of the Law governing the filing of asset declarations shall also apply to Council members.

Article 46

(Operation and Decision-Making)

- (1) The Council shall operate and decide in plenary sessions of the Council, sessions of the Judicial Department and the Prosecutorial Department, and through disciplinary bodies and appraisal committees.
- (2) In the voting procedure, Council members may not abstain.

Article 47

(Plenary Session of the Council)

- (1) Plenary session shall comprise all Council members.
- (2) At its plenary sessions, the Council shall decide on all matters within its competence that have not been conferred by this Law to the Judicial Department or the Prosecutorial Department, disciplinary bodies or appraisal committees.
- (3) At the Council's plenary session, the quorum shall be at least 13 members in attendance, of which at least six members shall be from the ranks of judges and at least six members from the ranks of prosecutors.

- (4) The Council shall decide by majority vote of all Council members, unless otherwise provided by this Law.
- (5) A decision by the Council on any matter previously decided by the Judicial Department or pertaining to the proposal of that Department shall require a vote of a minimum of five members of the Council from among the judges, and a vote of a minimum of five members of the Council from among the prosecutors on any matter previously decided by the Prosecutorial Department or pertaining to the proposal of that Department.
- (6) In the event of a tie vote, the President of the Council shall have the casting vote.

Article 48

(Department Sessions)

- (1) Chairperson, and in his/her absence, Deputy Chairperson shall convene and preside over the sessions of the of the Department.
- (2) At sessions of the Judicial Department and the Prosecutorial Department respectively, the presence of a minimum of seven members shall be required to constitute a quorum.
- (3) A decision of the Judicial Department shall require a majority vote of all members and shall be deemed adopted if at least five members of the Judicial Department from the ranks of judges have cast their affirmative vote.
- (4) A decision of the Prosecutorial Department shall require a majority vote of all members and shall be deemed adopted if at least five members of the Prosecutorial Department from the ranks of prosecutors have cast their affirmative vote.
- (5) In the event of a tie vote, the Chairperson, or the Deputy Chairperson, shall have the casting vote.

Article 49

(Sub-Councils for Nomination of Candidates)

- (1) The sub-councils shall nominate candidates to the Judicial Department for their appointment as judges, in accordance with this Law.
- (2) The sub-councils shall nominate candidates to the Prosecutorial Department for their appointment as prosecutors, in accordance with this Law.

Article 50

(Disciplinary Bodies)

- (1) The Council shall exercise its disciplinary powers through its disciplinary bodies established in accordance with this Law, namely: the Office of Disciplinary Counsel, the

First Instance Disciplinary Panel and the Second Instance Disciplinary Panel, and the Appeals Panel pursuant to Article 202, paragraph (4) of the Law.

- (2) The composition, competencies and the method of work of disciplinary bodies shall be regulated in more detail in Part four of the Law.

Article 51

(Performance Appraisal Committees)

The Judicial Department shall have a Performance Appraisal Committee for Judges, and the Prosecutorial Department shall have a Performance Appraisal Committee for Prosecutors, which shall respectively conduct performance appraisal in accordance with this law.

Article 52

(Committees and Working Bodies)

- (1) The Council may, for reasons of greater efficiency in the execution of tasks, establish committees and other working bodies.
- (2) The majority of the committees established in accordance with paragraph (1) of this Article shall be the Council members elected from the ranks of judges and prosecutors.
- (3) The composition and the method of work of the committees and other working bodies of the Council shall be regulated in more detail in the decision on their establishment.
- (4) In establishing committees and other working bodies, the principle of Article 5 paragraph (5) of this Law shall apply.
- (5) The competences of the Council, except for the competences of the Judicial Department and the Prosecutorial Department, and decisions that fall within the competence of disciplinary panels and appraisal committees, may be delegated to the committees established in accordance with this Article.
- (6) The Council may engage judges, prosecutors and any other person who are experts in a specific field and not members of the Council, to participate in the work of the Council, and in the work of a Council committee or other working bodies of the Council.
- (7) Persons who are engaged in accordance with paragraph (6) of this Article shall not have the right to vote in the decision-making process, except in cases provided for by this Law.
- (8) Experts who are engaged by the Council in accordance with paragraph (6) of this Article shall be entitled to the reimbursement of costs and compensation for work in accordance with the Council's internal documents, where this amount may not, on a monthly basis, exceed the base established by the Council of Ministers of BiH for calculating salaries in BiH institutions.

Article 53
(Competencies)

The Council shall have the following competencies:

- a) appointment of judges, including court presidents and lay judges;
- b) appointment of chief prosecutors, deputy chief prosecutors and prosecutors;
- c) deciding on objections in the appointment procedures for judges and prosecutors;
- d) making proposals to the relevant authorities in relation to their proposal and election of judges to the Constitutional Court of Republika Srpska and the appointment of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina. When exercising its competence under this item, the Council shall seek a written opinion of the relevant Constitutional Court before it makes its proposal;
- e) deciding on the termination of the mandate of a judge, prosecutor, court president, chief prosecutor and deputy chief prosecutor;
- f) receiving complaints against judges and prosecutors, conducting disciplinary proceedings, determining disciplinary liability, and imposing disciplinary measures on judges, lay judges and prosecutors and deciding on appeals in disciplinary proceedings;
- g) deciding on the suspension of judges, lay judges and prosecutors;
- h) supervising the advanced professional training of judges and prosecutors and advising the Entity Judicial and Prosecutorial Training Centres and the Brcko District Judicial Commission in their adoption of programmes of advanced professional training for judges and prosecutors;
- i) determining the minimum amount of advanced professional training to be undertaken by every judge and prosecutor each year and determining the induction training for candidates chosen for judicial and prosecutorial office and supervising the provision of such training;
- j) approving the annual report of the Steering Boards of the Entity Judicial and Prosecutorial Training Centres and of the Brcko District Judicial Commission insofar as it relates to the induction training and the advanced professional training of judges and prosecutors;
- k) deciding on issues of incompatibility of other functions performed by judges and prosecutors;
- l) deciding on the temporary assignment of judges and prosecutors to another court or prosecutor's office;
- m) deciding upon leaves of absence for judges and prosecutors;
- n) participating, at the Council's discretion, in the drafting process of annual budgets for the courts and prosecutor's offices;

- o) making recommendations, at the Council's discretion, on the annual budget proposals made by governmental bodies and/or governments for courts and prosecutor's offices;
- p) making and presenting recommendations, at the Council's discretion, for amendments to the proposed budgets made by governmental bodies and/or governments and/or the Brcko District Judicial Commission before the relevant legislative bodies;
- r) collecting and analysing reports and relevant budget and revenue data for courts and prosecutor's offices, in order to provide statistical data for the effective operation of courts and prosecutor's offices;
- s) advocating for adequate and continuous funding of courts and prosecutor's offices in Bosnia and Herzegovina;
- t) participating in the drafting of, and approving, Books of Rules for the operation of courts and prosecutor's offices in Bosnia and Herzegovina;
- u) monitoring and advising courts and prosecutor's offices on appropriate and effective budget, administration and management techniques and procedures and initiating training in this regard;
- v) setting criteria for the performance of courts and prosecutor's offices, and overseeing the courts and prosecutor's offices regarding the matters of judicial and prosecutorial administration;
- z) initiating, overseeing and coordinating projects related to improving all aspects of the administration of courts and prosecutor's offices, including seeking national and international funding therefore;
- aa) setting additional criteria for the performance evaluations of judges and prosecutors;
- bb) evaluating the performance of judges, prosecutors, court presidents, chief prosecutors and deputy chief prosecutors;
- cc) initiating, coordinating, overseeing and approving the establishment and use of information technology by courts and prosecutor's offices;
- dd) determining the number of judges, prosecutors and deputy chief prosecutors of each court or prosecutor's office within the Council's competence, after consultation with the relevant Court President or Chief Prosecutor, relevant budgetary authority, and the relevant Ministry of Justice and the Brcko District Judicial Commission;
- ee) collecting information and maintaining documentation on the professional status of judges and prosecutors, including their date of appointment, termination of office, statistical information relevant to their work performance, and any other information which the Council considers relevant to the work of court presidents, chief prosecutors and deputy chief prosecutors, judges and prosecutors;
- ff) gathering asset and interest declarations of Council members, judges and prosecutors, checking timeliness, accuracy, completeness and authenticity of the reported data and analysing data provided in the declarations;

- gg) providing opinions on complaints lodged by a judge or a prosecutor who considers that his or her rights provided for by this or other law, or his or her independence are threatened;
- hh) providing opinions on draft laws, regulations, or issues of importance that may affect the judiciary, initiate the adoption of relevant legislation and other regulations and to provide guidance to courts and prosecutor's offices on matters falling under the Council's competence;
- ii) issuing codes of ethics for judges and prosecutors;
- jj) exercising other competencies as determined by this or other law.

Article 54

(Application of Competencies)

- (1) The Council shall have competencies as determined with the law for the courts and prosecutor's offices in Bosnia and Herzegovina except for the Constitutional Court of Bosnia and Herzegovina.
- (2) Regarding the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of Republika Srpska, the Council shall have competencies exclusively in accordance with the provisions of Article 53, item d) of the Law.

Article 55

(Obligation to Comply with Inquiry and Requests)

- (1) All courts, prosecutor's offices, governmental bodies and other legal entities as well as judges, court presidents, prosecutors, chief prosecutors, deputy chief prosecutors, lay judges and employees of the courts and prosecutor's offices shall comply with the requests of the Council for information, documents and other materials related to the performance of competencies by the Council.
- (2) To the extent necessary for the performance of its competencies, the Council and its representatives shall have access to all premises and documentation of the courts and prosecutor's offices from Article 54, paragraph (1) of the Law.
- (3) In the event of criminal investigation ordered against a judge or prosecutor or Council member, the prosecutor in charge of the case shall immediately notify the Chief Prosecutor of that and provide him or her with all information about the course and outcome of the criminal proceedings without delay.
- (4) The Chief Prosecutor shall, without delay, provide the Council with all information referred to in paragraph (3) of this Article.

CHAPTER IV SECRETARIAT, BUDGET AND ANNUAL REPORT**Article 56****(Secretariat)**

- (1) The professional, financial and administrative tasks for the Council and departments shall be performed by the Secretariat of the HJPC. The tasks of the Secretariat shall include, inter alia, providing administrative support, carrying out legal, financial and other tasks for the Council to implement its mandate in accordance with the Law, as well as providing strategic advice on issues related to the execution of the mandate of the Council.
- (2) The Secretariat shall prepare draft decisions to be rendered by the Council, execute decisions adopted by the Council and regularly report to the Council with respect to its activities.
- (3) The Secretariat's internal organisation and operations are governed by the Book of Rules on Internal Organization and Systematization of Job Positions, adopted by the Council in order to ensure the legal, professional and efficient performance of tasks and duties, as well as effective management, coordination and supervision over the execution of tasks and duties necessary for the Council to exercise its mandate in accordance with the Law.

Article 57**(Managing the Secretariat)**

The Secretariat of the Council shall have a Director and Deputy Director, responsible to the Council.

- (2) The Director shall carry out management duties, coordinate the work of the Secretariat and shall be responsible for the performance of the professional, financial and administrative tasks of the Secretariat, for the execution of the budget adopted by the Council, as well as for other tasks as decided by the Council.
- (3) The Deputy Director shall oversee the preparation of sessions and the implementation of decisions by the Council and departments, and shall be responsible for any other tasks that are decided on by the Council. The Deputy Director shall replace the Director in his/her absence.
- (4) The Director and Deputy Director have the right to attend all meetings of the Council as non-voting participants and to express their opinion on all issues on the agenda. The Director and Deputy Director may also propose and include items on the agenda.

Article 58

(Appointment of the Director and Deputy Director)

- (1) The Director and Deputy Director shall be appointed by the Council to a five-year term after the conclusion of the public competition conducted by the Civil Service Agency of Bosnia and Herzegovina.
- (2) The Director and Deputy Director shall have the status of a senior executive manager with a special assignment in accordance with the Law on Civil Service in Institutions of Bosnia and Herzegovina.
- (3) Two Council members shall be elected on behalf of the Council as members of the selection committee for the Director and Deputy Director from Article 24, para (2) of the Law on Civil Service in the Institutions of Bosnia and Herzegovina.
- (4) The Director and Deputy Director shall be removed by the Council.

Article 59

(Civil Servants and Employees in the Secretariat)

- (1) The nature and the content of all open competitions conducted in accordance with Article 26, para (1) of the Law on Civil Service in the Institutions of Bosnia and Herzegovina shall be decided by the Council upon the proposal of the Director.

A selection committee pursuant to Article 24, para (2) of the Law on Civil Service in Institutions of Bosnia and Herzegovina for the recruitment of civil servants for the Secretariat shall have one member of the Council as designated by the Council and the Director or a person authorised by the Director.

- (3) The appointment of civil servants in the Secretariat shall be performed in accordance with Article 28, para (2) of the Law on Civil Service in the Institutions of BiH.
- (4) Civil servants in the Secretariat are appointed and removed by a committee consisting of the Director of the Secretariat and two members of the Council designated by the Council.
- (5) In accordance with the Law on Service in the Institutions of Bosnia and Herzegovina, decision on employment or termination of employment of an employee of the Secretariat who does not hold the status of civil servant shall be rendered by the committee consisting of one Council member as designated by the Council, one member as designated by the Director and one member as designated by the Deputy Director.

Article 60

(By-laws)

- (1) The Council shall adopt the Rules of Procedure of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: the Rules of Procedure of the Council) which regulate the issues provided for in this Law, as well as other issues important for

the work and organisation of the Council. The Rules of Procedure of the Council shall be published in the Official Gazette of BiH.

- (2) The Council shall adopt its books of rules and by-laws as stipulated by this Law, as well as other documents necessary for the work of the Council.

Article 61

(Funding of the Council)

- (1) The Council shall be funded from the Budget of BiH institutions and international obligations of BiH.
- (2) The Council shall prepare a draft of its annual budget in accordance with the provisions of the Law on Funding the Institutions of Bosnia and Herzegovina.

Article 62

(Donor Funds)

- (1) The Council may receive donations from international donors to its operational budget and for special judicial reform projects outside the operational budget of the Council.
- (2) Funds referred to in paragraph (1) of this Article shall be transferred to a special purpose account with the Central Bank of Bosnia and Herzegovina. The funds shall be expended upon the order of the Director of the Secretariat, in accordance with the regulations on the expenditure of donor funds issued by the Council and in accordance with the terms of the agreement with the donor.

Article 63

(Annual Report)

- (1) The annual report of the Council shall contain information on the activities of the Council as well as the information on the situation in courts and prosecutor's offices, including the recommendations for its improvement.
- (2) The Council shall submit its annual report, not later than 1 May, to the Parliamentary Assembly of Bosnia and Herzegovina, the Council of Ministers of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina, cantonal assemblies, the National Assembly of Republika Srpska, the state and Entity ministries of justice and the Assembly of Brcko District BiH, for their information. The annual report shall also be posted on the Council's web site.
- (3) If the authorities referred to in paragraph (2) of this Article request so, the President of the Council, shall elaborate and explain the annual report to them, and answer questions regarding the report. Recommendations that do not undermine the Council's autonomy may be given through discussing the report and conclusions.

PART III - APPOINTMENTS TO JUDICIAL AND PROSECUTORIAL OFFICE**CHAPTER I REQUIREMENTS AND TERM OF JUDICIAL AND PROSECUTORIAL OFFICE****Article 64****(Qualities)**

Judges and prosecutors shall be individuals of professional impartiality and high moral standing and demonstrated professional ability and integrity and shall meet the basic and special requirements for appointment as set forth in this Law.

Article 65**(Basic Requirements)**

In order to qualify for appointment to judicial or prosecutorial office, a person shall meet the following basic requirements:

- a) they shall be a citizen of Bosnia and Herzegovina;
- b) they shall hold the medical aptitude to perform judicial or prosecutorial function;
- c) they shall be a graduate from a law school in Bosnia and Herzegovina or in the Socialist Federal Republic of Yugoslavia or from another law school provided that the diploma issued from that law school has been validated in accordance with law;
- d) they shall have passed a bar examination administered in Bosnia and Herzegovina or in the Socialist Federal Republic of Yugoslavia;
- e) or, as an exception to item d) above, they shall, in the period between 6 April 1992 and 31 March 2004, have passed a bar examination administered in any country whose territory was part of the territory of the Socialist Federal Republic of Yugoslavia and shall have held office as a judge or prosecutor in Bosnia and Herzegovina in the period between 6 April 1992 and 31 March 2004;
- f) they have not been finally convicted of a criminal offence for which the law provides for a prison sentence and
- g) no criminal proceedings are conducted against them.

Article 66

(Special Requirements for the Appointment of Judges)

- (1) The following persons may be appointed to the position of a judge of the Appellate Court of Bosnia and Herzegovina, the Supreme Court of the Federation of BiH and the Supreme Court of Republika Srpska:
 - a) a judge of the court referred to in paras (3), (4) and (5) of this Article, who has served for at least five years in that position and has at least fifteen years of experience as a judge or prosecutor, of which at least twelve years as a judge;
 - b) a prosecutor of the FBiH Prosecutor's Office or the RS Prosecutor's Office who has served for at least five years in that position and has at least twenty years of experience as a prosecutor or judge.
- (2) A distinguished legal expert who is not a judicial office holder may be appointed to the position of a judge of the court referred to in paragraph (1) of this Article, provided that he or she has at least twenty years of work experience after passing the bar examination.
- (3) A judge of at least ten years of experience as a judge or prosecutor, of which at least seven years as a judge, may be appointed to the position of a judge of the Appellate Court of Brčko District BiH.⁶
- (4) A judge of at least ten years of experience as a judge or prosecutor, of which at least seven years as a judge, may be appointed to the position of a judge of the Court of BiH.
- (5) a judge of at least ten years of experience as a judge or prosecutor, of which at least seven years as a judge, may be appointed to the position of a judge of the district court in Republika Srpska, High Commercial Court in Republika Srpska and cantonal court in the Federation of BiH.
- (6) A person who has at least five years of legal experience after passing the bar examination may be appointed a judge of the Basic Court of Brčko District BiH.
- (7) A person who has at least three years of legal experience after passing the bar examination may be appointed a judge of the basic court, district commercial court and municipal court.
- (8) A prosecutor may be appointed to the position of a judge referred to in paras (6) and (7) of this Article.

Article 67

(Special requirements for appointment of prosecutors and deputy chief prosecutors)

- (1) The following persons may be appointed to the position of a prosecutor and deputy chief prosecutor of the FBiH Prosecutor's Office and the RS Prosecutor's Office:

⁶ The Judicial Commission of BD BiH will submit the proposal at a later date

- a) a prosecutor who has at least fifteen years of experience as a prosecutor or judge, of which at least 12 years as a prosecutor;
 - b) a judge of the FBiH Supreme Court or the RS Supreme Court who has served for at least five years in that position and has at least twenty years of experience as a prosecutor or judge.
- (2) A prosecutor of at least ten years of experience as a judge or prosecutor, of which at least seven years as a prosecutor, may be appointed to the position of a prosecutor or deputy chief prosecutor of the Prosecutor's Office of BiH.
 - (3) A prosecutor of at least five years of experience in that position may be appointed deputy chief prosecutor of the Prosecutor's Office of Brcko District BiH, cantonal prosecutor's office in the Federation of BiH and district prosecutor's office in Republika of Srpska.
 - (4) A person with at least three years of legal experience after passing the bar examination may be appointed a prosecutor of the Prosecutor's Office of Brcko District BiH, cantonal prosecutor's office in the Federation of BiH and district prosecutor's office in Republika Srpska.
 - (5) A judge may be appointed to the position of a prosecutor referred to in para (4) of this Article.

Article 68

(Mandate of Judges and Prosecutors)

- (1) Judges and prosecutors are appointed for an unlimited term of office. However, their term shall be terminated in case of death, resignation, mandatory retirement age, permanent loss of ability to hold office, conviction for a criminal offence carrying a prison sentence or removal from office for reasons set forth under this Law.

Article 69

(Suitability)

- (1) In the procedures referred to in Article 70 of this Law, the following applications shall not be considered:
 - a) applications by persons who still suffer the legal consequences of the imposed disciplinary measures;
 - b) applications by Council members filed in contravention of prohibition under Article 25 paragraph (2) of this Law;
 - c) applications by candidates who have applied to a position in the same court or prosecutor's office in which their blood relative in direct line without limitation, in lateral line up to fourth degree, a spouse or a civil-law partner, relative by marriage or relative of civil-law partner up to second degree, holds a judicial/prosecutorial office.

In the procedures referred to in Article 70 of this law, when nominating, transferring or appointing candidates, all circumstances relevant to the assessment of their suitability are taken into account, such as circumstances related to behaviour contrary to the principles of the codes of judicial or prosecutorial ethics or any pending disciplinary proceedings; for candidates in the public competition procedure, also past disciplinary offences and the information about convictions expunged from the criminal records.

CHAPTER II BASIC PROVISIONS ON THE PROCEDURE FOR FILLING THE VACANT POSITIONS

Article 70

(Filling the Vacant Positions)

- (1) Vacant positions of judges, prosecutors and deputy chief prosecutors shall be filled through transfers, internal and public competitions, based on the annual plan for filling the positions in the judiciary.
- (2) Vacant positions of court presidents and chief prosecutors shall be filled through internal competition within that court or the prosecutor's office, or exceptionally through internal competition within the judiciary, subject to conditions set out in this Law.

Article 71

(Representation)

In the transfer and appointment procedure, based on internal or public competition, the Council shall apply relevant constitutional provisions which regulate the equal rights and representation of constituent peoples and others, and shall look after the gender equality.

Article 72

(Matters Regulated by By-laws)

- (1) The transfer, internal and public competition and appointment procedures, including to managerial positions, in the part not regulated by this Law, shall be regulated in more detail by the HJPC Book of Rules on the Appointment Procedure for Judicial Office Holders (hereinafter: the Book of Rules on the Appointment Procedure) other HJPC documents issued in accordance with this Law.
- (2) The Council may issue a separate instruction for assessing the candidates' abilities, qualities or skills included in the criteria prescribed by this Law that are tested during the interview.

Article 73

(Decision on Transfer and Appointment)

- 1) The decision on transfer or appointment shall contain reasoning behind the application of criteria under Articles 83, 88, 96, 107 and 115 of this Law and shall be posted on the Council's website.
- 2) The decision referred to in paragraph (1) of this Article, without reasoning, shall be published in the Official Gazette of Bosnia and Herzegovina, after the decision on assuming the office of an appointed judge or prosecutor has been issued.

Article 74

(Decision on Assuming Office)

- (1) The date of assuming the office of an appointed or transferred judge or prosecutor shall be determined by a separate decision.
- (2) Issuing a decision on assuming the office of a judge or prosecutor appointed in an internal or public competition is preceded by a check of their declarations of assets and interests, pursuant to the provisions of this Law governing declaration of assets and interests. A judge or prosecutor appointed in an internal or public competition may assume office only if the outcome of checking their declarations in line with Article 166 of this Law is positive.
- (3) If an administrative dispute is brought against the appointment or transfer decision, the decision referred to in paragraph (1) of this Article shall be postponed until conclusion of the court proceedings.
- (4) The decision referred to in paragraph (1) of this Article shall be delivered to the judge or prosecutor to whom it relates, the court or prosecutor's office to which he or she was transferred or appointed, the competent ministry of justice and the authorities in charge of the training of judges and prosecutors.
- (5) The Council may postpone or change the date for assuming the office of a judge or prosecutor, for the following reasons:
 - a) If to do so is necessary in order to check the information referred to in Article 69 para (2) of this Law;
 - b) If the transferred or appointed judge or prosecutor may not assume the office on the specified date for justified reasons.
- (6) The provisions of this Article also apply to the assumption of office of the court president, chief prosecutor and deputy chief prosecutor.

Article 75

(Reversing the Decision on Transfer or Appointment)

- (1) The Council shall reverse its Decision on Transfer or Appointment:
 - a) when receives a negative outcome on the conducted check in accordance with Article 166 and 167, paragraph (2) of this Law;
 - b) if, before assuming the office of a judge or prosecutor, receives information that, if known at the time of transfer or appointment, would constitute a reason not to issue the decision on transfer or appointment;
 - c) if the appointed person fails to assume the office during the time period prescribed by the Law.
- (2) If the Council reverses its decision on transfer or appointment in the internal competition procedure, it may appoint another candidate from the list to that office in accordance with the provisions of this Law.
- (3) Paragraph (1) of this Article also applies to the assumption of office of the court president, chief prosecutor and deputy chief prosecutor.

Article 76

(Declaration of Office)

- (1) Prior to assuming their duty, judges and prosecutors appointed in the public competition procedure shall make a solemn declaration, which reads as follows: "I solemnly declare that I shall perform the duty of my office in accordance with the Constitution and the Law, take decisions upon my best knowledge, conscientiously, responsibly and impartially to uphold the rule of law, and shall protect the freedoms and rights of individuals granted by the Constitution of Bosnia and Herzegovina."
- (2) Solemn declaration is made orally before the President of the Council, or a Council Member designated by the President of the Council, and the declaration is then signed.
- (3) Solemn declaration binds the judge and the prosecutor as long as they carry out their official duties, regardless of whether they have been appointed or transferred to another court or prosecutor's office.

Article 77

(Right to Object During the Appointment Process)

- (1) The candidate may lodge an objection to the decision dismissing the candidate's application in the process of transfer or internal or public competition, as well as to the regularity of the conducted entrance and written test procedure as part of the public competition, within eight days from the date of receipt of the decision or the publication of the preliminary results of the entrance exam and written test.

- (2) The objection from paragraph (1) is decided by the Judicial Department or the Prosecutorial Department, and the procedure upon objection is regulated in more detail by the Book of Rules on Appointments.

Article 78

(Judicial Review)

- (1) The candidate from the ranking list specified in Articles 84, 91, and 101 may initiate an administrative dispute before the Appellate Court of BiH in opposition to the transfer or appointment decision.
- (2) The complaint to initiate an administrative dispute shall be submitted within eight days from the date of publication of the decision on appointment on the Council's website.
- (3) The court submits the complaint to the Council for a response within eight days from the date it was received by the court. The Council is required to submit the response to the complaint within eight days from the date of receipt.
- (4) In the dispute referred to in this Article, the Appellate Court of BiH shall review the lawfulness of the appointment procedure and shall decide in an urgent procedure, no later than eight days from the date of submission of the response to the complaint.
- (5) In the dispute referred to in this Article, the court may reject the complaint as unfounded, or uphold the complaint, reverse the decision on appointment, and return the matter to the Council for a new decision.
- (6) The decision of the court cannot be challenged by extraordinary legal remedies provided by the Law on Administrative Disputes of Bosnia and Herzegovina.

CHAPTER III PROCEDURE AND CRITERIA FOR TRANSFER AND APPOINTMENT OF JUDGES AND PROSECUTORS

Section A Bodies in charge of implementing transfer and appointment procedures

Article 79

(Sub-councils for Nomination of Candidates at the Level of Bosnia and Herzegovina and in the Brčko District BiH)

- (1) The Council shall have sub-councils for nomination of candidates to vacant positions in courts and prosecutor's offices at the level of Bosnia and Herzegovina and in the Brčko District BiH. Nominations of sub-councils in accordance with this Law shall include the reasoning.

- (2) The sub-council for nomination of candidates to vacant positions at the level of Bosnia and Herzegovina and in the Brcko District BiH shall consist of six Council members, as follows:
- a) one Council member who is the judge of the Court of BiH or the Appellate Court of BiH;
 - b) one Council member who is the judge of the Appellate Court of the Brcko District BiH or the Basic Court of the Brcko District BiH;
 - c) one Council member who is the prosecutor of the Prosecutor's Office of Bosnia and Herzegovina;
 - d) one Council member who is the prosecutor of the Prosecutor's Office of the Brcko District BiH;
 - e) one Council member elected by the Parliamentary Assembly of Bosnia and Herzegovina;
 - f) one Council member elected by the Council of Ministers of Bosnia and Herzegovina.

Article 80

(Entity Sub-councils for Nomination of Candidates)

- (1) The Council shall have sub-councils for nomination of candidates to vacant positions in courts and prosecutor's offices in the Entities. Nominations of sub-councils in accordance with this Law shall include the reasoning.
- (2) Sub-council for nomination of candidates to vacant positions in Republika Srpska shall consist of six Council members from Republika Srpska, as follows:
- a) one Council member who is the judge of the Supreme Court of Republika Srpska;
 - b) one Council member who is the judge of a district court or of the High Commercial Court;
 - c) one Council member who is the judge of a basic court or of a district commercial court;
 - d) one Council member who is the prosecutor of the Prosecutor's Office of Republika Srpska;
 - e) two Council members who are the prosecutors of district prosecutor's offices in Republika Srpska.
- (3) Sub-council for nomination of candidates to vacant positions in the Federation of Bosnia and Herzegovina shall consist of six Council members from the Federation of Bosnia and Herzegovina, as follows:
- a) one Council member who is the judge of the Supreme Court of the Federation of Bosnia and Herzegovina;

- b) one Council member who is the judge of a cantonal court;
 - c) one Council member who is the judge of a municipal court;
 - d) one Council member who is the prosecutor of the Prosecutor's Office of the Federation of Bosnia and Herzegovina;
 - e) two Council members who are the prosecutors of a cantonal prosecutor's office in the Federation of Bosnia and Herzegovina.
- (4) When determining a proposal related to the appointment or transfer of judges, at least two members of the subcommittee from among judges must vote in favour of the proposal. When determining a proposal related to the appointment or transfer of prosecutors, at least two members of the subcommittee from among prosecutors must vote in favour of the proposal. Other issues related to the work of sub-councils shall be regulated by the Book of Rules on Appointments.

Article 81

(Interview Panels)

- (1) In accordance with the Book of Rules on Appointments, the Judicial or Prosecutorial Department shall appoint panels of three Council members each, to interview candidates who apply in both the public and internal competition procedure and to score their performance during the interview.
- (2) Majority of members of the panel referred to in paragraph (1) of this Article who conduct interviews with candidates for judicial positions shall be judges.
- (3) Majority of members of the panel referred to in paragraph (1) of this Article who conduct interviews with candidates for prosecutorial positions shall be prosecutors.

Section B Transfer

Article 82

(Transfer)

- (1) At least once every five years the Council shall announce:
 - a) a list of vacant judicial positions in municipal, basic, cantonal and district courts and a call to judges of the same or higher level courts who wish to be transferred to some of the vacant positions in the court of the same or lower level;
 - b) a list of vacant prosecutorial positions in cantonal and district prosecutor's offices and a call to prosecutors of the same or higher level who wish to be transferred to some of the vacant positions in the prosecutor's office of the same or lower level.

- (2) The list and the call referred to in paragraph (1) of this Article, which shall be announced on the Council's web site and sent electronically to all courts and prosecutor's offices, shall include up to 70% of vacant positions in one court or the prosecutor's office, in accordance with the plan previously determined by the Council.
- (3) Within the meaning of paragraph (1) of this Article, same level court position is a position for which the same special requirements are prescribed, and the lower level court position is a position for which lesser special requirements are prescribed.
- (4) If a judge with particular work experience is needed in the cantonal or district court, this shall be mentioned in the call from paragraph (1) item a) of this Article.
- (5) The call shall be open to judges and prosecutors who have spent at least five years in the position they perform at the time when call is announced.
- (6) The required work experience in terms of paragraph (4) item c) of this Article shall be regulated in more detail by the Book of Rules.

Article 83

(Criteria for Transfer)

- (1) In the transfer procedure the following criteria shall apply:
 - a) latest performance appraisal;
 - b) time spent in the position from which one applies for transfer.
- (2) The manner of scoring against the criteria referred to in paragraph (1) of this Article shall be regulated in more detail by the Book of Rules, whereby the points awarded for the performance appraisal shall constitute at least two thirds of the total number of points.
- (3) In addition to the criteria referred to in paragraph (1) of this Article, when nominating and deciding on transfer, the following shall be taken into account:
 - a) personal or family circumstances of a judge or prosecutor that justify the transfer;
 - b) all circumstances that are relevant to assessing the quality and suitability of candidates;
 - c) the need to ensure adequate ethnic and gender representation in terms of Article 71 of this Law;
 - d) the candidate's particular work experience if specified in the call announcement.

Article 84

Transfer Procedure

The transfer procedure shall be conducted by the relevant sub-council. It will review received applications, prepare a ranking list of candidates and nominate a candidate for transfer.

Article 85**Decision on Transfer**

- (1) Decision on transfer of a judge shall be made by the Judicial Department, decision on transfer of a prosecutor shall be made by the Prosecutorial Department.
- (2) The Judicial Department or the Prosecutorial Department shall consider the circumstances outlined in Article 83 of this Law when deciding on the transfer.

Section C Internal Competition Procedure**Article 86****(Announcing the Internal Competition)**

- (1) For the positions referred to in Article 66, paras (6) and (7) and 67, para (4) of this Law, an internal competition shall be announced at least once every five years.
- (2) For the positions referred to in Article 66 paras (1), (3), (4) and (5) and Article 67 paras (1), (2) and (3), internal competition shall be announced in accordance with the plan established by the Council.
- (3) Internal competition shall be posted on the Council's website.
- (4) If a judge or prosecutor with particular work experience needs to be appointed to the court or prosecutor's office, this shall be made clear in the announced internal competition from paragraph (2) of this Article. Particular work experience is regulated in more detail by the Book of Rules on Appointments.
- (5) The internal competition shall be open to judges or prosecutors who:
 - a) meet the special requirements prescribed for the position that they are applying for;
 - b) have spent at least five years at the position they perform at the moment when the internal competition is announced.

Article 87**(Internal Competition Procedure)**

The internal competition procedure shall include the interview with candidates and the scoring, ranking and nomination of candidates.

Article 88

Criteria for the Internal Competition Procedure

- (1) In the internal competition procedure, the following criteria shall apply:
 - a) competence and performance;
 - b) the ability to responsibly, independently and impartially hold the office;
 - c) motivation and communication skills;
 - d) length of service as a judge or prosecutor;
 - e) professional development, publication of academic and professional papers and other professional activities.
- (2) Candidates shall be assessed against criteria referred to in paragraph (1) item (a) of this Article based on the performance appraisal in accordance with paragraphs (3) to (5) of this Article, and against criteria referred to in paragraph (1) items (b) to (e) during the interview.
- (3) Candidates applying to positions which require at least 15 years of experience as a special requirement shall be assessed against criteria referred to in paragraph (1) item (a) of this Article based on the last three performance appraisals.
- (4) Candidates applying to positions which require at least ten years of experience as a special requirement shall be assessed against criteria referred to in paragraph (1) item (a) of this Article based on the last two performance appraisals.
- (5) Candidates applying to positions which require up to five and less years of experience as a special requirement shall be assessed against criteria referred to in paragraph (1) item (a) of this Article based on the latest performance appraisal.

Article 89

Scoring against the Criteria for the Internal Competition Procedure

The manner of scoring against the criteria referred to in Article 88 of this Law shall be regulated in more detail by the Book of Rules on Appointments, which shall prescribe:

- a) the total number of points that may be awarded during the competition procedure;
- b) the maximum number of points that may be awarded based on the performance appraisal, and the maximum number of points that may be awarded at the interview, in total and against each of the criteria, whereby the points awarded for the performance appraisal make up at least two thirds of the total number of points;
- c) minimum number of points that the candidate must score to be nominated;
- d) rules for ranking candidates who earn equal number of points.

Article 90

Interview

- (1) Candidates who meet special requirements set out in this Law to be appointed to the position they have applied for, and who have the requisite performance appraisals defined by the Book of Rules, shall be called for an interview.
- (2) Interview with candidates shall be conducted by the panel referred to in Article 81 of this Law.
- (3) The panel shall score the candidates during the interview, and provide the list of candidates to the relevant sub-council.
- (4) As an exception to paragraph (1) of this Article, candidates who have been interviewed in the last 12 months and whose score in the previous interview is taken into account will not be called for an interview.

Article 91

Ranking and Nomination of Candidates in the Internal Competition Procedure

- (1) In accordance with the Book of Rules on Appointments, the competent sub-council ranks the candidates based on the total number of points, and submits the ranking list with a reasoned nomination for the appointment to the Judicial Department or the Prosecutorial Department.
- (2) When nominating a candidate, the sub-council shall cumulatively take into account the following:
 - a) minimum number of points that the candidate is required to score to be nominated;
 - b) the number of points earned by the candidate;
 - c) circumstances relevant to the assessment of suitability of candidates referred to in Article 69 paragraph (2) of this Law;
 - d) the need to ensure adequate ethnic and gender representation in terms of Article 71 of this Law;
 - d) the candidate's particular work experience if specified in the call announcement.
- (3) When up to five positions in the same court or prosecutor's office are announced through a single competition, the sub-council shall nominate candidates for the position of judge or prosecutor from among a maximum of ten candidates who obtained the highest number of points.
- (4) When more than five positions in the same court or prosecutor's office are announced through a single competition, the sub-council shall nominate candidates for the position of judge or prosecutor from among twice the number of candidates in relation to the number of positions announced, who obtained the highest number of points.

Article 92

Decision on Appointment in the Internal Competition Procedure

- (1) The decision on appointment of a judge shall be made by the Judicial Department, the decision on appointment of a prosecutor shall be made by the Prosecutorial Department.
- (2) Rules from Article 91, paras (2), (3) and (4) of this Law shall be binding on the Judicial Department or the Prosecutorial Department when making a decision on the appointment.

Section D (Public Competition)

Article 93

(Announcing the Public Competition)

- (1) The Council shall announce a public competition once a year to fill the position of a judge in the court referred to in Article 66 paras (6) and (7) of this Law and the position of a prosecutor in the prosecutor's office referred to in Article 67 para (4) of this Law.
- (2) Public competition shall be posted on the Council's website.

Article 94

(Filling the Positions Through Public Competition)

- (1) Positions in courts and prosecutor's offices referred to in Article 66, paragraphs (6) and (7) and Article 67, paragraph (4) of this Law, which according to the plan for filling the positions shall not be covered by transfer or internal competition procedure shall be filled through public competition procedure.
- (2) In the public competition procedure, candidates must disclose the information regarding the circumstances referred to in Article 69 paragraph (2) of this Law.

Article 95

(Phases of the Public Competition)

- (1) Public competition procedure includes entrance exam, written test, interview, preparing the list of successful candidates and nomination of candidates.
- (2) Entrance exam and written test shall be conducted anonymously. In the process of evaluating entrance exams and written tests, evaluators may not know the identity of the candidates being tested.
- (3) Any matters relevant to entrance exam and written test that are not regulated by this Law shall be regulated in more detail in the Book of Rules on Appointments.

Article 96**(Criteria for the Public Competition Procedure)**

- (1) In the public competition procedure, the following criteria shall apply:
 - a) knowledge of legislation relevant to performing judicial/prosecutorial office, and ability to apply it;
 - b) ability to analyse and solve legal problems;
 - c) ability to responsibly, independently and impartially hold the office for which they have applied;
 - d) knowledge of principles of judicial/prosecutorial ethics and understanding their significance;
 - e) motivation, communication and presentation skills;
 - f) relevance of the prior work experience for performing judicial/prosecutorial office;
 - g) professional development, publication of academic and professional papers and other professional activities.
- (2) Candidates shall be tested against criteria referred to in paragraph (1) of this Article through entrance exam, written test and interview in a way prescribed by this Law and a document issued by the Council.

Article 97**(Entrance Exam)**

- (1) Entrance exam shall be used to test the candidate's knowledge of legislation relevant for performing the judicial/prosecutorial office, in legal fields regulated by the Book of Rules, and the knowledge of principles of judicial/prosecutorial ethics.
- (2) Unless otherwise prescribed, candidates who meet basic and special requirements prescribed by this Law to be appointed to the position for which they have applied shall be called to take the entrance exam.

Article 98**(Written Test)**

- (1) Candidates who pass the entrance exam shall be called to take the written test.
- (2) The written test that includes drafting of at least one written document, shall be used to test the knowledge of legislation relevant to performing judicial/prosecutorial office, and the ability to apply it in legal fields regulated by the Book of Rules on Appointments, and the ability to analyse and solve legal problems.

Article 99**(Interview)**

- (1) Unless otherwise prescribed, candidates who pass the written test shall be called to the interview, which shall test the candidates against the criteria referred to in Article 96, paragraph (1) items (b), c), d), e), f) and g) of this Law.
- (2) Panel referred to in Article 81 of this Law shall interview the candidates and score their performance at the interview.

Article 100**(Points Awarded in the Public Competition)**

The manner of evaluating and scoring the entrance exam and written test, and the interview shall be regulated in more detail by the Book of Rules on Appointments, which shall include:

- a) the total number of points that may be awarded during the competition procedure;
- b) maximum number of points that may be awarded in each of the stages in the procedure, whereby points scored at the entrance and written exam shall make at least two thirds of the total number of points;
- c) minimum results in each stage of the procedure and the total results which each of the candidates need to achieve to be placed on the list of successful candidates referred to in Article 101 of this Law;
- d) criteria for ranking candidates who earn equal number of points.

Article 101**(Forming the List of Successful Candidates)**

- (1) The Judicial Department or the Prosecutorial Department forms the list of successful candidates based on the results achieved at entrance exam, written test and interview.
- (2) List of successful candidates shall remain valid until the new list upon next public competition is formed.
- (3) Candidates who are placed on the list of successful candidates in the public competition procedure, shall not be required to take written test, entrance exam or interview for the following three years, if during that period they apply to another public competition. Exceptionally, the candidate may indicate in the application that they want to be tested or interviewed again, or both tested and interviewed, if at least 12 months have passed since the previous test or interview.
- (4) In the process of scoring the candidates, referred to in paragraph (3) of this Article, who have not been re-tested, their previous results of the entrance exam, written test and interview shall be taken in consideration.

Article 102

(Announcement of Vacancies and Call for Applications)

- (1) Once every three months, the Judicial Department and the Prosecutorial Department shall determine and announce a list of vacancies in courts and prosecutor's offices referred to in Article 66, paras (6) and (7) and Article 67, para (4), with a call for applications to candidates from the list of successful candidates referred to in Article 101 of this Law, who wish to be appointed to one of the vacant positions.
- (2) One candidate may apply to a maximum of three vacant positions.
- (3) If a candidate applies for more than one position in accordance with para (2) of this Article, he or she may indicate their preferences regarding the court or prosecutor's office to which they wish to be appointed.

Article 103

(Ranking and Nomination of Candidates in the Public Competition Procedure)

- (1) After the application deadline, the competent sub-council shall without delay form a ranking list of candidates for each of the announced positions, in accordance with the results they achieved in the public competition procedure.
- (2) The competent sub-council shall nominate the candidates from the ranking list referred to in paragraph (1) of this Article, taking into account the achieved results of the candidates, their preferences if they have indicated them, the need to ensure adequate ethnic and gender representation in terms of Article 71 of this Law, as well as circumstances from Article 69, para (2) of this Law, which are relevant to the assessment of the candidates' suitability.
- (3) The preferences of the candidates who are ranked best on the list of successful candidates from Article 102 are binding on the sub-council, and they may be deviated from only if it is necessary to ensure adequate ethnic and gender representation. The Council shall define in the Book of Rules the minimum results that need to be achieved for a candidate to be considered the best ranked in terms of this paragraph.
- (4) The preferences of higher-ranked candidates shall take precedence over the preferences of lower-ranked candidates.
- (5) Candidates who applied in response to a call announced in line with this Article and then renounced their application for all or any of the positions after the application deadline shall not be considered for ranking or nomination in the current and two future calls announced in line with this Article.

Article 104

(Decision on Appointment in the Public Competition Procedure)

- (1) The decision on appointment of a judge shall be made by the Judicial Department, the decision on appointment of a prosecutor shall be made by the Prosecutorial Department.
- (2) Rules from Article 103 paras (2), (3), (4) and (5) of this Law shall be binding on the Judicial Department and the Prosecutorial Department when making the appointment decision.

Section E Filling the Positions in the Highest Instance Courts

Article 105

(Rules on the Ratio of Filling Positions in the Highest Instance Courts)

- (1) Vacant positions in the Supreme Court of the Federation BiH, the Supreme Court of Republika Srpska, the Appellate Court of BiH, the Appellate Court of the Brcko District BiH and the Court of BiH shall be filled in accordance with the Council's two-year plan, through an internal competition procedure, in accordance with Section 4 of this Chapter or through a public competition procedure.

Of the total number of systematised judicial positions in the Supreme Court of the Federation of BiH, the Supreme Court of Republika Srpska, the Appellate Court of BiH, the Appellate Court of the Brcko District BiH and the Court of BiH up to 10% of positions may be filled by candidates who meet the requirements under Article 66 paragraph (2) of this Law.

Article 106

(Filling the Positions in the Highest Instance Courts Through a Public Competition)

- (1) The Council shall appoint the candidates who are not judicial office holders and meet the requirements prescribed under Article 66 para (2) of this Law, based on the public competition.
- (2) Public competition shall be posted on the Council's website.
- (3) If there is a need for a judge with particular work experience in the court referred to in Article 105, para (1) of this Law, this circumstance shall be indicated in the public competition.
- (4) Public competition procedure includes entrance exam, written test, interview, preparing the list of successful candidates and nomination of candidates.

Article 107

(Appointment Criteria for Public Competitions)

- (1) In the public competition procedure for filling the positions in courts referred to in Article 105 of this Law, the following criteria shall apply:
 - a) knowledge of legislation relevant to holding the highest instance judicial office, and the ability to apply it;
 - b) ability to analyse and solve legal problems;
 - c) ability to responsibly, independently and impartially hold the office for which they have applied
 - d) knowledge of the principles of judicial ethics and understanding its significance;
 - e) motivation, communication and presentation skills;
 - f) professional development, publication of academic and professional papers and other professional activities.
- (2) Candidates shall be tested against criteria referred to in paragraph (1) of this Article through entrance exam, written test and interview in a way prescribed by this Law and the Book of Rules issued by the Council.

Article 108

(Stages of the Public Competition for Positions in the Highest Instance Courts)

- (1) Entrance exam shall be used to test the candidate's knowledge of legislation relevant for holding the highest instance judicial office, in the fields regulated by the Book of Rules, and the knowledge of principles of judicial ethics.
- (2) The written test that includes drafting of at least one written document, shall be used to test the knowledge of legislation relevant to holding the highest instance judicial office, and the ability to apply it in the fields regulated by the Book of Rules, and the ability to analyse and solve legal problems.
- (3) Candidates who meet basic and special requirements prescribed by this Law to be appointed to the position for which they have applied shall be called to take the entrance exam and candidates who pass the entrance exam shall be called to take the written test.
- (4) Rules under Section D of this Chapter shall apply to conducting entrance exams and written tests.
- (5) Candidates who pass the written test shall be invited for an interview. The interview shall be conducted by the panel referred to in Article 81 of this Law and used to assess the candidates against the criteria referred to in Article 107, para (1), items (b), c), d), e) and f) of this Law.

Article 109**(Nomination and Appointment of Candidates in the Public Competition Procedure
for the Positions in the Highest Instance Courts)**

- (1) In accordance with the Book of Rules on Appointments, the relevant sub-council shall perform the overall scoring and ranking of the candidates, and shall submit to the Judicial/Prosecutorial Department a ranking list with a reasoned nomination for appointment.
- (2) When nominating a candidate, in addition to the number of points scored and their position on the list of successful candidates, the relevant sub-council shall also take into account the following:
 - a) minimum number of points that the candidate is required to score to be nominated;
 - b) the number of points earned by the candidate;
 - c) circumstances relevant to the assessment of suitability of candidates referred to in Article 69 para (2) of this Law;
 - d) the need to ensure adequate ethnic and gender representation in terms of Article 71 of this Law;
 - e) the candidate's particular work experience if specified in the call announcement.
- (3) The Council shall regulate in more detail the rules for nominating candidates in the Book of Rules on Appointments.
- (4) The Judicial Department or the Prosecutorial Department shall make a decision on the appointment of a judge or prosecutor based on the ranking list from paragraph (1) of this Article upon nomination of the competent sub-council.

Article 110**(Analogous Application of Provisions on Public Competition Procedure)**

Articles 94, para (2) and 95 of this Law shall also apply in the public competition procedure for filling the positions in the highest instance courts.

CHAPTER IV REQUIREMENTS, PROCEDURE AND CRITERIA FOR APPOINTING COURT PRESIDENTS AND CHIEF PROSECUTORS

Article 111

(General Requirements for Appointment to Managerial Positions)

Positions of court presidents and chief prosecutors are open to judges/prosecutors who meet the requirements prescribed by this Law and who have successfully completed the training for managers organised by the authorities in charge of training of judges and prosecutors.

Article 112

(Requirements for Appointment of Court Presidents)

- (1) Court president shall be appointed from among the judges of that court.
- (2) Exceptionally, court president may be appointed from among judges of the same or higher level court in the following situations:
 - a) if in the internal competition procedure within a court no candidates apply or those who apply are not successful or none of the candidates receives the majority of votes required for appointment;
 - b) if the concerned court has been newly established.
- (3) A judge of that court or a judge of a court of the same or higher level, who has at least eight years of work experience as a judge, may be appointed as the president of the municipal, basic and district commercial court.

Article 113

(Requirements for Appointment of Chief Prosecutors)

- (1) The chief prosecutor of the FBiH Prosecutor's Office, the RS Prosecutor's Office and the Prosecutor's Office of BiH shall be appointed from among the prosecutors of that prosecutor's office.
- (2) Notwithstanding this, if in the internal competition within the prosecutor's offices referred to in paragraph (1) of this Article no candidates have applied or the candidates who applied were not successful, the chief prosecutors may be appointed from among prosecutors of one of the prosecutor's offices referred to in paragraph (1) of this Article who meet the requirements prescribed under Article 67, paras (1) and (2) of this Law.
- (3) Chief prosecutors of the Prosecutor's Office of the Breko District BiH, cantonal prosecutor's offices in the Federation BiH and district prosecutor's offices in Republika Srpska may be appointed from among prosecutors of those prosecutor's offices who have served as prosecutors for at least 8 years.

- (4) Notwithstanding this, chief prosecutors of prosecutor's office referred to in paragraph (3) of this Article may be appointed from among prosecutors of the prosecutor's offices of the same or higher level, who have served as prosecutors for at least 8 years, in the following situations:
- a) if in the internal competition procedure within a prosecutor's office no candidates apply or those who apply are not successful or none of the candidates receives the majority of votes required for appointment;
 - b) if the concerned prosecutor's office has been newly established.

Article 114

(Announcing the Position of Court President and Chief Prosecutor)

- (1) A competition for a court president shall be announced internally within the court, and a competition for a chief prosecutor shall be announced internally within the prosecutor's office.
- (2) If no candidates apply to the internal competition announced within a court or a prosecutor's office or those who apply are not successful or none of the candidates receives the majority of votes required for appointment, the Council shall announce a competition within the judiciary, on the condition that there is a vacant position in the court or prosecutor's office for which financial resources are provided.
- (3) If a position needs to be filled in a newly established court, the Council may announce a competition within judiciary for the position of the court president before or at the same time when announcing the competition for judges in the newly established court.
- (4) If positions are being filled in a newly established prosecutor's office, the Council may announce a competition within judiciary for the position of the chief prosecutor before or at the same time when announcing the competition for prosecutors in the newly established prosecutor's office.
- (5) The competition referred to in paras (2), (3) and (4) of this Article shall be open to candidates who meet the requirements and have served at least five years in the position from which they apply.

Article 115

(Selection Criteria for Managerial Positions)

- (1) In the procedure to appoint court president and chief prosecutor the following criteria shall apply:
 - a) organisational and managerial skills;
 - b) performance appraisal;
 - c) prior work experience;

- d) motivation and understanding the role of court president / chief prosecutor.
- (2) Criteria referred to in paragraph (1) item b) of this Article shall take into consideration performance appraisal in accordance with the rules set out in Article 88 of this Law.
 - (3) In addition to the criteria referred to in paragraph (1) of this Article, information relevant for assessing the suitability of candidate or whether the candidate possesses the qualities referred to in Article 64 in conjunction with Article 69, paragraph (2) of this Law, shall also be taken into consideration.

Article 116

(Work Plan)

- (1) Candidates for the position of court president or chief prosecutor shall prepare and present a work plan for the court or the prosecutor's office for which they have applied.
- (2) Work plan shall contain an overview of the situation in the court or the prosecutor's office for which the candidate has applied, a proposal of measures and the results that the candidate intends to achieve to improve the work of the institution.

Article 117

(Testing against the Criteria)

- (1) Candidates shall be tested against criteria referred to in Article 115 paragraph (1) of this Law during interviews, including the assessment of the submitted work plan for the position of a court president or a chief prosecutor and by reviewing performance appraisal records.
- (2) The manner of scoring the candidates based on the criteria shall be regulated in more detail by the Book of Rules.

Article 118

(Interview with Candidates for Managerial Positions)

- (1) Interview with candidates shall be conducted by the panel referred to in Article 81 of this Law, which shall submit to the relevant sub-council a list of candidates ranked in accordance with their performance at the interview.
- (2) During the interview, the panel shall ask the candidates for the position of court president/chief prosecutor to present their work plan.

Article 119**(Ranking and Nomination of Candidates for the Position of Court President and Chief Prosecutor)**

- (1) The relevant sub-council shall prepare a ranking list of candidates based on their performance at the interview and performance appraisal, and shall nominate three candidates to present their work plans at the session of the Judicial/Prosecutorial Department.
- (2) When nominating candidates, the sub-council shall be guided by the candidates' position on the ranking list, and it shall take into account the ethnicity of the candidates, if to do so is necessary to ensure the appropriate distribution of positions in accordance with the Entity constitutions.
- (3) Provisions of this Article shall apply accordingly to situations when less than three candidates apply for the position of court president or chief prosecutor, or when less than three candidates for the appointment are successful in the competition procedure.

Article 120**(Appointment of Court Presidents or Chief Prosecutors)**

- (1) The Judicial/Prosecutorial Department shall decide to appoint a candidate to the position of a court president or a chief prosecutor based on their results in the competition procedure and the presentation of work plan at the Department's session.
- (2) If a candidate who is not a judicial office holder in the relevant court or the prosecutor's office is appointed a court president or a chief prosecutor, the Judicial/Prosecutorial Department shall simultaneously issue a decision appointing the candidate as judge or a prosecutor.
- (3) The manner of presenting the work plan at the Department's session shall be regulated in more detail by the Book of Rules.
- (4) Voting for candidates shall follow the ranking of the candidates on the ranking list.

Article 121**(Mandate)**

- (1) Court presidents, chief prosecutors and deputy chief prosecutors shall be appointed to a mandate of four years and may be reappointed but not for more than one consecutive term in the same court or prosecutor's office.

Article 122**(Status After the Expiry of Mandate)**

- (2) Upon expiration of their term of office as managers, court presidents, chief prosecutors and deputy chief prosecutors, they shall continue to serve as judges/prosecutors in the same court / prosecutor's office.

CHAPTER V JUDGES OF THE ENTITY CONSTITUTIONAL COURTS AND LAY JUDGES**Section A Special provisions concerning judges of the Entity constitutional courts****Article 123****(Competences in Relation to the Entity Constitutional Courts)**

The Council shall exercise its competences relating to the appointment of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of Republika Srpska in accordance with the Constitution of the Federation of Bosnia and Herzegovina and the Constitution of Republika Srpska.

Article 124**(Nomination Criteria)**

- (1) When providing a proposal to the relevant authorities regarding the nomination and election of a judge of the Constitutional Court of Republika Srpska and the selection of a judge to the Constitutional Court of the Federation of Bosnia and Herzegovina as prescribed with the Constitution, the Council shall consider the following criteria:
 - (a) years of experience the candidate has as a judge, prosecutor, attorney or other relevant legal experience post bar examination;
 - b) the candidate's academic experience and achievements;
 - (c) other information relevant for the Council regarding the suitability of the candidate to work as a judge of the given constitutional court.
- (2) Pursuant to other provisions of this Article, the Council may propose the appointment of professors and assistant professors of law universities in Bosnia and Herzegovina who teach constitutional law, international law, criminal law, criminal procedure law, civil law, civil procedure law, administrative law, commercial law or family law for judges of a constitutional court, without bar examination passed under the condition they have at least ten years of experience as a professor or assistant professor.

Section B Special Provisions Concerning Lay Judges

Article 125

(Requirements for the Appointment of Lay Judges)

- (1) In order to serve as a lay judge, an individual shall satisfy the following requirements:
 - a) they shall be a citizen of Bosnia and Herzegovina;
 - b) they shall hold the intellectual and physical aptitude to hold judicial or prosecutorial office;
 - c) be at least 25 years of age at the time of application;
 - d) have a reputation for high moral character and professional integrity;
 - e) have not been convicted of a criminal offence;
 - f) possess a certificate that there are no ongoing criminal proceedings against them;
 - g) be a resident in the jurisdiction in which they are appointed.
- (2) For the adjudication of matters involving juveniles, a lay judge shall have appropriate professional qualifications or experience involving juveniles.
- (3) A person may not be appointed a lay judge if his/her regular professional activity is related to the conduct of judicial proceedings.

Article 126

(Mandate of a Lay Judge)

- (1) Lay judges may serve until they reach the age of 72.
- (2) Lay judges shall have a mandate of eight years and be eligible for re-appointment. The mandate shall be subject to resignation, mandatory retirement age and removal for reasons stipulated by the Law.
- (3) A lay judge shall finish participation in a case before a court after the expiration of their mandate, resignation or upon reaching 72 years of age, if required to ensure the proper resolution of a case on which they were participating prior to such event.

Article 127

(Appointment of Lay Judges)

- (1) Judicial Department shall appoint lay judges to a court after it receives from the court president a list of proposed candidates.
- (2) Lay judges shall be entitled to be compensated for the justified costs incurred during the performance of their duties as well as remuneration. Requirements for lay judges and the

amount of their compensation and remuneration shall be set by the relevant justice minister upon consultations with the Council.

- (3) Before assuming the duty, lay judges shall make a declaration of office pursuant to Article 76 of this Law. President of the Council may delegate this task to the president of the court in which the lay judge will assume the duty.

CHAPTER VI. APPRAISAL OF JUDGES AND PROSECUTORS

Article 128

(Purpose of Performance Appraisal)

Performance appraisal of judges and prosecutors shall be conducted with a view to:

- a) improve the efficiency and quality of the judicial system by enhancing the professional capacities of judicial office holders;
- b) enable career advancement and identify training needs for judicial office holders;
- c) improve management processes in judicial institutions and achieve their greater efficiency and effectiveness;
- d) enhancing the accountability of the judicial system and strengthening public confidence.

Article 129

(Performance Appraisal)

- (1) In appraising the performance of court presidents, chief prosecutors and deputy chief prosecutors, the following criteria shall apply:
 - a) “exceptionally successful”
 - b) “successful”
 - c) “good”
 - d) “satisfactory”
 - e) “unsatisfactory”.
- (2) The "unsatisfactory" score shall be considered a poor performance score.

Article 130**(Periodic Appraisal of Judges and Prosecutors)**

Performance of a judge or prosecutor shall be appraised once every three years.

Article 131**(A Plan of Measures to Prevent Poor Performance Appraisal Scores)**

- (1) If the continuous monitoring of judges'/prosecutors' performance, which is carried out during the performance appraisal period based on the indicators that are a part of the performance appraisal criteria, indicates likelihood of a poor performance score, the court president / chief prosecutor shall be required to draft and implement a plan of measures to help the judge/prosecutor improve his/her performance.
- (2) Court president / chief prosecutor shall submit to the Council a plan of measures and a report on its implementation.

Article 132**(Performance Appraisal of Court Presidents, Chief Prosecutors and Deputy Chief Prosecutors)**

Court presidents, chief prosecutors or deputy chief prosecutors shall be appraised after the expiry of their mandate.

Article 133**(Appraisers in the Process of Performance Appraisal of Judges)**

- (1) Performance appraisal of judges shall be conducted by the Judicial Performance Appraisal Committee established by the Council in accordance with the Law.
- (2) The Judicial Performance Appraisal Committee shall consist of all members of the Council from the rank of judges and one judge of the FBiH Supreme Court, the RS Supreme Court, the Appellate Court of BiH, the Court of BiH and the Appellate Court of Brcko District BiH.
- (3) The Committee referred to in paragraph (1) of this Article shall make a decision on the performance appraisal of the judge concerned upon the proposal of his/her court president.

Article 134

(Appraisers in the Process of Performance Appraisal of Court Presidents)

- (1) Performance appraisal of the president of the FBiH Supreme Court, the RS Supreme Court, the Appellate Court of Brčko District BiH and the Appellate Court of BiH shall be conducted by the Council at the proposal of the Judicial Department.
- (2) Other court presidents shall be appraised by the Judicial Performance Appraisal Committee consisting of all members of the Council from the rank of judges and presidents of the FBiH Supreme Court, the RS Supreme Court, the High Court of BiH and the Appellate Court of Brčko District BiH.
- (3) The Committee referred to in paragraph (2) of this Article shall make a decision on the performance appraisal at the proposal of the president of the immediately higher instance court.

Article 135

(Appraisers in the Process of Performance Appraisal of Prosecutors)

- (1) Performance appraisal of deputy chief prosecutor and prosecutors shall be conducted by the Prosecutorial Performance Appraisal Committee established by the Council in accordance with the Law.
- (2) The Prosecutorial Performance Appraisal Committee shall consist of all members of the Council from the ranks of prosecutors and one prosecutor of the FBiH Prosecutor's Office, the RS Prosecutor's Office, the Prosecutor's Office of BiH and the Prosecutor's Office of the Brčko District BiH.
- (3) The Committee referred to in paragraph (1) of this Article shall make a decision on the performance appraisal of the prosecutor concerned upon the proposal of his/her Chief Prosecutor.

Article 136

(Appraisers in the Process of Performance Appraisal of Chief Prosecutors)

- (1) Performance appraisal of chief prosecutors of the FBiH Prosecutor's Office, the RS Prosecutor's Office, the Prosecutor's Office of BiH and the Prosecutor's Office of the Brčko District BiH shall be conducted by the Council at the proposal of the Prosecutorial Department.
- (2) Performance appraisal of chief prosecutors of cantonal and district prosecutor's offices shall be conducted by the Appraisal Committee for Chief Prosecutors consisting of all members of the Council from the ranks of prosecutors and chief prosecutors of the FBiH Prosecutor's Office, the RS Prosecutor's Office, the Prosecutor's Office of BiH and the Prosecutor's Office of the Brčko District BiH.

- (3) The Committee referred to in paragraph (2) of this Article shall make a decision on the performance appraisal score at the proposal of the chief prosecutor of the immediately higher prosecutor's office.

Article 137

(Performance Appraisal Criteria)

- (1) The criteria for performance appraisal of judges and prosecutors shall be as follows:
 - a) workplace skills and professional knowledge;
 - b) personal qualities and general ability to hold judicial or prosecutorial office.
- (2) In addition to the criteria referred to in paragraph (1) of this Article, the criteria for performance appraisal of court presidents, chief prosecutors and deputy chief prosecutors shall include the ability to perform managerial tasks.

Article 138

(Workplace Skills and Professional Knowledge)

- (1) Workplace skills and professional knowledge shall be assessed against the following sub-criteria:
 - a) performance quantity;
 - b) statistical quality of decisions;
 - c) analytical quality of performance and decisions.
- (2) Notwithstanding the provisions of paragraph (1) of this Article, the sub-criteria for assessing the workplace skills and professional knowledge of judges of the Entity supreme courts, the Appellate Court of Brčko District BiH, the Appellate Court of BiH and the Entity prosecutor's offices shall be set out by a by-law of the Council.

Article 139

(Personal Qualities and General Abilities)

Personal qualities and general abilities to hold judicial or prosecutorial office shall be assessed against the following sub-criteria:

- a) communication skills, the ability to communicate with parties, other authorities and relationships with co-workers and colleagues;
- b) participation in various professional activities including regular compulsory training;

- c) responsibility and reliability that involves determining whether the conduct of a judge or prosecutor in carrying out his/her official duties and out of office is such to protect his/her independence and impartiality and the reputation of the judiciary;
- d) ability to adapt to changing circumstances.

Article 140

(Sources of Information in Performance Appraisal)

- (1) The performance appraisal scores of judicial office holders are the result of continuous performance monitoring determined on the basis of data from the personal files and other information regarding the fulfilment of the criteria and sub-criteria referred to in Articles 137, 138 and 139 of this Law, and in particular on the basis of an insight into:
 - a) statistical reports on the performance of the judicial institution and the judicial office holder concerned pertaining to quality and quantity;
 - b) certain number of cases for assessing the analytical quality of performance and decisions, of which some shall be selected randomly, and some chosen by the judicial office holder concerned;
 - c) all other documents and opinions containing objective and relevant information about the performance, professional activities and personal qualities of the judicial office holder.
- (2) In the process of determining the proposal of the score, the court president may request the opinion of the head of department in which the judge concerned works.
- (3) In the process of determining the proposal of the score, the chief prosecutor may seek an opinion of the deputy chief prosecutor, the head of department in which the prosecutor concerned works and the prosecutor mentor.
- (4) The sources referred to in paragraph (1) of this Article shall, through a by-law of the Council, be adjusted to the sub-criteria for performance appraisal of judges and prosecutors referred to in Article 138 paragraph (2) of this Law.

Article 141

(Performance Appraisal Procedure)

- (1) The performance appraisal of judges and prosecutors shall be a two-phase procedure:
 - a) determining the proposal for performance appraisal score and
 - b) making a decision on the score.
- (2) The competent court president or chief prosecutor shall determine the proposal of the performance appraisal score based on the data referred to in Article 140 of the Law.

- (3) The judge or prosecutor concerned shall participate in the process of determining the proposal of the score and give his/her opinion on the proposal.
- (4) The competent court president/chief prosecutor shall submit a reasoned proposal of the performance appraisal score to the relevant performance appraisal committee, along with the opinion of the judge or the prosecutor concerned and the materials used in determining the proposal of the score.
- (5) In the performance appraisal procedure referred to in Article 134, para (1) and Article 135, para (1), the Judicial Department / the Prosecutorial Department shall submit a reasoned proposal of the performance appraisal score to the Council, along with the opinion of the court president/chief prosecutor concerned and the materials used in determining the performance appraisal score.
- (6) The Performance Appraisal Committee or the Council shall make a reasoned decision on the performance appraisal score based on the submitted proposal and an insight into the complete materials.
- (7) The Performance Appraisal Committee or the Council shall not be bound by the proposed performance appraisal score, and it may obtain other relevant information and seek clarifications relevant for making a decision on the performance appraisal score.
- (8) In determining the final performance appraisal score, the judge or prosecutor concerned may be called for an interview to provide additional clarifications regarding certain issues relevant for making a decision on the performance appraisal score.

Article 142

(Judicial Review in Performance Appraisal Process)

- (1) Against the decision on performance appraisal, the concerned judge or prosecutor may initiate an administrative dispute before the Appellate Court of BiH.
- (2) The complaint to initiate an administrative dispute shall be filed within eight days from delivery date of the decision on appraisal to the judge or prosecutor concerned.
- (3) The Court submits the complaint to the Council for a response within eight days from the date it was received by the Court. The Council is required to submit the response to the complaint within eight days from the date of receipt.
- (4) In the dispute referred to in this paragraph, the Appellate Court of BiH shall review the lawfulness of the appraisal procedure and shall decide in an urgent procedure, no later than eight days from the date of submission of the response to the complaint.
- (5) In the dispute referred to in this Article, the Court may reject the complaint as unfounded or uphold the complaint, reverse the decision on appointment and return the matter for a new decision.
- (6) The decision of the Court shall not be challenged by extraordinary legal remedies provided by the Law on Administrative Disputes of Bosnia and Herzegovina.

- (7) In the case of initiating an administrative dispute from paragraph (1) of this Article, the legal consequences of a poor performance appraisal score shall be postponed until the court proceedings are completed.

Article 143

(Mandatory Recusal)

- (1) A member of the Performance Appraisal Committee whose performance is being appraised shall recuse himself/herself from the Performance Appraisal Committee.
- (2) A member of the Performance Appraisal Committee shall recuse himself/herself from the Performance Appraisal Committee when he/she is giving the proposal of the score or participates in giving the proposal of the score.
- (3) Other grounds for recusal shall be stipulated in by-laws referred to in Article 144 of the Law.

Article 144

(By-laws Governing Performance Appraisal)

The Council shall regulate in detail the criteria for performance appraisal, performance appraisal procedure, the sources of information in the appraisal process, the establishing of performance appraisal committees in the by-laws to be published in the Official Gazette of BiH.

CHAPTER XVI - ASSIGNMENT AND TRANSFER TO ANOTHER COURT OR PROSECUTORS OFFICE

Article 145

(Assignment to Another Court with Consent)

- (1) Judges may be assigned to perform judicial office, with their consent, at another court of the same or lower instance for the following reasons:
 - a) there is an insufficient number of judges at the court to which they are being temporarily assigned;
 - b) there is a temporary reduction in the workload of the court in which they regularly perform judicial service;
 - c) in order to assist in the elimination of backlogs in the receiving court;

- d) the judge is assigned to deal with a particular case or cases in the receiving court, where the disqualification of a judge at that court necessitates the temporary assignment of a judge from another court to deal with such case or cases;
 - e) a judge at the receiving court is on extended leave.
- (2) A judge may be assigned to a court for no more than one year and may be assigned no more than three times consecutively.
 - (3) For the duration of the temporary assignment, a judge may also deal with cases of the court to which they were appointed.

Article 146

(Assignment of a Judge Without Consent)

- (1) A judge may only be the subject of a temporary assignment to another court of the same or lower instance, without their consent and for no longer than 12 months:
 - a) if there is an insufficient number of judges at the court to which they are being temporarily assigned, or
 - b) in order to assist in the elimination of backlogs in the receiving court or there is insufficient number of judges at that court.
- (2) A judge may be temporarily assigned to another court in accordance with paragraph (1) of this Article only if the workload is temporarily reduced in the court in which he or she regularly holds judicial office.
- (2) The provisions of this Article shall not apply to a judge who is pregnant or a judge who is nursing a child up to three years old as well as to a judge who is a single parent or a parent to a child with special needs.
- (3) For the duration of the temporary assignment, a judge may also deal with cases of the court to which they were appointed.
- (4) The judge shall have the right to file an appeal against the decision on temporary assignment to another court of the same or lower instance, without his consent. The Council shall decide on the judge's appeal.

Article 147

(Procedure for Temporary Assignment)

- (1) The Council shall decide on any request for temporary assignment to another court in accordance with articles 145 and 146, on the request of court president seeking the temporary assignment of a judge to their court.
- (2) As part of the temporary assignment procedure, the Council shall consult the president of the court who made the request, the judge who is being considered for temporary

assignment, and the president of the court where the judge regularly performs judicial service.

Article 148

(Temporary Assignments of Prosecutors)

The provisions on temporary assignment of judges shall also apply to the procedure of temporary assignment of prosecutors.

Article 149

(Transfer to Another Court or Prosecutor's Office Without Consent)

- (1) A judge may be permanently transferred to another court of the same instance by decision of the Council, even without their consent, in the event of termination of the court to which they were appointed.
- (2) A prosecutor may be permanently transferred to another prosecutor's office of the same instance by decision of the Council, even without their consent, in the event of termination of the prosecutor's office to which they were appointed.

CHAPTER VIII - LEAVE OF ABSENCE

Article 150

(Leave by Force of Law)

- (1) A judge or prosecutor shall be on leave of absence in all cases prescribed by this Law.
- (2) A decision on leave of absence pursuant to this Article shall be passed by the Council.

Article 151

(Grounds for the Approval of Leave)

- (1) The Council may approve leave of absence for a judge or prosecutor, which may be paid or unpaid, under the conditions and in procedures prescribed with this Law and a separate book of rules passed by the Council (hereinafter: Book of Rules on Leave of Absence).
- (2) A judge or prosecutor may be allowed to use leave of absence for the following reasons:
 - a) participation in advanced training programs in a professional field that is linked to the work of the court or prosecutor's office up to 30 working days;

- b) assignment and appointment as a judge of an international court or to another office within an international judicial body;
 - c) training and study trips abroad and participation at professional gatherings organised abroad if such activities are linked to the judiciary;
 - d) participation in activities on drafting regulations and other papers of importance for the judiciary that are so demanding that they require leave of absence ;
 - e) involvement in short-term academic, teaching and similar activities as a trainer or lecturer;
 - f) the performance of other activities and duties that may be of significance for the judiciary;
 - g) engagement at the Council in accordance with the provisions of this Law;
 - h) membership in international bodies for the judiciary;
 - i) personal or family reasons that justify leave of absence.
- (3) Paid leave of absence may be approved for reasons prescribed in paragraph (2), items c), d), g) and h) of this Article and under the conditions prescribed by the Book of Rules on Leave of Absence.
- (4) With the exception of cases referred to in paragraph (2), items b), g) and h) of this Article, the Council shall render a decision on leave of absence based on an elaborated request by a judge or prosecutor together with the attached opinion of the relevant court president or chief prosecutor.
- (5) In the event referred to in paragraph (2), item b) of this Article, leave shall be established based on a decision on assignment or appointment to the position of judge of an international court or to another international judicial office.
- (6) In the event referred to in paragraph (2), item g) of this Article, leave shall be established based on a decision on the engagement of a judge or prosecutor with the Council or through a separate decision.
- (7) In the event referred to in paragraph (2), item h) of this Article, leave shall be established based on a decision on the membership of a judge or prosecutor with an international body for the judiciary.

Article 152

(Discretionary Decision on Leave of Absence)

- (1) The provision of Article 151 of this Article shall not refer to:
- a) legally prescribed leave stemming from employment;
 - b) leave in order to serve as a trainer with the training centres, up to 10 days during one year;

- c) leave in order to participate in regular training at the judicial and prosecutorial training centres;
 - d) leave in order to undertake activities in connection with the performance of the judiciary, including study trips and participation at professional gatherings and advanced training programs domestically and abroad, up to five consecutive days and at most up to ten days during a year.
- (2) Leave pursuant to paragraph (1) of the Article shall be approved by the court president / chief prosecutor. Notice on approved leave pursuant to paragraph (1), item d) of this Article shall be sent to the Council.

Article 153

(Duration of Leave)

The duration of leave for each basis from Article 152 paragraph (2), except for item a) of the Law, as well as the total duration of leave that may be approved for a judge or prosecutor within a given period of time shall be regulated by the Book of Rules on Leave of Absence.

Article 154

(Status for the Duration of Leave)

During the leave of absence, the judge's or prosecutor's term in office shall be inactive, and upon cessation of the leave of absence, the judge or prosecutor shall resume the office they performed prior to their leave of absence.

CHAPTER IX IMMUNITY, INCOMPATIBILITY AND ASSET DECLARATION

Section A Immunity, Incompatibility and Additional Activities

Article 155

(Immunity)

- (1) A judge or prosecutor may not be criminally prosecuted, arrested or detained nor be subject to civil liability for opinions expressed or decisions taken in the course of their official duties.
- (2) The privilege of immunity shall not bar or delay the criminal or civil investigation, conducted in accordance with the law, of a matter concerning a judge or prosecutor.

Article 156**(Ethical Standards)**

- (1) A judge or prosecutor shall behave in accordance with the dignity of the office they hold and shall protect their impartiality and independence, as well as their reputation and the reputation of the entire judiciary.
- (2) The Council shall adopt judicial and prosecutorial codes of ethics to prescribe the principles of ethical behaviour for judges and prosecutors.

Article 157**(Protection of Independence)**

- (1) A judge or prosecutor who believes that their rights under this Law or their independence have been violated may request the Council's opinion. In their request, the judge or prosecutor may move the Council to remedy the violation.
- (2) If the Council finds that such request is justified, it shall give its opinion, and may require the violation to be remedied. Depending on the nature of violation, if possible, the Council itself may remedy the violation.
- (3) The opinion referred to in paragraph (2) of this Article shall be placed on the Council's web site and delivered to the applicant and the relevant institutions.

Article 158**(Prohibition against Holding Incompatible Offices)**

- (1) A judge or prosecutor shall not engage in any function or activity, paid or unpaid, which is incompatible with their office, except for activities pursuant to Article 159, paragraph (2) of the Law.
- (2) A judge or prosecutor shall not be a member of or perform any duties in political party organs, or associations or foundations connected to political parties, and shall refrain from participating in political party activities of a public nature.
- (3) A judge or prosecutor shall not be a member of any organisation that discriminates on any basis in accordance with the Law on Discrimination ("Official Gazette BiH", no. 59/09 & 66/16), nor shall they arrange for the use of property that belongs to any such organisation and shall resign from the organisation immediately upon learning of such conduct.
- (4) A judge or prosecutor shall not be an attorney, a notary, a member of an executive or supervisory board of a public or private company or other legal person. Exceptionally, a judge or prosecutor may be a member of a managing authority of an institution responsible for judicial training.

- (5) A judge or prosecutor shall not hold any other public office, other than in judicial bodies, as stipulated by law.

Article 159

(Additional Activities)

- (1) A judge or prosecutor may, outside working hours, engage in academic, scholarly, scientific, professional, cultural or other activities that are compatible with their judicial or prosecutorial office and do not fall under the prohibitions pursuant to Article 158 of the Law.
- (2) During working hours, a judge or prosecutor shall be permitted to:
- a) work as a trainer at the judicial and prosecutorial training centres, but not more than ten working days a year;
 - b) participate in the work of professional bodies or in groups formed or organised for the purpose of drafting legislation or discussing issues and preparing or presenting materials of relevance to the judiciary;
 - c) perform duties in judicial bodies to which they are appointed;
 - d) participate in the work of professional associations of judges and prosecutors up to five working days a year.
- (3) A judge or prosecutor who intends on undertaking activities pursuant to paragraph (2), item b) of this Article shall inform their court president or chief prosecutor accordingly, as well as the Council.
- (4) A judge or prosecutor may earn income from additional activities pursuant to paragraph (1) of this Article.

Article 160

(Income from Additional Activities)

- (1) Remuneration for additional activities of a judge or prosecutor may not annually exceed, in total, 40% of their annual net salary as a judge or prosecutor.
- (2) The limitations listed in paragraph (1) of this Article shall not apply to income from property, income from copyrights and related rights or industrial property rights, and other income that cannot be considered as income from additional activities.
- (3) Limitations under paragraph (1) of this Article shall not apply to income a judge or prosecutor earns during unpaid leave.

Article 161

(Referral to the Council)

- (1) A judge or prosecutor may request the Council to provide an opinion on whether their activities are compatible with their function and the provisions of this Law.
- (2) A court president or chief prosecutor may also seek an opinion from the Council when they believe that a judge or prosecutor performs or intends to perform activities incompatible with their office. The court president or chief prosecutor shall notify the relevant judge/prosecutor of the opinion requested.
- (3) In addition to providing opinions in response to specific requests, the Council may issue *ex officio* opinions regarding the compatibility of judicial or prosecutorial office with activities they perform also upon receiving notification referred to in Article 159, paragraph (3) of the Law.
- (4) A Council opinion on compatibility of office is binding, and adhering to it shall protect a judge or prosecutor against potential disciplinary proceedings being initiated. The procedure for rendering an opinion pursuant to this Article shall be elaborated in detail with the Rules of Procedure of the Council.
- (5) The Council may render an act providing general guidelines for the application of articles 158 and 159 of the Law.

Section B Declaration of Assets and Additional Activities

Article 162

(Application of the Provisions on the Declaration of Assets and Interests)

- (1) The provisions of this Chapter on the declaration of assets and interests shall equally apply to judges, prosecutors and all members of the Council.
- (2) References in this Chapter to judges and prosecutors shall, unless otherwise indicated, be construed to include judges, prosecutors, court presidents, chief prosecutors and deputy chief prosecutors, as well as members of the Council.

Article 163

(Declaration of Assets and Interests)

- (1) Judges and prosecutors shall submit to the Council an initial and annual declaration of assets and interests, including the manner and time of acquisition and the purchase value of income, interests, liabilities, expenditures and guarantees for themselves, their spouse or common-law partner, parents, children and any other persons with whom they share a common household (hereinafter: Asset Declaration).

- (2) An asset declaration from paragraph (1) of this Article shall contain the following data:
- a) the name and surname, date of birth, place and address of residence/temporary residence, marital status/relationship to the reporting party, the employment status, function and place of work;
 - b) data on all income of the judge, prosecutor, spouse and common-law partner, parents, children and other persons from paragraph 1 of this Article with whom they share a common household;
 - c) information on income from other paid activities;
 - d) information on the ownership of real estate, including how and when acquired, as well as the purchase price;
 - e) information on the ownership of a vehicle, including how and when acquired, as well as the purchase price;
 - f) information on the ownership of other movables with an individual value of over BAM 5,000, including how and when acquired;
 - g) information on financial assets in banks or other financial institutions, including e-currency, and any cash exceeding BAM 5,000 in value;
 - h) information on any life insurance policy;
 - i) information on any gifts or donations received in connection with the performance of their official duties with a value of over BAM 25;
 - j) information on any gifts or donations received in a private capacity if their individual value exceeds BAM 500 or BAM 1,000 in total per year;
 - k) information on investments, including shares and other securities;
 - l) data on other expenses with an individual value exceeding BAM 5,000;
 - m) information on liabilities.
- (3) An asset declaration from paragraph (1) of this Article and data pursuant to Article 164, paragraph (2) of the Law shall not be available to the public.
- (4) In their declaration of assets, a judge or prosecutor shall also provide detailed information on any additional unpaid activities they performed which are otherwise relevant for the performance of their official duties.
- (5) In their asset declaration, a judge or prosecutor shall also provide the name and surname, type of kinship, function or activity of their relatives working in the judiciary, the bar, a public attorney's office or a notary's office. Relatives shall include relatives in the direct line of descent, relatives in the lateral line of descent up to the third degree, relatives-in-law up to the second degree and the child of a spouse, a spouse or a common-law partner, adoptive parents and adopted children.
- (6) The declaration of assets for the previous year shall be submitted on a form the contents of which shall be determined by the Council. The deadline for submitting the annual

declaration of assets shall be determined by the Council and shall not extend beyond 30 April of the current year. Judicial office holders shall attach to their declaration of assets a copy of their annual tax return, and any other tax returns and documents relevant to the information submitted in the declaration.

- (7) The annual declaration of assets shall list all the changes that occurred during the reporting period and which are not listed in the previous declaration of assets, a copy of which shall be attached to the declaration.
- (8) A judge or a prosecutor who is appointed to judicial office subsequent to a public competition shall submit their initial asset declaration within 30 days of appointment. Upon appointment subsequent to an internal competition, including any appointment to a management level position at a court or prosecutor's office, the appointed judge or prosecutor shall submit their asset declaration for the previous year within the deadline pursuant to paragraph (6) of this Article or within 30 days of the date of appointment, depending on which of the two deadlines comes first. A person who has been elected to the Council as a member, the president or vice-president shall submit their asset declaration in accordance with Article 22 of the Law.
- (9) A judge or a prosecutor whose mandate has expired shall submit their asset declaration pursuant to this Law for the first year following the expiry of their mandate.
- (10) If a person referred to in paragraph (1) of this Article refuses to provide to a judge or a prosecutor information necessary for submitting an asset declaration, the judge or prosecutor shall state so in their asset declaration, and attach a statement to the asset declaration as certified by the competent administrative body, informing that the relevant person from paragraph (2), item a) of this Article refused to provide information necessary for the asset declaration.
- (11) After this Law comes into effect, if a judge or a prosecutor declares cash in their initial asset declaration or their first annual declaration of assets in an amount exceeding BAM 5,000, which is held outside of any bank, they cannot justify their expenditures with such cash.

Article 164

(Transparency)

- (1) The Asset Declaration from Article 163 of the Law shall be published on the Council website with the aim of strengthening integrity, transparency and public trust in the judiciary, as well as to prevent conflicts of interest and any other undue influence over the performance of judicial duties.
- (2) Notwithstanding paragraph (1) of this Article, the following data from the declaration shall not be available to the public:
 - a) the names of minors who are listed in the asset declaration, except for the first initial of their name;

- b) the national identity number and residence address of the judge or prosecutor or other persons listed in the asset declaration,
 - c) the street name and number where the property listed in the asset declaration is located,
 - d) bank account numbers and other financial ID numbers;
 - e) individual amounts of cash owned by a judge or prosecutor and individual amounts of money of other household members;
 - f) vehicle licence plate numbers.
- (3) Annual income tax returns, and other attachments that judges or prosecutors submit with their declarations, shall not be made available to the public.
- (4) The total amount of savings, which is the sum of the balances in all bank accounts and the cash reserves of a judge or a prosecutor and other household members shall be made available to the public.
- (6) After the elapsing of a three-year period from the end of a judge's or prosecutor's mandate, data from the declaration shall no longer be available to the public.

Article 165

(Data Verification and Analysis)

- (1) Respectful of the statutory competences of the authorities, institutions and other legal entities that keep the records referred to in Article 166, paragraph (4) of the Law, the Asset Declarations Department referred to in Article 169 of this Law shall regularly check the accuracy, completeness and truthfulness of declared data and analyse the data from the asset declarations with the aim of detecting any incompatible activities and potential conflicts of interest.
- (2) Verification of the timeliness, accuracy and completeness of information provided in the declaration shall be carried out through:
- a) formal checks, to verify whether an asset declaration was submitted in a timely manner and fully completed;
 - b) regular checks, by comparing declared data to verify the proportionality between the data on the financial inflows and outflows as declared by a judge or prosecutor;
 - c) additional checks, to verify the accuracy of the data from the asset declaration based on the data collected pursuant to Article 166, paragraph (6) of the Law, by comparing it with the subsequently collected data in accordance with the Law.
- (3) Financial inflows shall mean all income that increases a judge's or prosecutor's financial assets during the declaration period, including bank accounts and similar savings balances at the end of the preceding declaration period, income from core and additional activities, cash gifts, loans and donations, loans and other income collected, such as income from real property, copyrights, investments etc.

- (4) Financial outflows comprise all expenses that decrease a judge's or prosecutor's financial assets during the declaration period, including expenditures for real property, vehicles, movable property, loan repayments, lending, investments, insurance costs, subsistence expenditures, savings and other expenses, such as alimony, education, medical treatment etc.
- (5) For the purpose of verifying asset declarations, the Council shall, through the Asset Declarations Department referred to in Article 169 of the Law, adopt and regularly revise the risk criteria, which shall be confidential. Risk criteria are circumstances or a set of circumstances based on which asset declarations are prioritised for regular checks, schedules for conducting checks are made as well as additional checks carried out.
- (6) Risk criteria which require additional checks *ex officio* in accordance with Article 166, paragraphs (4) through (8) of the Law shall be:
 - a) the appointment of a judge or prosecutor through a public or internal competition,
 - b) the appointment and reappointment of a court president, chief prosecutor or deputy chief prosecutor,
 - c) the election of a Council member, as well as the election of the president and vice presidents of the Council.
- (7) The Asset Declarations Department referred to in Article 169 of the Law, shall request additional information or explanations from a judge or prosecutor concerning the data from their asset declaration when needed to verify its accuracy and completeness.
- (8) The asset declaration verification procedure shall be closed for the public while the criteria and results of the verification shall be published.

Article 166

(Additional Checks)

- (1) Additional checks, which may involve the entire declaration or certain elements from the declaration, shall be carried out:
 - a) when the comparison of data received from the regular check of an asset declaration shows a discrepancy between financial inflow and financial outflow;
 - b) when the risk criteria require so;
 - c) when a declaration of assets and interests is selected randomly using a software application;
 - d) in other cases provided for with the law;
 - e) if the asset declaration does not contain all data on persons referred to in Article 163, paragraph (1) of the Law.
- (2) An additional check of an asset declaration may be carried out based on an elaborated complaint by a natural or legal person alleging incorrect information in the declaration.

- (3) Additional checks referred to in paragraph (1), item c) of this Article shall be carried out on at least 10% of all asset declarations submitted in a calendar year.
- (4) When conducting an additional check, information may be collected from:
 - a) public records: civil registers, tax records, court records, land books, cadastres, registers of business entities, associations and foundations, securities registers, intellectual property rights registers, registers of motor vehicles, civilian aircraft, boats and other vessels etc.;
 - b) other records, e.g. records on company debts, records on the value of real property or cars, bank records etc.
- (5) When access to the data referred to in paragraph (4) of this Article is not possible by directly searching electronic records or when information needs to be collected from physical persons, the Asset Declarations Department shall send a written request for the data from the relevant institutions. The relevant institutions and other legal and physical persons shall deliver the requested data to the Department within the deadline as stated in the request.
- (6) The Asset Declarations Department referred to in Article 169 of the Law shall define more precisely how to access data or obtain data through other ways with an agreement on cooperation with the authorities, institutions and other legal entities that maintain the records from paragraph (4) of this Article. Resources required for accessing commercial records shall be ensured in the Council budget.
- (7) As requested by the Asset Declarations Department referred to in Article 169 of the Law, and in accordance with paragraph (5) of this Article, any institution whose operations are governed by the laws on banks, shall confirm whether the account balances declared for a certain date correspond with the actual account balance on such date, and whether there are any undeclared accounts or other financial products held at this institution by persons covered in the declaration.
- (8) The following irregularities can be identified through additional checks:
 - a) missing data in the declaration;
 - b) false data in the declaration;
 - c) concealed assets, liabilities, income or expenses;
 - d) any discrepancy between financial inflow and financial outflow that a judge, prosecutor or Council member is unable to explain;
 - e) any concealed activity that is incompatible with the office of a judge, prosecutor or Council member;
 - f) any concealed information indicating a potential conflict of interest of a judge, prosecutor or a Council member.

Article 167

(Outcome of Conducted Checks)

- (1) The verification process shall end by producing a notice on the conducted control, which shall contain information on the type and scope of the check, information collected from records of other legal persons and other information sources that were consulted during the check, the availability of data for the check, cooperation of the judge, prosecutor or Council member during the verification process, the outcome of the verification process with elaboration, as well as other data relevant for completing the verification process.
- (2) If an additional check to an asset declaration identifies one or more irregularities pursuant to Article 166, paragraph (8) of the Law, the outcome of the check shall be considered as negative.
- (3) A judge, prosecutor or Council member shall be informed of the outcome of the declaration verification process, and the notice referred to in paragraph (1) of this Article shall be delivered to the judge, prosecutor or Council member.
- (4) The Council and the Judicial or Prosecutorial Departments shall be notified of the outcome of an additional check that is carried out based on risk criteria pursuant to Article 165, paragraph (6) of the Law. In the event of a negative outcome, the decision on the appointment of a judge or prosecutor, court president, chief prosecutor or deputy chief prosecutor shall be annulled as will the election of a Council member, the Council president and Council vice-president.
- (5) If a comparison of data submitted in the regular asset declaration verification process or if data from institutions and other legal entities that keep records referred to in Article 166, paragraph (4) of the Law raises suspicion of any irregularities referred to in Article 166, paragraph (8) of the Law, the Office of the Disciplinary Counsel shall be informed thereof and provided with all information resulting from the check for further action.
- (6) Based on the information provided by the Department pursuant to paragraph (5) of this Article, the Office of the Disciplinary Counsel shall proceed in accordance with its competence. If the data collected in the procedure by the Office of the Disciplinary Counsel meet the evidentiary standards for a disciplinary offence and lead to a complaint in accordance with Article 194 of the Law, pursuant to Article 184, paragraph (1), item 1) and Article 185 paragraph (1), item 1), notwithstanding the rules of disciplinary procedure prescribed with the Law, it shall be up to the judge, prosecutor or Council member subject to the disciplinary procedure to prove or explain to the contrary.
- (7) The burden of proof from paragraph (6) of this Article shall apply exclusively to disciplinary proceedings resulting from the asset declaration verification process and may not be used in any other proceedings, especially not in criminal proceedings.
- (8) The Asset Declarations Department referred to in Article 169 of the Law shall forward the information on the control carried out, including data from the asset declaration and data obtained during the control procedure, to the institution or other legal entity whose data was used during the asset declaration verification process, as well as to any other

competent authority when necessary for implementing measures that fall under their competence.

Article 168

(Register of Declarations)

- (1) The Council shall establish records, i.e. a Register of Declarations on Assets and Interests.
- (2) The declarations of a judge or prosecutor whose mandate has been terminated shall be expunged from the Register ten years after the termination of their mandate. Expungement shall be suspended during any ongoing use of the declarations and attached documents by the Council or any other authority in official proceedings.

Article 169

(Asset Declarations Department)

- (1) The Council shall establish an Asset Declarations Department within the Council Secretariat (hereinafter: the Department), which shall be independent in performing its tasks and shall have competence for implementing the provisions of this Law that regulate the processing of declarations, without receiving any instructions, and without any interference in its work on any given case.
- (2) The Department shall be independently managed by the Head of the Department, who organises and ensures the lawful and efficient performance of tasks, while performing the function entrusted to them conscientiously.
- (3) A person who meets the general requirements prescribed by the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Official Gazette of BiH, No. 12/02, 19/02, 8/03 & 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10, 40/12 & 93/17) as well as special requirements prescribed by the Book of Rules on Internal Organisation and the Systematisation of Posts in the Secretariat, may be appointed as the Head of the Department.
- (4) The Head of the Department shall be assisted in their work by the Deputy Head, legal advisers, expert advisers and other employees tasked to perform duties set forth in the Book of Rules on Internal Organisation and the Systematisation of Posts in the Secretariat.
- (5) Provisions of the Law on Civil Service in BiH Institutions regulating the rights, duties, disciplinary liability and incompatibility with the office of a civil servant shall be applied accordingly for employees of the Department, while vacant positions shall be filled in accordance with Article 59 of the Law.
- (6) The security and privacy of information, communications and other essential Department infrastructure, as well as the personal safety of its employees shall be guaranteed. Employees of the Department shall preserve the security and confidentiality of information and communications in accordance with the book of rules that regulates classified information and the safety of employees of the Department, which shall be

rendered by the Council on the proposal of the Secretariat Director, and shall ensure the protection of personal data.

- (7) To be eligible to access, use, safeguard and keep classified information, the Head of Department, Deputy and other Department employees shall, as required, be subject to security clearance before assuming their positions, in accordance with the Law on Classified Information (Official Gazette BiH, no. 54/05 & 12/ 09). The Council shall promptly request, in writing, that persons listed in this paragraph receive security clearance.
- (8) Department employees who provide false or incomplete information when hired or in the course of acquiring security clearance, and those who violate the duty referred to in paragraph (6) of this Article, shall be liable to disciplinary action.
- (9) When taking up office, persons from paragraph (4) of this Article who do not require security clearance checks, shall sign a statement confirming that they are familiar with and that they assume the duty to act in accordance with the Law on Classified Information and the Book of Rules regulating the safekeeping of classified information within the Department.

Article 170

(Department Competences and Transparency)

- (1) The Department shall have the following competences:
 - a) implements provisions of the Law and other regulations regarding asset declarations, collects asset declarations from judges, prosecutors and Council members, checks the timeliness, accuracy, completeness and truthfulness of declared data, analyses the declared data to detect incompatible functions or conflicts of interest;
 - b) adopts and regularly updates the risk criteria used to prioritise regular checks of declarations, establishes a schedule for checks, and performs additional checks;
 - c) publishes asset declaration verification results;
 - d) in accordance with Article 167, paragraph (5) of the Law, submits to the Office of the Disciplinary Counsel and authorities referred to in Article 167, paragraph (8) of the Law the information resulting from the verification process.
- (2) The operations of the Department shall be based on the principle of transparency. The Department shall establish a system for filing complaints and make it available to the public, and shall publish a report on its performance at least once a year. Information on the assets and activities of employees of the Department shall be submitted in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina and published in compliance with the regulations on personal data protection. Employees of the Department shall have a duty to update the published information once a year.
- (3) Any breach of duties by a Department employee, as prescribed under paragraph (2) of this Article, shall constitute grounds for disciplinary liability.

Article 171

(External Monitoring of the Work of the Department and Disciplinary Proceedings)

- (1) The Council shall hire experts in an advisory capacity for the purpose of monitoring the work of the Department on collecting, verifying and publishing the asset declarations, as well as monitoring the overall functioning of the Department, and monitoring disciplinary proceedings initiated based on findings from the verification of declarations. Experts shall be retained for a period of four years, and if necessary, the Council shall decide on the period for their continued engagement.
- (2) The experts referred to in paragraph (1) of this Article shall have direct and unimpeded access to all information and data on persons and their asset declarations, as well as to the documents available to the Department, with the exception of data covered by personal data protection regulations.
- (3) The experts shall have the right to monitor the recruitment process in the Department and, in the process, issue written recommendations to the hiring committee, which may be rejected, while the reasons for rejection shall be provided in writing within 15 days of receiving the written recommendation.
- (4) In the event that the Department acts pursuant to Article 167, paragraph (5) of the Law and informs the Office of the Disciplinary Counsel of any irregularities identified during the check, the experts shall monitor the disciplinary proceedings and draft a report referred to in paragraph (9) of this Article.
- (5) The experts may propose disciplinary proceedings to be initiated against employees of the Department.
- (6) The experts shall maintain the confidentiality of all information defined as classified in accordance with the Law on the Protection of Classified Data.
- (7) The experts shall provide written recommendations to the Head of the Department regarding the handling of any specific asset declaration verification case as well as with reference to overall Department operations, with the aim of improving the efficiency and effectiveness of its work.
- (8) Recommendations by the experts referred to in this Article may be rejected, in which event, the Head of the Department shall elaborate in writing the reasons for the rejection within 15 days of receiving the written recommendation.
- (9) At least once a year, the experts shall prepare and publish a report on the performance and functioning of the Department, and the asset declaration verification procedures as well as on disciplinary proceedings stemming from asset declaration verification findings.

Article 172

(Book of Rules on Reporting)

The Council shall issue a separate book of rules to regulate any additional details regarding the asset declaration form, also including accompanying attachments, deadlines and procedures for

submitting asset declarations, exceptions from accessing data, operational aspects of the Department's work within the Secretariat, as well as the advisory role of the experts, establishing and maintaining records, i.e. the register of asset declarations, the procedure and dynamic for checking asset declarations, and the procedure for concluding agreements on cooperation with authorities, institutions and other legal entities from Article 166, paragraph (6) of the Law.

Article 173

(Minor Offences related to the Declaration of Assets and Interests)

- (1) A responsible official within a public body who fails to cooperate with the Department or the body authorised to verify the asset declarations or fails to provide the requested information to such body shall be punished by a fine in the amount ranging between BAM 2,000 and 10,000.
- (2) If the manager of a public body fails to assign a specific official person for cooperation with the Department or the body authorised to verify the asset declarations, the manager shall, in accordance with these provisions, be responsible.
- (3) A physical person who fails to cooperate with the Department or the body authorised to verify the asset declarations or fails to provide the requested information to such body in accordance with the prescribed procedures shall be punished by a fine in the amount ranging between BAM 2,000 and 10,000. A legal person shall be punished for such an offence by a fine in the amount ranging between BAM 5,000 and 20,000.
- (4) The Council shall file a request to initiate minor offence proceedings for minor offences referred to in this Article, in accordance with the Law on Minor Offences (Official Gazette BiH, No. 41/07, 18/12, 36/14, 81/15 & 65/20).

PART FOUR – DISCIPLINARY LIABILITY

CHAPTER I OFFICE OF THE DISCIPLINARY COUNSEL AND DISCIPLINARY PANELS

Section A Office of the Disciplinary Counsel

Article 174

(Office of the Disciplinary Counsel)

- (1) The Office of the Disciplinary Counsel (hereinafter: the ODC) shall have a Chief Disciplinary Counsel, deputy chief disciplinary counsels and disciplinary counsels.

- (2) The ODC is autonomous and functionally independent in its work on disciplinary cases and performs the duties of disciplinary counsel in relation to allegations of misconduct by a judge or prosecutor in accordance with the Law and the Book of Rules on Disciplinary Liability of Judicial Office Holders (Book of Rules on Disciplinary Liability) as rendered by the Council.
- (3) The ODC takes action either upon receiving a complaint or *ex officio*, they conduct disciplinary investigations, initiate disciplinary proceedings and represent disciplinary cases before the disciplinary panels of the Council. Case assignment is carried out using an automated case assignment system.
- (4) The Chief Disciplinary Counsel shall manage the ODC and make all administrative and financial decisions within the framework of the approved budget. The Chief Disciplinary Counsel shall render binding instructions on department operations as well as binding instructions on taking measures in given situations.
- (5) Deputy chief disciplinary counsels and disciplinary counsels shall perform all tasks in disciplinary cases assigned to them and shall report to the chief disciplinary counsel on the performance of those tasks.

Article 175

(Collegium of Disciplinary Counsels)

- (1) The Collegium of disciplinary counsels includes the Chief Disciplinary Counsel, deputy chief disciplinary counsels and disciplinary counsels.
- (2) The Chief Disciplinary Counsel shall, as required, and at least one in three months, convene a Collegium meeting to which they may also invite other persons.
- (3) The Collegium shall serve to decide on complaints pursuant to Article 195, paragraph (2) of the Law as well as to consider all matters regarding ODC operations, and in particular:
 - a) performance results for the given period;
 - b) work on priority cases;
 - d) improving performance, professional advancement;
 - e) performance reports as well as other issues relevant for ODC operations as prescribed with the rules of procedure.
- (3) Based on the analysis and the outcome from collegium meetings, the Chief Disciplinary Counsel may pass other measures in order to improve ODC operations and clearance rates.

Article 176

(Appointment and Removal of the Chief Disciplinary Counsel)

- (1) The Chief Disciplinary Counsel shall be appointed by the Council to a five-year term after the conclusion of the public competition conducted by the Civil Service Agency of Bosnia and Herzegovina.
- (2) The Chief Disciplinary Counsel shall have the status of a senior executive manager with a special assignment in accordance with the Law on Civil Service in Institutions of Bosnia and Herzegovina.
- (3) Two Council members selected by the Council shall participate as members of the selection committee from Article 24, paragraph 2 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina for the election of the chief disciplinary counsel.
- (4) The chief disciplinary counsel shall be removed by the Council.
- (5) The mandate of the chief disciplinary counsel shall terminate by force of the law when they apply for a vacant position for which appointment is decided on by the Council, or if the Council participates in the appointment process by giving a proposal, opinion, consent, or in any other way.

Article 177

(Election, Appointment and Removal of the Deputy Chief Disciplinary Counsel, Disciplinary Counsels and Civil Servants)

- (1) The appointment and removal of the deputy chief disciplinary counsel, disciplinary counsel and other civil servants of the ODC shall be performed in accordance with Article 28, paragraph (2) of the Law on Civil Service in the Institutions of BiH.
- (2) A selection committee pursuant to Article 24, paragraph 2 of the Law on Civil Service in Institutions of Bosnia and Herzegovina for the election of civil servants for the ODC shall have one member of the Council as selected by the Council and the Chief Disciplinary Counsel or a person they authorise.
- (3) Deputy chief disciplinary counsels, disciplinary counsels and other civil servants of the ODC are appointed and removed by a committee comprised of the Chief Disciplinary Counsel and two members of the Council selected by the Council.

Article 178

(Requirements for the Appointment of Disciplinary Counsels)

- (1) Apart from the general requirements prescribed with the Law on Civil Service in the Institutions of BiH, a person who possesses a university law degree or 240 ECTS credits pursuant to the Bologna system with a minimum of eight years of post bar exam working experience in legal affairs, and possesses the quality of professional impartiality, high

moral values and proven professional competences may be appointed to the position of chief disciplinary counsel or deputy chief disciplinary counsel.

- (2) Apart from the general requirements prescribed with the Law on Civil Service in the Institutions of BiH, a person who possesses a university law degree or 240 ECTS credits pursuant to the Bologna system with a minimum of five years of post bar exam working experience in legal affairs, and possesses the quality of professional impartiality, high moral values and proven professional competences may be appointed to the position of deputy chief disciplinary counsel.
- (3) Apart from the general requirements prescribed with the Law on Civil Service in the Institutions of BiH, a person who possesses a university law degree or 240 credits pursuant to the Bologna system with a minimum of three years of post bar exam working experience in legal affairs, and possesses the quality of professional impartiality, high moral values and proven professional competences may be appointed to the position of disciplinary counsel.

Article 179

(Employment)

In accordance with the Law on Working in Institutions of Bosnia and Herzegovina, a decision on employment or termination of an employment contract by the employer for employees of the ODC who do not have the status of civil servants shall be passed by a committee consisting of one member of the Council selected by the Council, the Chief Disciplinary Counsel and deputy chief disciplinary counsel or a disciplinary counsel who is authorised by the Chief Disciplinary Counsel.

Section B Disciplinary Panels

Article 180

(Disciplinary Panels)

- (1) Disciplinary panels shall be:
 - a) first instance disciplinary panels, and
 - b) second instance disciplinary panels.
 - c) disciplinary panel for deciding on appeals pursuant to Article 202, paragraph (4) of the Law (hereinafter: Appeals Panel)
- (2) The panels pursuant to paragraph (1) shall be independent and in charge of processing disciplinary matters.

Article 181

(Composition and Appointment of Disciplinary Panels)

- (1) The first instance disciplinary panel shall be comprised of three members of which one shall be a Council department member, while two members shall be appointed from the list referred to in Article 182 of the Law.
- (2) The second instance disciplinary panel shall be comprised of three members of which one shall be a Council member, while the other two members shall be appointed from the list referred to in Article 182 of the Law.
- (3) The Appeals Panel shall be comprised of three members of which one shall be a Council member, while the other two members shall be appointed from the list referred to in Article 182 of the Law.
- (4) Disciplinary panels shall be appointed by the Council for a four-year term. As an exception, a disciplinary panel shall continue operating after the term has ended through to the conclusion of any ongoing disciplinary proceeding.
- (5) In disciplinary proceedings against judges, both first instance and second instance panels shall be comprised of judges. In disciplinary proceedings against prosecutors, both first instance and second instance panels shall be comprised of prosecutors
- (6) At least one member of the disciplinary panel, in both first and second instance, shall be a judge from the same or higher instance court than the respondent judge in the disciplinary proceeding. At least one member of the disciplinary panel, in both first and second instance, shall be a prosecutor of the same or higher level than the respondent prosecutor in the disciplinary proceeding.
- (7) In disciplinary proceedings against judges, the appeals panel members shall be judges of the highest instance courts. In disciplinary proceedings against prosecutors, the appeals panel members shall be prosecutors of the highest level prosecutor's offices.
- (8) A panel member who participated in the processing of a case as a member of the first instance panel may not work on the same case as a member of the second instance disciplinary panel or the appeals panel.
- (9) Members of disciplinary panels who are not members of the Council shall be entitled to the reimbursement of their costs pursuant to Article 52 paragraph (8) of the Law.

Article 182

(List of Candidates Nominated by Courts and Prosecutor's Offices)

- (1) At the general session or general meeting, every court and prosecutor's office shall nominate one judge or prosecutor as a potential member of a disciplinary panel. The nomination procedure shall be regulated with instructions rendered by the Council.
- (2) As an exception to paragraph (1) of this Article, the High Court of BiH, the FBiH Supreme Court, the RS Supreme Court and the Appellate Court of the Brcko District BiH shall each

propose two judges, while the Prosecutor's Office of BiH, the FBiH Prosecutor's Office and the RS Prosecutor's Office shall each propose two prosecutors.

- (3) A judge or a prosecutor who has not been found liable in disciplinary proceedings and who's last performance evaluation was "exceptionally successful in the performance of duties" or "successful in the performance of duties" may be nominated for a member of a disciplinary panel.
- (4) A list shall be made of judges and prosecutors for appointment as disciplinary panel members based on the nominations submitted by the courts and prosecutor's offices. The list shall be valid for four years.

CHAPTER II CHAPTER XX - DISCIPLINARY LIABILITY AND DISCIPLINARY PROCEEDINGS

Section A Disciplinary Offences and Disciplinary Measures

Article 183

(Liability for Disciplinary Offences)

- (1) A judge, prosecutor, or lay judge, including court presidents and chief prosecutors and their deputies, as well as Council members from the ranks of judges and prosecutors shall be held liable for any disciplinary offence stipulated by the law, which they commit either intentionally or negligently.
- (2) Appointment to another court or prosecutor's office shall not preclude disciplinary liability of a judge or prosecutor for any offence committed while in their previous judicial office. Cessation of a mandate to a managerial position shall not preclude disciplinary liability for an offence committed during that mandate.
- (3) Criminal or minor offence liability shall not preclude the disciplinary liability of a judge or prosecutor for an offence that was a matter for criminal or minor offence proceedings, where such an offence also represents a disciplinary offence.
- (4) If the offence that is the subject of the removal procedure is also a disciplinary offence, the removal procedure in accordance with Article 27 of the Law shall not preclude disciplinary liability of a Council member from the ranks of judges of prosecutors.

Article 184**(Disciplinary Offences of Judges)**

- (1) Disciplinary offences of judges shall be as follows:
- a) disclosure of confidential information obtained in the course of performing judicial duties;
 - b) using judicial office to obtain benefits for oneself or others;
 - c) not disqualifying himself or herself from a case when a conflict of interest exists;
 - d) undue delays in writing decisions or in taking procedural actions;
 - e) failure to comply with decisions rendered in the procedure for the protection of the right to a trial within a reasonable time;
 - f) enabling persons not authorised by law to perform judicial functions;
 - g) interfering with the work of a judge or prosecutor contrary to law, with the intention to obstruct or prevent their activities, or to influence their work;
 - h) making any comments about a judicial or prosecutorial decision, proceeding or case while it is still pending before the court that could reasonably be expected to interfere with or prejudice a fair proceeding or trial;
 - i) failure to comply with books of rules, decisions, orders or other acts of the Council for unjustified reason;
 - j) providing or presenting the Council with false, misleading or insufficient information;
 - k) failure to provide the Council with any of the information as required by this Law;
 - l) violation of the provisions of this Law concerning the submission of a declaration of assets and interests;
 - m) violation of the provisions of this Law regarding monitoring the compliance with obligations under this Law by disclosure entities;
 - n) failure to fulfil any mandatory training obligations;
 - o) engaging in activities that are incompatible with the office of a judge;
 - p) violating restrictions related to generating income from fees for additional activities;
 - r) acting with bias and prejudice while carrying out official duties on the basis of race, colour, sex, gender, religion, ethnic origin, nationality, sexual orientation, or a party's social or economic status;
 - s) violation of principles of the Code of Ethics for Judges that compromises the reputation and integrity of the judiciary, where such a violation is not prescribed by this Article as a separate offence;

- t) accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the judge, including also when the gift or remuneration merely creates the appearance of improper influence.
- (2) In addition to the offences referred to in paragraph (1) of this Article, a court president shall also be held liable for the following disciplinary offences:
- a) violating regulations governing court management and administration;
 - b) violating regulations and decisions on the assignment of cases, directly or by failing to carry out supervision;
 - c) failure to file a disciplinary complaint against a judge of the respective court, although they have information on the judge's misconduct;
 - d) failure to provide the Council with the information and data that a court president is required to provide by this Law.

Article 185

(Disciplinary Offences of Prosecutors)

- (1) Disciplinary offences of prosecutors shall be as follows:
- a) disclosure of confidential information obtained while performing prosecutorial duties;
 - b) using prosecutorial office to obtain benefits for oneself or others;
 - c) not disqualifying himself or herself from a case when a conflict of interest exists;
 - d) undue delays in conducting actions concerning the performance of prosecutorial office;
 - e) failure to comply with decisions rendered in the procedure for the protection of the right to a trial within a reasonable time;
 - f) enabling persons not authorised by law to perform prosecutorial functions;
 - g) interfering with the work of a judge or prosecutor contrary to law, with the intention to obstruct or prevent their activities, or to influence their work;
 - h) making any comments about a judicial or prosecutorial decision, proceeding or case while it is still pending before the court that could reasonably be expected to interfere with or prejudice a fair proceeding or trial;
 - i) failure to comply with books of rules, decisions, orders or other acts of the Council for unjustified reason;
 - j) providing or presenting the Council with false, misleading or insufficient information;
 - k) failure to provide the Council with any of the information as required by this Law;

- l) violation of the provisions of this law concerning the submission of declaration of assets and interests;
 - m) violation of the provisions of this Law regarding monitoring the compliance with obligations under this Law by disclosure entities;
 - n) failure to fulfil any mandatory training obligations;
 - o) failure to carry out statutory instructions of a supervising prosecutor unless the carrying out of such instructions would, in itself, constitute a violation of law;
 - p) engaging in any activities that are incompatible with the office of prosecutor;
 - r) violating any restrictions related to generating income from fees for additional activities;
 - s) acting with bias and prejudice while carrying out official duties on the basis of race, colour, sex, gender, religion, ethnic origin, nationality, sexual orientation, or a party's social or economic status;
 - t) violation of principles of the Code of Ethics for Prosecutors that compromises the reputation and integrity of the judiciary, where such a violation is not prescribed by this Article as a separate offence;
 - u) accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the prosecutor, including also when the gift or remuneration merely creates the appearance of improper influence.
- (2) In addition to the offences referred to in paragraph (1) of this Article, a chief prosecutor shall also be held liable for the following disciplinary offences:
- a) violating regulations governing management and administration of the prosecutor's office;
 - b) violating regulations and decisions on the assignment of cases, directly or by failing to carry out supervision;
 - c) failure to file a disciplinary complaint against a prosecutor of the respective prosecutor's office, despite having information on the prosecutor's misconduct;
 - d) failure to provide the Council with the information and data that a chief prosecutor is required to provide under this Law.

Article 186

(List of Disciplinary Measures)

In disciplinary proceedings, one or more of the following disciplinary measures may be imposed:

- a) public reprimand;
- b) a reduction in salary up to 50 percent, for a period of up to one year;

- c) removal from the office of court president to a judge, chief prosecutor or deputy chief prosecutor to a prosecutor;
- d) removal from the office of judge or prosecutor.

Article 187

(Additional Measures)

In addition to the disciplinary measure referred to in Article 186 of the Law, a judge or a prosecutor may be ordered to participate in counselling or specialised training in a specific field provided by the judicial and prosecutorial training centres.

Article 188

(Principles for Determining Disciplinary Measures)

When imposing disciplinary measures, disciplinary panels shall be governed by the principle of proportionality, taking into account the following facts:

- a) the severity of the disciplinary offence committed and its consequences;
- b) the number of disciplinary offences committed or actions taken towards committing the disciplinary offence;
- c) the degree of responsibility;
- d) the circumstances under which the disciplinary offence was committed;
- e) the previous work and behaviour of the offender; and
- f) any other circumstances that may influence the decision on the severity and type of disciplinary measure, including remorse and cooperation shown by the judge or prosecutor during the disciplinary proceedings.

Article 189

(Legal Consequences of Imposed Disciplinary Measures)

- (1) A judge or a prosecutor who has been issued a reprimand may not be appointed or transferred to a vacant position in the judiciary for a period of one year from the date when the decision imposing the disciplinary measure became final.
- (2) A judge or a prosecutor who has been disciplined by salary reduction for up to six months may not be appointed or transferred to a vacant position in the judiciary for a period of two years from the date when the decision imposing the disciplinary measure became final.
- (3) A judge or a prosecutor who has been disciplined by salary reduction for longer than six months may not be appointed or transferred to a vacant position in the judiciary for a

period of three years from the date when the decision imposing the disciplinary measure became final.

- (4) The provisions of paragraphs (1), (2), (3) and (6) of this Article shall also apply to a court president, chief prosecutor and deputy chief prosecutor.
- (5) A court president, chief prosecutor or deputy chief prosecutor against whom the disciplinary measure removal from such office has been pronounced, may not be appointed to a managerial position in the judiciary for a period of ten years from the date when the decision imposing the disciplinary measure became final, that is, they may not be appointed or transferred to the vacant position of a judge or prosecutor for a period of five years.
- (6) A judge or a prosecutor against whom the measure of removal from such office has been pronounced may not be reappointed to the position of a judge or prosecutor for a period of eight years from the date when the decision imposing the disciplinary measure became final.
- (7) The legal consequences to the disciplinary measure imposing the removal of a court president, chief prosecutor or deputy chief prosecutor shall apply to a judge or prosecutor who resigns from a managerial position during the course of disciplinary proceedings.
- (8) The legal consequences of the disciplinary measure imposing removal shall apply to a judge or prosecutor who resigns during the course of disciplinary proceedings.

Section B Statute of Limitations

Article 190

(Statute of Limitations for the Initiation of Disciplinary Proceedings)

- (1) Disciplinary proceedings against a judge, prosecutor or Council member may not be initiated:
 - a) upon the expiry of two years from the date of filing the complaint, or from the date the ODC learnt of the offence;
 - b) upon the expiry of five years from the day that the alleged offence was committed.
- (2) Statute of limitations for initiating disciplinary proceedings for a disciplinary offence of a habitual nature shall commence at the time when the unlawful status ends.

Article 191

(Statute of Limitations for the Conduct of Disciplinary Proceedings)

- (1) The procedure for the establishment of disciplinary liability shall be completed within two years from the date of the filing of a formal complaint before the first instance disciplinary panel.
- (2) By way of derogation from paragraph (1) of this Article, if a decision of the disciplinary panel has been reversed by the competent court and returned for repeated proceedings, the proceedings shall, at the latest, be carried out within one year from the date of receiving the competent court's decision.

Article 192

(Interruption of Statute of Limitations)

- (1) When a criminal investigation or criminal proceedings are initiated against a judge or a prosecutor based on the same facts that are examined in the disciplinary investigation or disciplinary proceedings, the statute of limitations referred to in articles 190 and 191 shall stop running.
- (2) The statute of limitations applicable to the initiation or conduct of disciplinary proceedings shall continue running upon the discontinuation of the criminal investigation or upon the rendering of a final judgement.

Section C Disciplinary Investigations

Article 193

(Disciplinary Investigation)

- (1) The ODC shall initiate a disciplinary investigation based on a complaint or in an *ex officio* capacity.
- (2) If several cases are initiated against the same judge or prosecutor, the ODC shall conduct a single disciplinary investigation.
- (3) The procedure for disciplinary investigations shall be regulated in more detail by the Book of Rules on Disciplinary Liability.
- (4) All courts, prosecutor's offices, as well as judges, court presidents, chief prosecutors, deputy chief prosecutors, prosecutors, lay judges and employees of courts or prosecutor's offices shall comply with requests of the ODC for information, documents or other materials related to a disciplinary investigation.

- (5) Public authorities at all levels of government in BiH and other legal persons shall cooperate with the ODC during a disciplinary investigation, pursuant to Article 55 of the Law.

Article 194

(Complaints)

- (1) A complaint which serves as the basis for a disciplinary investigation shall include the name and surname of the respondent judge or prosecutor, allegations about the judge's or prosecutor's misconduct, as well as the evidence.
- (2) The ODC shall return an incomprehensible complaint, or a complaint which does not contain the elements referred to in paragraph (1) of this Article to the complainant, who shall complete the complaint within eight days.
- (3) The ODC shall dismiss a complaint without having conducted a disciplinary investigation, should it find that:
- a) the initiation of disciplinary proceedings is time-barred;
 - b) the complaint is incomplete or incomprehensible, and filed by an anonymous complainant;
 - c) the complaint is not corrected within the time period referred to in paragraph (2) of this Article;
 - d) the respondent judge's or prosecutor's mandate had expired prior to the submission of the complaint, or it expired between the time of submission and the time when the processing of the complaint started;
 - e) the allegations of misconduct do not constitute a disciplinary offence;
 - f) a decision was made earlier in the same matter.
- (4) A decision referred to in paragraph (3) of this Article shall be rendered by the ODC within 180 days from of receiving the complaint.
- (5) Submissions received by the ODC that do not constitute complaints by their content shall be recorded in a separate register.

Article 195

(Decision not to File a Motion to Initiate Disciplinary Proceedings)

- (1) The ODC shall issue a decision not to file a motion for the initiation of disciplinary proceedings, if the investigation shows that:
- a) there is insufficient evidence to prove that the disciplinary offence was committed;
 - b) the judge's or prosecutor's mandate to judicial or prosecutorial office expired during the investigation;

- c) the initiation of disciplinary proceedings is time-barred.
- (2) When the ODC determines circumstances pursuant to paragraph (1) of this Article, it shall render a decision within 60 days of determining such circumstances. The elaborated decision referred to in paragraph (1) of this Article shall be delivered to the complainant who may file an objection with the Collegium of the ODC within eight days from the delivery date.
- (3) The Collegium shall decide on an objection within 30 days from the date of receipt. If the Collegium finds that the complaint is grounded, it shall determine the measures and actions to be taken and notify the complainant accordingly. A complainant shall be notified of any Collegium decision rendered subsequent to a complaint.
- (4) A final decision not to file a motion for the initiation of disciplinary proceedings shall be delivered to the respective judge or prosecutor, provided that they were informed previously that a complaint had been filed against them.

Section D Disciplinary Proceedings

Article 196

(Initiation of Disciplinary Proceedings)

- (1) A disciplinary proceeding shall be initiated upon the filing of a motion for the initiation of disciplinary proceedings with the first instance disciplinary panel.
- (2) The motion for the initiation of disciplinary proceedings shall contain:
 - a) the name and surname, judicial office, address, telephone number, e-mail address and other personal details of the judge or prosecutor against whom disciplinary proceedings have been initiated, as well as details of their proxy(s), if available;
 - b) the alleged disciplinary offence;
 - c) the description of facts of the disciplinary offence, including the time, place and manner of commission;
 - d) the provisions of applicable laws and other regulations;
 - e) evidence that is motioned to be presented at the proceedings.

Article 197

(The Rights of Judges and Prosecutors in Disciplinary Proceedings)

- (1) During the course of disciplinary proceedings, a judge or prosecutor against whom disciplinary proceedings have been initiated shall have the right to be duly notified of the formal complaint against them, to be acquainted with the case and the accompanying documents.

- (2) Throughout disciplinary proceedings, a judge or prosecutor against whom disciplinary proceedings are being held shall be afforded the option to present their defence personally or via a proxy of their choice.

Article 198

(Assignment of Disciplinary Cases)

Disciplinary cases shall be assigned to disciplinary panels in order using an automated system for assignment.

Article 199

(The Conduct of Disciplinary Proceedings)

- (1) Disciplinary proceedings shall be conducted in compliance with this Law and the Book of Rules on the Disciplinary Liability.
- (2) Disciplinary proceedings shall be transparent and public. A hearing may be closed or partially closed for the public in the interest of morality, public order or national security of a democratic society, or when interests concerning a minor or the protection of the private life of the parties require so, or when the panel believes it is necessary due to specific circumstances in which public presence would be harmful to the interest of justice.
- (3) In all issues related to disciplinary proceedings that are not covered with this Law and the Book of Rules on Disciplinary Liability, the provisions of the Law on Civil Procedure before the Court of Bosnia and Herzegovina shall be applied accordingly.

Article 200

(Joinder of Proceedings)

If several disciplinary proceedings have been initiated against the same judge or prosecutor, the first instance disciplinary panel shall join the proceedings and render a single decision.

Article 201

(Joint Consent Agreement)

- (1) The ODC and the person against whom a complaint has been filed, as well as their proxy, may reach an agreement on the alleged disciplinary offences and conclude a joint consent agreement at any time before the completion of the proceedings with finality.
- (2) An agreement shall be drawn up in writing and submitted to the disciplinary panel once signed by both parties. The Agreement shall contain:

- a) a statement of facts in relation to disciplinary offences admitted to by the judge or prosecutor;
 - b) a joint statement on the measure to be imposed, if any.
 - c) a statement from the judge or prosecutor acknowledging that they are aware that the agreement is contingent on approval by the disciplinary panel, which it may withhold.
- (3) The disciplinary panel shall confirm:
- a) whether the judge or prosecutor understands that a disciplinary measure imposed against them is unappealable;
 - b) whether the proposed disciplinary measure is appropriate to the committed disciplinary offence.
- (4) If the Panel accepts the Agreement, the matter shall proceed in the same manner as if the Panel had made a finding after a hearing that a disciplinary offence had occurred, except that there shall be no appeal against the imposed disciplinary measure.
- (5) In the event that the Panel rejects an Agreement, the proceeding shall continue while the admission from the agreement may not be used as evidence in the disciplinary proceeding.

Article 202

(Decisions and Appeals)

- (1) The First Instance Disciplinary Panel shall establish disciplinary liability in the first instance and impose disciplinary measures.
- (2) An appeal against the decision rendered in the first instance may be filed within 15 days of delivery of the decision.
- (3) The second instance disciplinary panel shall decide on appeals against decisions of the first instance disciplinary panel and may may affirm, reverse or modify a decision of the first instance disciplinary panel.
- (4) The decision of the second instance disciplinary panel may be appealed in the following cases:
 - (a) when the second instance disciplinary panel modifies the first instance disciplinary panel decision rejecting a motion to initiate disciplinary proceedings, and imposes a measure finding the judge or prosecutor to be disciplinary liable;
 - (b) when the second instance disciplinary panel modifies a first instance decision that found the judge or prosecutor liable for a disciplinary offence and renders a decision rejecting the complaint.
- (5) An appeal referred to in paragraph (4) of this Article shall be submitted within 15 days from the date of receiving the decision of the second instance disciplinary panel.

Article 203

(Filing an Appeal with the Court of BiH)

- (1) A judge or prosecutor who has been removed through a decision may file an appeal with the Court of Bosnia and Herzegovina if:
 - a) during the disciplinary proceedings which led to the decision to impose the measure of removal, the procedures set out in this Law were materially violated;
 - b) during the disciplinary proceedings which led to the decision to impose the measure of removal, the law was applied erroneously.
- (2) An appeal from paragraph (1) of this Article may be filed against a decision of a second instance disciplinary panel that is not subject to appeal in accordance with Article 205, paragraph (4) of the Law or against a decision of the Appeals Panel.
- (3) The deadline for filing an appeal shall be 15 days from the day the judge or prosecutor received the decision on removal.

Article 204

(Enforcement of Decisions)

- (1) Decisions rendered in disciplinary proceedings shall be enforced by the court president, chief prosecutor, the Judicial Department or Prosecutorial Department, depending on the imposed disciplinary measure.
- (2) The enforcement of decisions rendered in disciplinary proceedings and imposed disciplinary measures shall be regulated in greater detail with the Book of Rules on Disciplinary Liability.

Section E Confidentiality and Records

Article 205

(Confidentiality of Disciplinary Investigations)

- (1) Unless stipulated otherwise with this Law, a complaint received by the ODC, the initiation and conduct of disciplinary proceedings, and any decision not to initiate disciplinary proceedings shall not be publicly available.
- (2) Information on a decision not to initiate disciplinary proceedings may be made publicly available upon request of the concerned judge or prosecutor.
- (3) The ODC may confirm, correct or deny any information in relation to paragraph (1) of this Article, if such information was previously revealed to the public.

Article 206**(Records of the Office of the Disciplinary Counsel)**

The ODC shall keep records of filed complaints and of actions taken pursuant to complaints, investigations and disciplinary cases, as well as records of submissions received by the ODC that do not constitute complaints.

Article 207**(Register of Disciplinary Proceedings)**

- (1) The Council shall keep a register of initiated disciplinary proceedings, disciplinary decisions and imposed disciplinary measures.
- (2) The data on imposed disciplinary measures shall be entered in the judge's or prosecutor's personal file.

Article 208**(Access to Data)**

- (1) Data on disciplinary proceedings initiated against a judge or prosecutor shall be available to the public for the duration of the disciplinary proceedings.
- (2) The public shall be informed of any disciplinary measures imposing removal or removal from the office of court president, chief prosecutor or deputy chief prosecutor.
- (3) The statement on a disciplinary decision finding a judge or prosecutor not liable for a disciplinary offence shall be disclosed as requested by or with the consent of the judge or prosecutor in question.
- (4) Disciplinary decisions shall be disclosed, subject to the removal of personal data, in accordance with the rules as determined by the Council.

Article 209**(Expunging Disciplinary Measures)**

Disciplinary measures shall be expunged *ex officio* from the personal file of a judge or prosecutor within five year after the expiry of the two times the period referred to in Article 189 of this Law, unless the judge or prosecutor commits another offence.

Article 210**(Reporting to the Council)**

- (1) The ODC shall, upon request, provide the Council, the Judicial Department, the Prosecutorial Department, the nomination sub-councils and the appraisal committees for judges/prosecutors with information on received complaints, initiated disciplinary investigations and initiated disciplinary proceedings if such information was requested for the purpose of conducting the appointment and appraisal procedure for judges and prosecutors.
- (2) The ODC shall, periodically and at least once a year, submit written periodic reports on its activities to the Council.

PART FIVE – SUSPENSION OF JUDGES AND PROSECUTORS FROM OFFICE AND TERMINATION OF OFFICE**CHAPTER XXI – SUSPENSION OF JUDGES AND PROSECUTORS FROM OFFICE****Article 211****(Mandatory Suspension from Office)**

- (1) A judge or prosecutor shall be suspended from office:
 - a) if detention or prohibiting measures have been rendered against them which represent obstacles to holding office;
 - b) if an indictment has been confirmed against them for a criminal offence.
- (2) Suspension pursuant to this Article shall last for the duration of pre-trial detention or the prohibiting measures or until the conclusion of criminal proceedings based on which the suspension was rendered.
- (3) A presiding judge or prosecutor shall, without delay, submit to the Council information concerning any circumstances pursuant to paragraph (1) of this Article.

Article 212**(Discretionary Suspension)**

- (1) A judge or prosecutor may be suspended from office:
 - a) if a criminal investigation has been initiated against them for a criminal offence which would render them unfit to hold the office of judge or prosecutor;

- b) if a procedure has been initiated to assess their capacity to hold the office of judge or prosecutor or if a procedure has been initiated to terminate their work capacity;
 - c) if a decision on removal without finality has been rendered against them in disciplinary proceedings;
 - d) if disciplinary proceedings have been initiated against them for a disciplinary offence of such nature and gravity that their continued holding of judicial office through to the conclusion of disciplinary proceedings would severely impede the reputation of the judiciary or interfere with the course of the proceedings.
- (2) A decision on suspension pursuant to paragraph (1), item b) of the Law shall be made upon obtaining opinion by a medical expert.

Article 213

(Duration of Discretionary Suspension)

- (1) In the event of the suspension of a judge or prosecutor due to grounds stipulated in Article 212, paragraph (1), item a) of the Law, suspension may, at most, last up to the conclusion of the investigation.
- (2) In the event of the suspension of a judge or prosecutor due to grounds stipulated in Article 212, paragraph (1), item b) of the Law, suspension may, at most, last until the conclusion of the procedure for the assessment of their capacity to hold the office of judge or prosecutor.
- (3) In the event of the suspension of a judge or prosecutor due to grounds stipulated in Article 212, paragraph (1), items c) and d) of the Law, the suspension may, at most, last up to the day of conclusion of disciplinary proceedings based on which the decision on suspension was rendered.

Article 214

(Decisions on Suspension and Appeals)

- (1) A decision on suspension shall be rendered by the First Instance Disciplinary Panel as motioned by the ODC.
- (2) An appeal against a decision on suspension shall be filed with the Second Instance Disciplinary Panel of the Council. An appeal shall not defer the enforcement of a decision from paragraph (1) of this Article. The decision of the second instance disciplinary panel shall be final.

Article 215

(Rights for the Duration of Suspension)

- (1) A judge or prosecutor who has been suspended shall have the right to receive 50 % of their salary for the duration of their suspension.
- (2) A judge or prosecutor shall have the right to be reimbursed the difference in unpaid salaries and other emoluments for the duration of the incurred consequences from the decision on suspension, in the event that:
 - a) disciplinary proceedings that were the basis for the suspension, do not establish their liability;
 - b) an investigation or criminal proceedings initiated against them are discontinued or that they are acquitted with finality in criminal proceedings and it was due to such circumstances that they were suspended.

Article 216

(Appointment of a Replacement for the Duration of the Suspension)

- (1) In the event of the suspension of a court president, the Judicial Department shall name a judge of the court to execute the duties of court president for the duration of the suspension.
- (2) In the event of the suspension of a chief prosecutor, the Prosecutorial Department shall assign one of the deputy chief prosecutors, or one of the prosecutors of a prosecutor's office that has no appointed deputy chief prosecutor, to execute the duties of chief prosecutor for the duration of the suspension.

Article 217

(Loss of Capacity of a Judge or Prosecutor to Hold Office)

- (1) The ODC shall investigate and represent cases before the Council that address the physical, emotional, mental or other incapacity of a judge or prosecutor that requires permanent removal or temporary suspension of a judge or prosecutor from office or termination of their mandate.
- (2) As part of an investigation and when collecting information in connection with the loss of capacity of a judge or prosecutor to hold office, the ODC shall retain all rights and authorities as prescribed by the Law.
- (3) Apart from measures pursuant to paragraph (1) of this Article, the Council shall have broad powers for the implementation of other measures as well. If a judge or prosecutor is relieved of their office, the Council may reinstate the judge or prosecutor to office upon determining that the judge or prosecutor no longer lacks the capacity to hold office.

- (4) A judge or prosecutor shall retain all rights to a pension, disability benefits and any other benefits prescribed by law in the event they are relieved of their office or if their mandate is terminated.

CHAPTER II TERMINATION OF OFFICE

Article 218

(Termination of Mandate)

- (1) The mandate of a judge or prosecutor shall terminate:
- a) upon reaching the mandatory retirement age;
 - b) upon resignation from office;
 - c) in case of appointment to another court or prosecutor's office;
 - d) due to the permanent loss of capacity to hold judicial or prosecutorial office;
 - e) if they have been convicted with finality of a criminal offence for which the law prescribes a prison sentence;
 - f) upon their removal as a consequence of disciplinary proceedings.
- (2) In case a judge or prosecutor reaches the mandatory retirement age, their mandate shall automatically terminate. A judge or prosecutor may request the termination of their mandate to be able to retire even before reaching the age stipulated in Article 221 of this Law if they meet the eligibility requirements to get an age pension in accordance with the regulations on pension and disability insurance.
- (3) A judge or prosecutor shall submit their resignation in writing. The Council shall adopt the decision on termination of mandate, in accordance with paragraph (1), item (b) of this Article, no later than 30 days from the day of receiving the resignation. The mandate shall terminate on the day of the decision or on another day determined by the Council upon proposal by the judge or prosecutor who resigns. If no decision is taken regarding the resignation within 30 days, the mandate shall be deemed to have terminated upon the expiry of the 30-day deadline from the day when the resignation was submitted.
- (4) The mandate of a judge or prosecutor to hold office in the court or prosecutor's office to which they were previously appointed shall terminate by their appointment or transfer to a judicial office in another court or prosecutor's office on the day when they assume office.
- (5) The Council shall issue a decision to terminate a mandate in accordance with paragraph (1), item d) of this Article based on a decision of the relevant authority establishing the loss of capacity to hold office. The mandate shall terminate on the day of the Council's decision, and no later than 30 days from the day of receiving the decision from the relevant authority.

- (6) The mandate of a judge or prosecutor pursuant to paragraph (1), item (e) of this Article shall terminate with the finality of the judgement. The mandate of a judge or prosecutor, in accordance with paragraph (1), item (f) of this Article shall terminate on the day of finality of the decision imposing the measure of removal.

Article 219

(Termination of Mandate of Court Presidents, Chief Prosecutors and Deputy Chief Prosecutors)

- (1) The mandate of court presidents, chief prosecutors and deputy chief prosecutors shall terminate:
- a) in the event of the termination of office of judge or prosecutor;
 - b) in the event of appointment to another court or prosecutor's office;
 - c) upon expiry of period to which they have been appointed;
 - d) in the event of submitting a resignation to the position of court president, chief prosecutor or deputy chief prosecutor;
 - e) in the event of removal from the office of court president, chief prosecutor or deputy chief prosecutor as a result of disciplinary proceedings;
- (2) In an event pursuant to paragraph (1), item b) of this Article, the mandate of a court president, chief prosecutor and deputy chief prosecutor shall terminate on the day of assuming office at another court or prosecutor's office.
- (3) The mandate of a court president, chief prosecutor or deputy chief prosecutor, in the event referred to in paragraph (1), item (f) of this Article, shall terminate on the day the decision imposing a measure of removal becomes final.
- (4) A court president, chief prosecutor or deputy chief prosecutor may resign from their office in accordance with Article 218, paragraph (3) of the Law.
- (5) In case of the termination of the mandate of a court president, chief prosecutor or deputy chief prosecutor, they shall nevertheless continue to perform a judicial or prosecutorial function in the same court or prosecutor's office.

Article 220

(Temporary Extension of Mandate)

- (1) A court president, chief prosecutor or deputy chief prosecutor whose mandate to the office they were appointed to has expired, shall continue exercising the rights and duties of such office in the capacity of an acting court president, chief prosecutor or deputy chief prosecutor, until a new court president or chief prosecutor or deputy chief prosecutor is appointed, and shall do so for a maximum of one year.

- (2) In any other event regarding a court president or chief prosecutor whose mandate has expired, the relevant department shall appoint a judge or prosecutor who shall perform the duties of court president or chief prosecutor with full rights and duties until a new court president or chief prosecutor is appointed.

Article 221

(Mandatory Retirement Age)

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

PART SIX – TRANSITIONAL AND CLOSING PROVISIONS

After the new Law on the HJPC BiH has been defined and finalised, we then need to prepare transitional provisions that should, primarily, regulate the following issues:

- the election of HJPC members in accordance with the new composition of the Council (the procedure, deadlines for the election of new members, technical mandates for current members);
- the mandate of the current court presidents, chief prosecutors and deputy chief prosecutors – which should be concluded in accordance with the provisions that were in effect at the time of appointment;
- performance evaluation – establish the beginning of the evaluation period after the coming into effect of the law, and regulate the use of the performance evaluations achieved based on the former rules for appointment procedures pursuant to the new law;
- the status of reserve judges already appointed – the transitional provisions of the law should provide powers for the Council to decide on mandate extensions for reserve judges who are in office at the time of coming into effect of the new Law on the HJPC BiH. The Council would need to pass decisions on mandate extensions in consideration of the performance evaluation of a reserve judge and the assessment on the need to extend the mandate in line with the requirements of the court in which they hold office, and depending on available funds. Stipulations should also be made whereby all of the provisions of the Law on the HJPC BiH that refer to judges also refer to reserve judges, except for the right to apply for membership to the Council. Also prescribe that the Council may render a decision whereby the status of reserve judges is changed to regular judge status – if justified through the performance evaluation of the reserve judge, if funds are available and if the reserve judge has held the position for an extended time period (e.g. more than 4 years);
- the conclusion of appointment procedures that are underway at the time of coming into effect of the new Law;
- the deadline for passing regulations to cover the actions of the Council after the coming into effect of the new Law;
- form a position regarding the status of legal associates in the Federation of BiH who have authorities to adjudicate;
- rules for the conclusion of disciplinary cases initiated pursuant to the previously applicable law; (Disciplinary cases initiated before this Law has come into effect shall be completed pursuant to the provisions of the previously applicable Law on the High Judicial and Prosecutorial Council of BiH (“Official Gazette of BiH“, 25/04, 93/05, 48/07 and 15/08).
- establish a sufficient period of time for the new HJPC Law to come into effect to ensure the conditions for its application (at least six months).
- the duty of judges/prosecutors to submit declarations referred to in Article 163 of this Law within 90 days from the day when the Law enters into force.

II. EXPLANATORY NOTE TO PROPOSED SOLUTIONS

Part Two of the Draft Law prescribes the membership and organisation of the Council.

Chapter I lists proposals for provisions regarding the composition of the Council and the election of its members.

(Article 6) **OPTION ONE** – The HJPC comprises 18 members, eight members are judges, representatives of different courts, eight prosecutors, representatives of different prosecutor's offices, and two members are elected by other bodies, one by the Council of Ministers, and the other by the Parliamentary Assembly of BiH with clearly prescribed requirements. The majority of members of the Working Group are in support of this proposal.

(Article 6) **OPTION TWO** – The HJPC comprises 24 members, 12 members are judges, representatives of different courts, 10 prosecutors, representatives of different prosecutor's offices, and two members are elected by other bodies, one by the Council of Ministers, and other by the Parliamentary Assembly of BiH with clearly prescribed requirements. This proposal was considered by the Working Group at the initiative of the Ministry of Justice, and it seems justified given that the current, as well as the proposed alternative for composition of the HJPC, leaves a possibility for larger courts and prosecutor's offices to have their own representative in most cases. At the same time, earlier practice has shown absence of any regional representation whatsoever in the composition of the Council (*never was there a representative in the HJPC from the district or basic courts in the Republika Srpska from, for example, Trebinje, Zvornik, Bijeljina, Foča, Istočno Sarajevo, Sokolac, Višegrad, Vlasenica,...* as well as prosecutor's offices from these regions, with representation from Banja Luka and its surroundings). Along the same lines, representation of the membership in the HJPC coming from the Federation of Bosnia and Herzegovina is equally unbalanced. It should be noted that this alternative foresees more members of the Council from the ranks of judges than prosecutor's offices. This is believed to be justified considering the judges in BiH outnumber prosecutors by far, especially since this Draft Law envisages the Judicial Department and Prosecutorial Department, with independent decision-making on all important issues. According to the analysis of the proposed provisions in this Draft Law regarding decision-making at the plenary session of the Council, it is foreseen that judges cannot outvote prosecutors, or vice versa. We therefore find the alternative to be justified in entirety, with likely support by the majority of judicial office holders in BiH, which is likely expected once the Draft Law is in the stage of public consultations.

(Article 7) – in order to make sure that persons of high moral qualities are appointed to the Council who, given their expertise and professionalism, will ensure independent and impartial action and decision-making in the Council, persons who are not eligible to be elected as members of the Council are listed in the provision. Also, this provision will prevent that members of the Council in all cases come from judicial institutions that are either larger in terms of its staff or are from a certain territory. The Draft here clearly prescribes provisions that preclude membership in the Council for members elected by the Council of Ministers and the BiH Parliamentary Assembly.

Articles 11 through 19 of the Draft Law prescribe selection bodies that will ensure a fair, confidential and transparent selection procedure for members of the Council.

Chapter II of the Draft regulates the term of the members of the Council and conflict of interests.

It is proposed that a member of the Council be elected for a term of five years with no possibility of re-election for a consecutive term.

Assuming office in the Council is preceded by a verification of the assets and interests declaration of the elected members of the Council (Article 21), and Article 22 of the Draft foresees the requirement to submit an initial declaration for all members of the Council within the given deadline.

The Draft Law incorporates rules aimed to increase the transparency of the work of the HJPC by (Article 25) prohibiting applications for vacant positions during and after the expiration of the term of office of a member of the Council. In other words, it prevents HJPC members from applying during their term of office or for one year after its expiration and/or from being elected to certain posts in the judiciary and civil service.

Article 26 of the Draft Law prescribes the reasons and procedure for removal of a member of the Council, on the ground of seriously damaging the reputation of the Council by violating the law or by other actions; in case of incompatible duties; and in the event of a longer absence from duty as a member of the Council. It is envisaged that a special panel formed by the Council, consisting of five members, will have the task of determining the facts and proposing a decision to the Council, and the decision on removal will be made by the Council with a two-thirds majority vote of all Council members. This removal procedure does not preclude the disciplinary liability of a member of the Council from the ranks of judges and prosecutors, if the act that is the subject of the removal procedure also amounts to a disciplinary offence, given that this is prescribed by Article 183 wherein the judge, prosecutor, ... as well as a member of the Council from the ranks of judges and prosecutors are disciplinary liable for disciplinary offences prescribed by law, which they committed intentionally or negligently. In accordance with the 2014 Opinion of the Venice Commission as well as the 2018 Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, an administrative dispute may be filed before the Court of Bosnia and Herzegovina against the decision of the Council on the removal of a Council member.

In this Chapter, Article 30 is clearly important, as it defines in detail the conflict of interest of a member of the Council, that is, defines cases in which a member of the Council has a private interest that affects or may affect the legality, transparency, objectivity and impartiality in the performance of his/her function with the Council, that is, in which private interest harms or may harm the public interest or the trust of citizens.

Chapter III of the Draft regulates the organisation, work and competences of the Council.

In its 2014 Opinion, the Venice Commission welcomed the proposal to form two separate sub-councils within the HJPC, as prescribed by Article 31 of the Draft, wherein the Council consists of all members of the Council, which in practice plays a vital role in strengthening the independence of the judiciary and improving cooperation between judges and prosecutors, but two departments within the HJPC have been proposed, one for judges (Judicial Department) and the other for prosecutors (Prosecutorial Department). The Venice Commission itself emphasised the need to ensure that the two main groups represented in the HJPC, judges and

prosecutors, cannot outvote each other (especially in terms of appointments and disciplinary procedures).

Furthermore, this Chapter regulates the management of both the Council and the Judicial and Prosecutorial Departments, selection of managerial staff, the manner of management, term, removal, as well as the duties that will ensure professionalism in work.

Article 46 of the Draft stipulates that the Council acts and decides at the plenary session of the Council, which, in accordance with Article 47, consists of all members of the Council, and decides on all matters within its competence that are not otherwise entrusted to the Judicial or Prosecutorial Department, disciplinary bodies and performance appraisal committees under this Law. The actual performance of the Judicial and Prosecutorial Department is regulated under Article 48 of the Draft.

An important novelty compared to the current Law on the HJPC is that the Draft stipulates that the members of the Council cannot abstain from voting.

Competences of the Council acting and deciding in the plenary session of the Council, session of the Judicial and Prosecutorial Department, through disciplinary bodies and performance appraisal commissions are prescribed in Article 53 of the Draft. Competences have been retained from the current Law, and in accordance with the amendments in the Draft Law, further extended (... collecting assets and interests declarations of Council members, judges and prosecutors, checks the timeliness, accuracy, completeness and veracity of the data disclosed and analyses the data from declarations; ...).

Chapter IV. Article 56 stipulates that expert, financial and administrative affairs of the Council and departments are performed by the Secretariat of the Council. This Chapter spells out the competences of the Secretariat, management, selection and term of managerial staff as well as the election of officials, employees in the Secretariat.

Much like any other institutions of Bosnia and Herzegovina, in accordance with Article 61, the Council is financed from the Budget of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina, and identically to the provisions of the current Law, the Draft foresees that the Council prepares a draft of its annual budget in accordance with the provisions of the Law on Financing of the Institutions of Bosnia and Herzegovina.

Part Three of the Draft Law regulates all important issues regarding the appointment of judges and prosecutors.

Chapter I of this section part exhaustively prescribes the requirements and term for the exercise of judicial and prosecutorial functions.

Article 65 prescribes the basic requirements to be met for appointment as a judge or prosecutor.

Articles 66 and 67 specifically prescribe special requirements for appointment to the post of judge for each level, as well as special requirements for appointment to the post of a prosecutor for each level.

Article 68 provides for the permanence of the judicial office (judges and prosecutors), as well as the reasons for the termination of the mandate.

In this Chapter, Article 69 clearly prescribes three reasons that exclude the eligibility of a person to apply for vacant posts in the judiciary.

Chapter II prescribes the basic provisions on the procedure for filling vacant posts of judges, prosecutors and deputy chief prosecutors. These positions are filled through transfer, internal or public vacancy.

A reasoned decision on transfer or appointment to a judicial post is made based on the criteria clearly prescribed under this Draft Law. In its 2014 Opinion, the Venice Commission, in its review of the amendments to the Law on the HJPC, welcomed the proposed solution whereby decisions must be reasoned in a way that indicates that decisions are based on objective criteria after weighing all the reasons in favour of such decision, while retaining the discretionary right of the HJPC regarding the evaluation of candidates and selection of a certain candidate for the appointment. The Venice Commission stresses that the decision of the HJPC on the appointment “must contain a reasoning on the application of criteria”.

Further, following the decision on the transfer or appointment to a judicial post by a separate decision, preceded by verification of their declaration on assets and interests, the date of entry into office of the appointed or transferred judge or prosecutor is determined.

An administrative dispute can be initiated against the decision on appointment or transfer (Article 74, paragraph (3)), and the assumption of duty is postponed pending the completion of the court proceedings.

The reasons for annulling the decision on transfer or appointment are spelled out in Article 75 of the Draft Law.

Article 78 – Judicial protection – This provision complied with the recommendation of the Venice Commission in its 2014 Opinion, “introduction of the right to appeal to the court from written decisions of the HJPC concerning appointment”, and is harmonised with the 2021 Opinion, welcoming provisions laid out in the Amendments to the Law on the HJPC, in part prescribing that an administrative dispute can be filed against the decision on appointment before the Court of Bosnia and Herzegovina. In accordance with the cited Opinion and proposal of the Venice Commission, paragraph (4) of this Article regulates that the judicial review will assess compliance with the law and compliance with procedural rules for making a decision on appointment or transfer.

Chapter III. Regulates the procedure and prescribes criteria for the transfer and appointment of judges and prosecutors.

Based on earlier good practice through application of the provisions of the current Law, **Section A** of this Chapter incorporates provisions on the composition of sub-councils for proposing candidates for vacant posts in courts and prosecutor’s offices at the level of Bosnia and Herzegovina and in the Brčko District of Bosnia and Herzegovina (Article 79) and the composition of sub-councils for proposing candidates for vacant posts in courts and prosecutor’s offices in the Entities (Article 80).

Interviews with candidates are carried out by a three-member committee of the Council appointed by the Judicial and/or Prosecutorial Department (Article 81).

Section B. – Transfer (Article 82) – a novelty introduced by this Draft Law, whereby at least once every five years a list of vacant positions in municipal, basic, cantonal and district courts

is published, including a call for judges of the same or higher level who wish to be transferred to one of the vacant posts in a court of the same or lower level; as well as a list of vacant posts in the cantonal and district prosecutor's offices and an invitation to prosecutors of the same or higher level who wish to be transferred to one of the vacant posts in the prosecutor's office of the same or lower level.

Paragraph (5) of the cited Article lays down the requirement that judges, that is, prosecutors who have spent at least five years in the current post at the time of the announcement of the call, can apply for a transfer call.

Article 83 clearly prescribes the criteria for transfer, and Article 84 the procedure.

The decision on the transfer of judge is made by the Judicial Department, the decision on the transfer of the prosecutor is made by the Prosecutorial Department.

What is new in relation to the current Law on the HJPC are the provisions **in Section C**, regulating internal vacancy procedure.

Article 86 of the Draft in paragraph (5) prescribes a limitation for applying to an internal vacancy in that, in addition to meeting the special requirements prescribed for the post they are applying for, judges and prosecutors who have spent at least five years in the post which they are occupying at the time of announcement of the internal vacancy can apply for the post.

Internal vacancy procedure includes interviews with candidates, scoring, ranking and nomination of candidates (Articles 87 through 91).

The decision on the appointment of a judge is made by the Judicial Department, the decision on the appointment of a prosecutor is made by the Prosecutorial Department (Article 92).

Section D. Public Vacancy

This Section prescribes the rules for "entry" posts in the judiciary that are filled through a public vacancy, open for application to candidates outside the judicial community. According to this procedure, the posts of judges of the basic court, the district commercial court and the municipal court, as well as the prosecutor of the Brčko District Prosecutor's Office, cantonal prosecutor's office in the Federation of BiH and the district prosecutor's office in the Republika Srpska, and the special requirement for participation in the vacancy procedure is at least three years of work experience on legal matters, after the bar exam. For the position of judge in the Basic Court of Brčko District of BiH, a special requirement is at least five years of work experience on legal matters, after passing the bar exam.

The Council publishes a public vacancy for filling of posts in accordance with this Section once a year. The public vacancy procedure includes entrance exams, written tests, interviews with candidates, determining a list of successful candidates and nomination of candidates (Article 95), and the criteria prescribed in Article 96 of the Draft Law are applied in the procedure, in a manner separately prescribed for each criterion of this Section. (Articles 97, 98, 99, 101 and 103).

Once every three months, the Judicial and Prosecutorial Department determines and publishes a list of vacant posts in courts and prosecutor's offices with an invitation to apply for candidates from the list of successful candidates who wish to be appointed to one of the vacant positions. One candidate can apply for not more than three vacant positions. Ranking and nomination of candidates in the public vacancy is performed by the competent sub-council in the manner clearly prescribed in Article 103 of this Section, and the decision on the appointment of a judge is made by the Judicial, that is, the Prosecutorial Department for prosecutors.

Section E. Filling posts in Supreme Courts

Vacant posts in the highest level courts (Supreme Court of the Federation of BiH, Supreme Court of the Republika Srpska, the Court of Appeal of BiH, the Court of Appeal of the Brčko District and the Court of BiH) are filled through an internal vacancy in accordance with the provisions of Chapter III – Section C of the Draft Law. However, in Article 66, paragraph (2), the Law stipulates that a prominent legal expert, who is not a judicial office holder, can be appointed as a judge of the highest level, provided that he has at least 20 years of work experience after passing the bar exam. With this requirement met, and based on a public vacancy, 10% of the posts in the highest instance courts can be filled. The public vacancy procedure includes entrance exams, written tests, interviews with candidates, determining the list of successful candidates and proposing candidates in accordance with the provisions of Section E, with the criteria for appointment in the public vacancy prescribed in Article 107 of the Draft Law.

Chapter IV. The Draft Law regulates the requirements, procedure and criteria for appointing the court president and chief prosecutor. A judge or prosecutor who meets the requirements prescribed in Article 112 and 113 of this Chapter can apply to these posts, provided that they had previously also successfully completed training for managers with the authorities responsible for training of judges and prosecutors. The vacant post of the president of the court is advertised internally within the court, and the vacant post of the chief prosecutor is advertised internally within the prosecutor's office. If these posts cannot be filled internally, the Council will announce a vacancy within the judiciary, provided that the court or prosecutor's office have a vacant post for which financial resources are secured. In the newly established court and the newly established prosecutor's office, the Council may advertise a vacancy within the judiciary for the post of court president or chief prosecutor prior to or simultaneously with the advertised vacancy for the posts of judges or prosecutors in those newly established judicial institutions.

Criteria for selection to a managerial post are spelled out in Article 115 and are verified based on an interview with the candidate. Candidates for the post of court president or chief prosecutor are required to prepare and present the work programme of the court or prosecutor's office for which they have applied. Interviews with candidates are carried out by the committee referred to in Article 81 of this Law, which, based on the interview with the candidate, assessment of the submitted work programme and inspection of performance appraisal records, submits a list of candidates to the competent sub-council based on their interview performance. The competent sub-council creates a ranking list of candidates and proposes three candidates (*or less, in a situation where less than three candidates apply or in the competitive procedure, the minimum success required for appointment is achieved by less than three candidates*) to present their work programme at the session of the Court, that is, the Prosecutor's Department.

The appointment of the president of the court or the chief prosecutor in the procedure prescribed in Article 120 of this Chapter is carried out by the Judicial and/or Prosecutorial Department

Chapter V of the Draft Law regulates the powers of the Council regarding the appointment of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of the Republika Srpska, which the Council exercises in accordance with the Constitution of the Federation of Bosnia and Herzegovina and the Constitution of the Republika Srpska, with the application criteria for nomination as under Article 124 of this Chapter.

Chapter V in Section B contains special provisions in relation to lay judges, which prescribe the conditions for appointment and term of office. **Lay judges** are appointed by the Judicial Department after receiving a list of proposed candidates from the president of the court (Article 127).

Chapter VI. Performance appraisal of judges and prosecutors

The Draft Law lists four goals to be achieved through performance appraisals of judicial office holders (Article 128), four of which are ranked according to the success of their performance, and one appraisal is negative, and the appraisal is conducted once every three years. Appraisals for the president of the court, chief prosecutor and deputy chief prosecutor are carried out at the end of the third year of their mandate (Article 132).

If the indicators included in the appraisal criteria indicate that the performance appraisal will be negative, the president of the court, that is, the chief prosecutor, must draw up and implement a plan of measures that would help the judge or prosecutor improve his/her performance, which the Council is informed about.

Judges are appraised by the Appraisal Committee for Judges, whose composition is determined by Article 133 of this Chapter, while the performance appraisals of prosecutors is performed by the Appraisal Committee for Prosecutors, whose composition is determined by Article 135 of this Chapter.

Article 134 regulates the appraiser in the process of performance appraisals of presidents of the court, and Article 136 regulates the appraiser in the process of performance appraisals of chief prosecutors.

At the proposal of the Judicial Department, the Council appraises the President of the Supreme Court of FBiH, the Supreme Court of the RS, and the Court of Appeal of the Brčko District of BiH and the Appellate of the Court of Bosnia and Herzegovina, and on the proposal of the Prosecutor's Department, the Council evaluates the chief prosecutors of the Federal Prosecutor's Office of the FBiH, the Prosecutor's Office of the RS, the Prosecutor's Office of BiH and the Prosecutor's Office of the Brčko District of BiH.

The presidents of other courts are appraised by the Appraisal Committee of court presidents, comprising judges as prescribed in Article 134, paragraph (2) of this Chapter, and the composition of the Committee, comprising prosecutors, for evaluating performance appraisals of chief prosecutors, is prescribed in Article 136, paragraph (2) of the same Chapter.

The criteria for performance appraisals of judges and prosecutors are their workplace skills and professional knowledge, as well as personal characteristics and general abilities to perform judicial or prosecutorial duties. Article 138 of this Chapter is a novelty, which regulates the sub-criteria of workplace skills and professional knowledge, and Article 139 the sub-criteria evaluated in terms of personal characteristics and general abilities.

The process of performance appraisals of judges and prosecutors is carried out in two stages (Article 141), meaning determining the proposed appraisal score and making a decision on the appraisal.

The appraisal proposal is determined by the competent president of the court, that is, the chief prosecutor. A judge or prosecutor subject to the appraisal takes part in the procedure. The competent court president or chief prosecutor submits a reasoned assessment proposal to the competent performance appraisal committee, with the opinion of the appraised judge or prosecutor and the materials used in the process of determining the performance appraisal proposal, and the competent committee makes a reasoned decision on the performance appraisal. In the process of evaluating court presidents and chief prosecutors appraised by the Council, the Judicial or Prosecutorial Department submits a reasoned appraisal proposal to the Council, with the opinion of the appraised court president, or chief prosecutor, and with the materials used in the process of determining the appraisal proposal.

The performance appraisal committee, that is, the Council, is not bound by the appraisal proposal, and may collect other relevant data and ask for clarifications relevant to the appraisal.

In its Opinion from 2014, the Venice Commission recommended “the introduction of the right to appeal to the court for written decisions of the HJPC concerning the appointment and performance appraisal of judges and prosecutors, as well as for the decisions of the disciplinary committee.” The importance of judicial review of decisions made by judicial panels has been highlighted in various international instruments. This recommendation is incorporated into Article 142 of this Chapter, which stipulates that the appraised judge or the prosecutor may initiate an administrative dispute before the Court of Appeal of BiH against the decision on performance appraisal. The cited Article establishes the deadline for initiating an administrative dispute, the deadline for responding to the claim, but the scope of the review of the appraisal procedure is also prescribed, that is, the court reviews the legality of the conducted appraisal procedure.

Chapter VII. The Draft Law regulates the referral and transfer of the judicial function holder to another court and prosecutor’s office.

In accordance with Article 145 of this Chapter, with his/her consent, the judge may be assigned to another court of the same or lower level, and may be assigned for a period of no more than one year, and no more than three consecutive times. In the cited Article, the reasons for referring a judge to another court are listed exhaustively.

However, a judge can be temporarily, for a period of no more than 12 months, referred to another court of the same or lower level, without his/her consent. For referral to another court without the judge’s consent, Article 146 of this Chapter lists two reasons, namely insufficient number of judges in the court which the judge is temporarily referred to or assistance in solving the backlog of pending cases in the court which the judge is temporarily referred to. Referrals can only be made if the court in which the judge regularly performs judicial duties has

temporarily reduced the scope of work. This provision lists the reasons why a judge cannot be referred to another court without consent (pregnancy, ...).

The judge has the right to file an appeal against the decision on temporary referral to another court of the same or lower level, without his/her consent, which is decided on by the Council.

In accordance with Article 147 of this Chapter, the Council decides on the request for temporary transfer to another court with the consent of the judge, or transfer to another court without the judge's consent, and at the request of the president of the court who requires the judge to be temporarily transferred to his court. In the procedure for temporary referral, the Council consults with the president of the court that submitted the request, with the judge who is being considered for temporary assignment, and with the president of the court where the judge regularly performs the duties of a judge.

The provisions of this Chapter on the temporary referral of judges also apply to the procedure of temporary referral of prosecutors (Article 148).

A judge or prosecutor may be permanently transferred to another court or prosecutor's office of the same level without consent, by decision of the Council, in the event of the abolition of the court or prosecutor's office.

Chapter VIII – prescribes the leave of absence for a judge or prosecutor, which is approved by the Council, and can be paid or unpaid. Paragraph (2) Article 151 prescribes the reasons, i.e., the grounds for approving leave, and for each reason exhaustively states the basis on which the Council can grant leave of absence to a judge or a prosecutor.

Court presidents or chief prosecutors decide on the absence of a judge or prosecutor for absences stemming from their employment status (marriage, birth of a child, ...), performing the duties of a trainer with the training centres, participation in regular trainings at the judicial and prosecutorial training centres and activities related to the work of the judiciary (study trips, participation in professional meetings...). Court presidents and chief prosecutors notify the Council of the approved absence.

Chapter IX - immunity, incompatibility and asset declarations

Section A. Immunity, incompatibility and additional activities

The Venice Commission itself determined, among other things, that *"only deliberate abuse of judicial power or repeated and gross negligence should give rise to a disciplinary violation"*. In line with the above, judges or prosecutors are not to be held liable for the opinions they give or the decisions they make within the scope of their official duties (Article 155).

The principles of ethical behaviour of judges and prosecutors, the adherence to which protects judges and prosecutors' impartiality and independence, as well as their reputation and the reputation of the judiciary, are prescribed by the Code adopted by the Council (Article 156).

In its 2021 Opinion, the Venice Commission points out *"that it would be a missed opportunity if the BiH authorities did not limit the scope of activities that judges, prosecutors and HJPC members can perform, which may lead to repeated and unwarranted deferral of their duties."* *The Venice Commission recommends establishing explicitly that it is not permitted to perform any duty or activity, paid or unpaid, except scientific, didactic or creative and possibly other specific activities"*.

In keeping precisely with the recommendation from the Opinion, Article 158 of this Section enumerates the duties that may judges or a prosecutors may not perform, i.e. those that are prohibited as incompatible with their office.

Thus, the Venice Commission emphasized that judges and prosecutors may perform "*scientific, didactic or creative and possibly other specific activities*". Therefore, Article 159 was structured along those lines, and in paragraph (2) it specifies those activities as the work of trainers in training centers for judges and prosecutors, participation in the professional gatherings organized for the purpose of preparing draft regulations or materials of importance for the judiciary, performing functions in the bodies of the judicial authority to which he/she was appointed, participating in the work of professional associations' bodies.

The Venice Commission emphasized in its 2021 Opinion that "the issue of internal independence in the judiciary is no less important than the issue of external independence. One of the important aspects of internal independence of judges is their independence from court presidents in making court decisions. Based on the above, and in accordance with the Venice Commission recommendation, this Article provides that during working hours, judges and prosecutors can engage in additional activities, with an obligation for the judge or prosecutor to inform court president or chief prosecutor of the activities he/she intends to engage in. Judges and prosecutors are office holders, not employees, as the Venice Commission points out, and even in hierarchical structures, they are expected to exercise their professional duties relying on their independent judgment, and are subject solely to the law.

The Venice Commission established in one of its previous opinions that "in the implementation of a code of ethics, the possibility for judges to seek advice from a body within their organisation should be included. In accordance with this recommendation, Article 161 of this Section enables a judge or prosecutor to seek an opinion from the HJPC on the compatibility of his/her activity with their office and the HJPC Law. Such opinion is binding, as stated in paragraph (4) of the cited Article, and the Venice Commission itself assumes that the binding effect protects the judge or prosecutor from the risk of disciplinary proceedings.

Section B. Reporting on assets and additional activities

The provisions included in this Section establish rules for detecting conflicts of interest and increase the transparency of the HJPC and judges and prosecutors. The provisions of this Section on reporting on assets and interests apply equally to judges, prosecutors and all Council members.

The Venice Commission in its Opinion No. 1015/2021 on the Draft Law on Amendments to the HJPC Law welcomed the efforts to increase transparency and prevent conflicts of interest both within the HJPC and among judges and prosecutors in a broader sense. These efforts, as stated in the Opinion, are in principle in accordance with international standards and take into account some recommendations that the Venice Commission formulated in its previous opinions. The recommendations from that Opinion were complied with and incorporated into the text that was officially adopted and published in the Official Gazette of Bosnia and Herzegovina on 15 September 2023. The provisions from that text have been fully included in this Draft Law, i.e. this Section, therefore detailed explanations for individual provisions were deemed unnecessary.

PART FOUR – Disciplinary liability

Section A. Office of the Disciplinary Counsel

Article 174 of this Section stipulates that the Office of Disciplinary Counsel consists of the chief disciplinary counsel, deputies to the chief disciplinary counsel and disciplinary counsels. It also underscores its autonomy and functional independence in processing disciplinary cases. Paragraph (3) lists the duties of the Office, paragraph (3) management, and paragraph (4) the duties of the deputy chief disciplinary counsel and disciplinary counsels. The composition and competences of the Collegium of Disciplinary Counsels are prescribed in Article 175.

This Section prescribes the appointment, status and removal from office of chief disciplinary counsel, deputy chief disciplinary counsel, disciplinary counsels and civil servants, as well as the recruitment of employees.

Section B. Disciplinary panels

Compared to the Current HJPC Law, in addition to the first-instance and second-instance disciplinary panels, this Draft, i.e. this Section also provides for a special panel - the disciplinary panel for deciding on appeals (Article 180).

Disciplinary offenses are considered by panels formed by the HJPC consisting of three members each, but the Draft Law contains a provision that explicitly states that in disciplinary proceedings against judges, the members of the panel will be judges, both in the first and second instance, and in disciplinary proceedings conducted against prosecutors, the members of the panel will be prosecutors, both in the first and second instance.

In both the first and second instance disciplinary panels, one member is a member of the competent department (Judicial or Prosecutorial), and two members are judges or prosecutors from the list proposed by each court or prosecutor's office at the general session or collegium. At least one member of the disciplinary panel, both in the first and second instance, is a judge from the court of the same or higher instance as the judge subject to the proceedings, and, at least one member of the disciplinary panel in both the first and second instance is a prosecutor of the same or higher instance as the prosecutor subject to the proceedings. The Panel for deciding on appeals includes judges of the highest instance courts, and the panel for deciding on appeals from prosecutors includes prosecutors from the highest instance prosecutor's offices.

Chapter II. Disciplinary liability and disciplinary proceedings

Section A. Disciplinary offenses and disciplinary measures

This Section regulates the disciplinary liability of judges, prosecutors, lay judges, including court presidents, chief prosecutors and their deputies, as well as Council members from the ranks of judges and prosecutors. They are all liable to disciplinary action for disciplinary offences prescribed under the law, committed either with intent or negligently. Criminal or misdemeanour liability does not preclude disciplinary liability for the same offence that was a matter for criminal or misdemeanour proceedings, where such an offence is at the same time a disciplinary offense as well. If a Council member's duty is terminated due to removal, it will not preclude the disciplinary liability of Council members from the ranks of judges and

prosecutors, if the offence leading to the removal procedure also constitutes a disciplinary offense (Article 183).

It should be noted that through the Amendments to the HJPC Law of Bosnia and Herzegovina, published in the "Official Gazette of BiH" number 63/23, Article 6a was added to the HJPC Law of Bosnia and Herzegovina, which prescribes the grounds and procedure for removal of a Council member, *if, by violating this law or by other action, he/she seriously damages the Council's reputation*, and in case of incompatible duties and continued absence from office. This provision is positioned as Article 27 in the Draft Law. While acknowledging the arguments from the Venice Commission Opinion in favour of prescribing a list of offenses for Council members, and prescribing a special procedure, the composition of the panels, the length of the procedure and the bodies to handle the matters... in conducting the disciplinary proceedings, one can quite certainly expect overlaps in the procedure, confusion and mistakes that will thwart the adoption of decisions to preserve the integrity of the Council.

It was assessed that it would not be prudent to keep the provisions on disciplinary liability of Council members in this HJPC Law. As a reminder, complex mechanisms for strengthening the responsibility of the HJPC members have been introduced in this Law, such as the rules on the preliminary additional checks for elected Council members, as one segment in checking their suitability before taking the office, the rules on legal effect of disciplinary measures, which would apply by prohibiting participation in competition procedures, and the rules on election of Council members that would prevent disciplinary sanctioned judges and prosecutors from running for Council members during a certain time period after receiving the sanction. All these measures would be relativized if the established system of disciplinary liability of Council members is kept, which provides for milder sanctions for serious violations of duty in a procedure that may entail several stages over a longer period of time.

We would like to emphasize that leaving out the rules on disciplinary offenses by Council members would have no effect on the rule under Article 183, paragraph (4) this Section, according to which Article 27 removal procedure in this Draft Law does not preclude the disciplinary liability of a Council member, if the offence that triggers the removal procedure is at the same time a disciplinary offense. This rule essentially means that a Council member who violates his/her duties in the Council and is therefore removed from duties in the Council can still face disciplinary action as a judge or prosecutor for the same violation, if that violation constitutes one of the offenses referred to in Articles 184 and 185 of the Draft Law. In the event that the violation by a Council member, that caused a Council member's removal from the Council, at the same time affects his/her suitability to perform judicial or prosecutorial duties, it is possible to conduct disciplinary investigation and then possibly disciplinary procedure to determine any disciplinary liability of the removed Council member and impose an appropriate disciplinary measure against him/her in their capacity as a judge or prosecutor. A decision on removal taken in a special procedure, that relates exclusively to the status of a Council member and does not prejudice his/her liability or suitability for holding a judicial office, could not be considered an obstacle to conducting disciplinary proceedings to establish the disciplinary liability of a judge or prosecutor, in terms of adjudicated matter.

Finally, but not without significance, we would like to point out a number of problems that may arise in applying the provisions on the disciplinary liability of Council members and with the procedure in which it would be determined, such as, for example, conducting the

disciplinary proceedings in a case when a Council member's mandate in the Council expires, what kind of sanction could be imposed in such situation, and whether it would still be advisable to continue the proceedings against a Council member after the end of the mandate.

Furthermore, Articles 184 and 185 prescribe the disciplinary offenses for judges and disciplinary offenses for prosecutors, which are entirely in line with the 2021 Venice Commission Opinion.

Article 186 of this Section prescribes four types of disciplinary measures, and one or more of those can be imposed in the disciplinary proceedings, because when imposing disciplinary measures, disciplinary panels are guided by the principle of proportionality, taking into account the principles for determining measures provided for in Article 188.

The consequences of imposed disciplinary measures depend on the severity of the measure, but also on the office held by the sanctioned judge or prosecutor, court president, chief prosecutor or deputy chief prosecutor (Article 189).

Section B of this Chapter provides for the statute of limitations for initiating and conducting disciplinary proceedings, as well as the reasons for suspending the statute of limitations, i.e. it provides that the statute of limitations for initiating and conducting disciplinary proceedings ceases to run if, on the basis of the same facts that are examined in a disciplinary investigation or disciplinary proceedings against a judge or a prosecutor, a criminal investigation or a criminal proceedings are initiated (Articles 190, 191 and 192).

Section C. Disciplinary investigation

The Office launches a disciplinary investigation based on a complaint or ex officio (Article 193), **and** the complaint must contain the first and last name of the judge or prosecutor it relates to, allegations regarding the judge's or prosecutor's misconduct and evidence. Otherwise, the Office will return the complaint to be amended by the complainant, within eight days. If one of the reasons from Article 194, paragraph (3) of this Section is met, the Office will reject the complaint within 180 days from the date of its receipt, even without conducting a disciplinary investigation.

If, during the investigation, the Office finds the evidence for the committed offence is insufficient, that judge or prosecutor's term of office has expired during the investigation, or that the statute of limitations for initiating disciplinary proceedings has expired, the Office will take a decision not to file a motion to initiate disciplinary proceedings (Article 195). The same Article stipulates that the Office will take the decision within 60 days from the date of ascertaining such facts, and the reasoned decision will be delivered to the complainant, who can then file an objection with the Collegium of the Office within eight days from the date of delivery. The Collegium decides on the complaint within 30 days from the day of its receipt.

Section D. Disciplinary proceedings

Article 196 of this Section stipulates that disciplinary proceedings are initiated by filing a motion to initiate disciplinary proceedings with the first instance disciplinary panel, and the same Article prescribes the content of the motion.

Judge or prosecutor against whom the proceedings are being conducted has the right to be immediately informed of the motion to initiate the proceedings, to familiarize himself/herself with the case and supporting documents, and he/she must be given opportunity to present his/her defence in person or through an attorney of his/her choice (Article 197).

To ensure transparent proceedings and eliminate any doubt in the work of the disciplinary panels, this Section stipulates that disciplinary cases are assigned to disciplinary panels chronologically through an automated system.

For the sake of efficiency of the proceedings, Article 201 of this Section stipulates that the Office and the person against whom a motion to initiate disciplinary proceedings has been filed, as well as his/her legal representative, may voluntarily reach an agreement regarding disciplinary violations alleged in the motion to initiate disciplinary proceedings, before the final completion of the proceedings, i.e. sign a plea agreement. This Article provides for the contents of the plea agreement, and that the disciplinary panel seized of the case checks whether the judge or prosecutor understands that in accordance with the plea agreement, he/she cannot file an appeal against the imposed disciplinary measure and whether the imposed disciplinary measure is in accordance with the committed disciplinary offense. The panel may accept the plea agreement and proceed as if disciplinary proceedings have been conducted and the panel found that a disciplinary offense was committed, without the right to appeal against the imposed disciplinary measure. However, if the panel rejects the plea agreement, the proceedings will continue, and the admission contained in the agreement cannot be used as evidence in the disciplinary proceedings.

Article 202 of this Section stipulates that the first instance disciplinary panel in the first instance proceedings establishes disciplinary liability and imposes disciplinary measures, and that these decisions can be appealed within 15 days from the date of rendering the decision. Appeals against the decisions of first instance disciplinary panel are decided by the second instance disciplinary panel, which can uphold, reverse or modify the decision pronounced by the first instance disciplinary panel.

An appeal is allowed against the decision of the second instance disciplinary panel when the second instance disciplinary panel modified the decision of the first instance disciplinary panel rejecting the motion to initiate disciplinary proceedings, found a judge or a prosecutor disciplinary liable and imposed a disciplinary measure against him/her; or the second instance disciplinary panel modified the decision of the first instance disciplinary panel finding a judge or prosecutor disciplinary liable, and issued a decision rejecting the complaint. An appeal can be filed with the disciplinary panel for deciding on appeals, referred to in Article 180, paragraph (1), point c) of this Draft Law within 15 days from the date of delivering the decision of the second instance disciplinary panel. Article 181, paragraph (7) of this Draft Law prescribes the composition of the panel for deciding on appeals. Paragraph (8) of the same Article stipulates that a panel member who participated in deciding the case in the first instance

panel cannot handle the same matter in the second instance disciplinary panel or the panel for deciding an appeal.

Prescribing the right to judicial protection for all important HJPC decisions, including decisions made in disciplinary proceedings, is a recommendation from the Venice Commission Opinion, the Priebe Report, Greco recommendations and Country Reports. In its 2021 Opinion, the Venice Commission recommended that all important decisions made by the HJPC need to contain a reasoning and be subject to judicial review in accordance with the Law on Administrative Disputes of Bosnia and Herzegovina.

Before explaining the implementation of the above recommendations through the Draft HJPC Law, we want to point out the need for a more detailed analysis of their meaning in the context of established system of disciplinary liability, and the effects that their elaboration and introduction in the Law could have.

Therefore, before reaching a conclusion on whether and how judicial review of decisions on disciplinary liability of judges and prosecutors should be prescribed, it is necessary to answer two questions by analysing the current legal framework, its application and relevant judicial practice.

First, bearing in mind the safeguards contained in Article 6 ECHR, does such an obligation arise from the status of disciplinary bodies, the nature of the disciplinary proceedings and the safeguards afforded within those proceedings, in accordance with the current HJPC Law and its application so far.

And second, whether the review of disciplinary decisions by a regular court would really achieve some specific purpose or improve the system, as being complementary to the goals of protecting the public interest of the proper functioning of the judicial system.

In answering the first question, it would be appropriate to start from the positions of the BiH Constitutional Court, which, in several proceedings initiated by appeals of judges and prosecutors against disciplinary proceedings decisions, considered the alleged violation of the right to access to court and the right to legal remedy and unequivocally established that *"although the HJPC is not a classical court, it nevertheless represents the body that can be considered "independent and impartial tribunal, established of law" within the meaning of requirements given in Article 6, paragraph 1 of the European Convention. In the proceedings before the HJPC, the facts are also established, the hearings are held, the testimony of witnesses are evaluated as well as other evidence, all in terms of the rules of procedure before the ordinary courts. The decision of first-instance panel can be challenged before the second-instance panel, as well as before the HJPC as a whole. The rights of parties in disciplinary proceedings are identical to the rights of parties in proceedings before regular courts (Article 68 of the Law on HJPC), and if some matters are not covered by the HJPC Law or the HJPC Rules of Procedure, the rules of the Law on Civil Procedure are applied subsidiarily (Article 79 of the Rules of Procedure of the HJPC)" – Decision of the Constitutional Court of BiH No. AP-487/23.*

In the above decision, the Constitutional Court found that *it is undisputable that the appellant had proceedings before a body that can be considered a tribunal within the meaning of Article 6, paragraph 1 of the European Convention.* The Constitutional Court has consistently

affirmed this point of view in other cases in which other appellants were subject to disciplinary proceedings before the HJPC.

The current recommendations to improve the legislative framework by prescribing judicial protection in disciplinary proceedings do not refer to the above circumstances, nor do their contents run against the above conclusions of the BiH Constitutional Court. Therefore, it is not clear from the recommendations, because it is not explained, why the disciplinary bodies established within the framework of the HJPC Law cannot be understood to mean "court" referred in Article 6 of the Convention, bearing in mind the criteria that must be satisfied in accordance with the caselaw of the European Court (judicial function of bodies that do not have to be integrated into the system of regular courts, and which is reflected in deciding on matters within its jurisdiction based on the rule of law and after a procedure carried out in the prescribed manner), and where from comes the necessity to have an external control of such decisions. The recommendations seem to suggest that the decisions of the disciplinary bodies established by the HJPC Law represent the decisions of administrative bodies, such that do not meet the safeguards under Article 6, paragraph 1 of the Convention, and therefore it is necessary that they be subject to "external" control by the regular court.

As it has been pointed out, this position has not been explained in detail or supported by arguments. Additionally, it is of note that the previously cited conclusions of the BiH Constitutional Court have not been called into question by the available reports/opinions/analyses of the disciplinary liability system for judges and prosecutors in BiH.

Also, it remains unclear why the protection available in the proceedings before the BiH Constitutional Court, which decides on appeals by judges and prosecutors against the decisions of disciplinary bodies regardless of the imposed disciplinary measure, is insufficient.

In this context, please be reminded of the views of the European Court of Human Rights in the decision in the *Olujić v. Croatia* case.

41. As to proceedings before the National Judicial Council, the Court notes that they follow the rules of criminal procedure set out in detail in the Code of Criminal Procedure. These include, inter alia, all the guarantees provided by Article 6 of the Convention and enable the accused to submit his or her defence. When ruling in disciplinary proceedings against judges, the National Judicial Council is empowered to establish the facts of a given case, hold hearings, hear witnesses and assess other evidence and decide on all questions of fact and law.

42. In the applicant's case, the National Judicial Council thus exercised judicial powers in determining his disciplinary responsibility. Against this background, the Court considers that the National Judicial Council is to be regarded as an independent tribunal established by law for the purposes of Article 6 of the Convention and that therefore the disciplinary proceedings against the applicant were conducted before a tribunal for the purposes of Article 6 § 1 of the Convention.

Taking into account all of the above stated, as well as the prescribed composition of disciplinary bodies, the manner of their appointment, the prescribed independence in conducting the proceedings, their competence, the procedure in which disciplinary decisions are made, and the prescribed legal remedies, one can conclude that prescribing additional review of disciplinary decisions by a court of regular jurisdiction is not necessarily required for the implementing

Article 6, paragraph (1) of the Convention, i.e. the protection of rights safeguarded by this Article.

Furthermore, it should be assessed whether, by introducing the right to appeal before a regular court instead of a disciplinary panel, the system for determining disciplinary liability and the rights guaranteed to the parties in the proceedings would really improve and to what extent. Namely, currently, both the accused judge/prosecutor and the Office of the Disciplinary Counsel, have the right to appeal to the second-instance disciplinary panel on all appeal grounds, and the panel can uphold, modify or reverse the first-instance decision. Moreover, the parties (the accused judge/prosecutor, but also the ODC) may appeal the imposed disciplinary measure to the Council as a whole. It has already been pointed out that according to the caselaw of the BiH Constitutional Court, the aforementioned disciplinary bodies can be considered a tribunal within the meaning of Article 6 Convention, and the rules of civil (judicial) proceedings are applied in deciding on disciplinary charges and appeals against disciplinary decisions. Thus, the BiH Constitutional Court states in the previously cited decision in the case number AP-487/23: " 31 ... *The decision of the First Instance Panel can be challenged before the Second Instance Panel, and before the HJPC as a whole.*" *The rights of the parties in disciplinary proceedings are identical to the rights of parties in proceedings before regular courts (Article 68 of the HJPC Law), and if some matters are not prescribed by the HJPC Law or the HJPC Rules of Procedure, the rules of the Law on Civil Procedure are applied subsidiarily (Article 79 of the HJPC Rules of Procedure). Therefore, there is no doubt that the appellant had proceedings before a body that can be considered a tribunal within the meaning of Article 6, Paragraph 1 of the European Convention.*

Bearing in mind that disciplinary panels, as a kind of disciplinary courts, are specialized in the field of disciplinary liability and procedure, and are not burdened with other cases in their work, the disciplinary proceedings are carried out efficiently, within the prescribed period of one year (including the first-instance procedure and the procedure following appeals). Prescribing additional review of the disciplinary panels' decisions before regular court will inevitably affect the efficiency of the procedure for determining disciplinary liability and the impact of the imposed disciplinary measures.

In addition, the HJPC proposes that in this Draft Law adjusts the composition of the disciplinary panels, as recommended by the peer review report, so that the majority members of these panels are judges or prosecutors who are not HJPC members. In doing so, the different membership would set these panels essentially apart from the regular structure of the Council, which would further strengthen their position as an independent tribunal with the authority to decide in disciplinary proceedings. This reduces the need for additional "external" review of the decision made by the panel, which is independent from the Council, including based on its composition. This substantially fulfils part of the recommendations of the GRECO Report of the IV round of evaluation - Prevention of corruption among members of parliament, judges and prosecutors. This Report stated that the HJPC has broad powers over the careers of judges and prosecutors, as a result of which the same HJPC members may be involved in different aspects of a judge's or prosecutor's career, which could lead to a conflict of interest and call into question their individual independence. For this reason, the Report emphasizes the need for a proper separation of tasks, as advised also in CCJE Opinion No. 10 (2007), and recommends avoiding an over-concentration of powers in the same hands concerning the different functions to be performed by members of the HJPC.

Furthermore, as the Draft Law foresees, disciplinary panels would be formed by the Council as a whole for a term of four years, which contributes to greater transparency of the decision-making process on the composition of panels, compared to the existing situation where panels are formed by the HJPC President. The cases would be assigned to panels for processing in sequence by an automated system.

Therefore, the plenary session of the Council is completely excluded from decision-making in the disciplinary procedure. Such solution is proposed due to the questionable expediency of the additional appeal, after the second-instance proceedings, limited only to challenging the decision on the imposed measure. Also, it was assessed that having the Council as a whole, i.e. in full composition, deciding on appeals challenging the decisions of disciplinary panels would not be complementary to other proposals for regulatory improvement of the disciplinary system. Namely, having the plenary session decide on appeals against the decisions by the panels made up of majority members who are not HJPC members and are all judges, if deciding on a disciplinary complaint against a judge, or all prosecutors, if deciding on a complaint against a prosecutor, would reduce or even invalidate the effects of the aforementioned rules on the composition of disciplinary panels. (it would render the rules for forming disciplinary panels meaningless, as well as the principles behind the rules).

Instead of the appeal that is currently prescribed in Article 60 paragraph (6) of the HJPC Law, this Law proposes the possibility of an appeal to the special disciplinary panel against the decision of the second-instance disciplinary panel that modifies the first-instance disciplinary panel's decision regarding the liability of the accused in a disciplinary procedure.

Therefore, Article 202 of the Draft Law stipulates that an appeal is allowed against the decision of the second instance disciplinary panel when the second instance disciplinary panel modifies the decision of the first instance disciplinary panel that rejected the motion to initiate disciplinary proceedings, found a judge or a prosecutor liable for the disciplinary offence and imposed a disciplinary measure; or the second instance disciplinary panel modified the decision of the first instance disciplinary panel that found a judge or a prosecutor liable for the disciplinary offence, and decided to reject the complaint. An appeal can be filed with the disciplinary panel for deciding on appeal from Article 180, paragraph (1), item c) of this Draft Law within 15 days from the date of delivering the decision of the second instance disciplinary panel. Article 181, paragraph (7) of this Draft Law prescribes the composition of the panel for deciding on appeals. Paragraph (8) of the same Article stipulates that a panel member who participated in handling the case in the first instance panel may not act in the same matter in the second instance disciplinary panel or the appeals panel.

We believe that the proposed system, as described above, is more complete to achieve the purpose of the proceedings for establishing and sanctioning violations of judicial or prosecutorial duty, enables efficient action that is both in the interest of the accused in the disciplinary proceedings, and in ensuring the integrity of the system. Decisions are made by panels specialized in the field of disciplinary proceedings, which can be considered to be a special court. They are independent from the HJPC in terms of its composition, formed in a transparent manner, decide in a procedure that has all the characteristics of a court procedure and contains the safeguards referred to in Article 6 ECHR. We believe that in their essence, these proposals do not depart from the essence of the recommendations that call for judicial protection/external review of disciplinary decisions. Essentially, by changing the rules on the

composition of disciplinary panels and how they are formed strengthens their independent position and separation from the Council in both the first instance and second instance proceedings. Thus, the disciplinary proceedings are carried out by panels that have all the characteristics of a court, the panels are not part of the Council, the second instance panel "controls" the decisions of the first instance panel pursuant to an appeal by the defendant and/or the ODC, the Council as a whole has no competence in the disciplinary proceedings, except for appointing disciplinary panels, and all decisions are in any case subject to the review by the BiH Constitutional Court.

Additionally, this Draft Law proposes that the decision to remove a judge or a prosecutor can be challenged by appeal to the Court of Bosnia and Herzegovina, taking into account the importance and weight of the imposed measure (Article 203).

PART FIVE – suspension of judges or prosecutors from their office and termination of office

Chapter I – suspension of judges or prosecutors from their office

If detention or prohibiting measures have been ordered against a judge or prosecutor and interfere with the holding of their office, or if an indictment for a criminal offense has been confirmed against them, the judge or prosecutor must be suspended from their office. The suspension from their office lasts as long as the detention or prohibiting measures last, or until the completion of criminal proceedings based on which the decision on suspension was issued (Article 211).

In addition to the mandatory, this Chapter prescribes the reasons for discretionary suspension from office, i.e. the reasons due to which a judge or a prosecutor may be suspended from office (Article 212). Article 213 prescribes the duration of discretionary suspension.

The decision on suspension from office is rendered by the first instance disciplinary panel, upon motion by the Office, and the appeal against the decision is filed with the second instance disciplinary panel, which is a final act (Article 214).

A judge or a prosecutor who is suspended from office is entitled to receive 50% of his/her salary for the duration of the suspension. However, he/she is entitled to receive the remainder of their salary and other benefits if the disciplinary proceedings, which lead to suspension, fail to establish their liability or if the investigation or criminal proceedings are discontinued against him/her or he/she is acquitted in criminal proceedings (Article 215).

Chapter II. Termination of office

This Chapter enumerates the reasons for terminating the office of a judge or a prosecutor, as well as the termination of office of court presidents, chief prosecutors or deputy chief prosecutors.

PART SIX - Transitional and final provisions

After agreeing on and finalising the new HJPC Law, it will be necessary to prepare the text of the transitional provisions that must regulate, first of all, the following issues:

- election of HJPC members in accordance with the new composition of the Council (procedure to be carried out, deadlines for electing new members, technical mandate of existing members);

- the term of office for the previously appointed court presidents, chief prosecutors and deputy chief prosecutors – due to expire in accordance with the provisions in force at the time of appointment;
- evaluation – set the beginning of the evaluation period after the entry into force of the law, and regulate the use of evaluations done in accordance with the former rules in the appointment procedures under the new Law;
- the status of reserve judges who have already been appointed to these positions - the transitional provisions of the Law should retain the Council's authority to decide on the extension of the mandate of additional judges in that position at the time of entry into force of the new HJPC Law. Decisions to extend their mandate would be made by the Council on the basis of the performance evaluations for the reserve judges and the assessment of the need to extend the mandate, taking into account the needs of the court in which the reserve judge performs his/her duties, and depending on the available funds. It should prescribe that all provisions of the HJPC Law that pertain to judges also apply to reserve judges, with the exception of the right to apply for Council members. It should also prescribe that the Council can decide to change the status of a reserve judge to the status of a regular judge if it is justified by the reserve judge's performance evaluation, there are available funds for it, and if the reserve judge has spent a longer period of time in the position (e.g. more than 4 years).
- completion of appointment procedures that will be underway at the time when the new Law enters into force;
- the deadline for adopting by-laws to regulate the Council's actions after the new Law enters into force;
- take a position regarding the status of legal associates in the Federation of BiH who have judicial powers;
- rules on completing disciplinary cases initiated under the previously valid law; (disciplinary proceedings initiated before this Law enters into force will be completed in accordance with the provisions of the previously valid HJPC Law (Official Gazette of BiH, 25/04, 93/05, 48/07 and 15/08, 63 /23 and 9/24).
- leave a sufficiently long time period for the new HJPC Law to enter into force in order to ensure all conditions for its application (at least six months).
- the obligation of judges and prosecutors to submit declarations referred to in Article 163 of this Law within 90 days from its entry into force.