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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**DOCUMENTS ON
THE CONSTITUTIONAL COURT
OF THE FEDERATION OF
BOSNIA AND HERZEGOVINA**

**CONSTITUTIONAL COURT
OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

INTERNAL REGULATION

OF THE ORGANIZATION OF COURT ADMINISTRATION

**Sarajevo
February 1995**

Constitutional Court of the Federation of Bosnia and Herzegovina, in a conference held on _____ 1995, issued the following

INTERNAL REGULATION OF THE ORGANIZATION OF COURT ADMINISTRATION

Article 1

This Regulation formulates tasks and duties of the Administration of the Constitutional Court of the Federation of Bosnia and Herzegovina (hereinafter: "Court Administration"), its organization, number of employees and employee eligibility requirements.

Article 2

Administration of the Constitutional Court performs legal, administrative, librarian, information, accounting and other services in accordance with the objectives and requirements of the Constitutional Court.

Secretary of the Constitutional Court heads the Court Administration.

Article 3

In addition to general requirements on eligibility of employees which are regulated by law, this Internal Regulation defines specific requirements such as qualifications, professional exams, experience etc.

Article 4

Working experience will be taken into account if it was acquired on the same or similar type of work after completion of the required degree.

Article 5

Tasks and duties of the Administration of the Constitutional Court are performed by:

I. SECRETARY OF THE CONSTITUTIONAL COURT

Secretary of the Constitutional Court

Secretary of the Constitutional Court performs the following tasks and duties: distributes motions, petitions and other documents to law clerks; proposes projects and measures for improvement of

the efficiency and timeliness of the Court Administration; gives proposals for annual objectives and analyzes their implementation; ensures delivery of the Constitutional Court's decisions to the parties in the proceedings and publication of the decision; ensures the access of public to the proceedings before the Constitutional Court; is responsible for implementing decisions and resolutions of the Constitutional Court that are within his authority; assists the President of the Constitutional Court in implementing resolutions of the Court; if necessary, schedules meetings of the Legal Council and all staff members of the Court Administration; coordinates typing assignments; prepares decisions, orders and other materials for the Constitutional Court, its committees and working groups; performs other tasks specified in the Rules of the Court, decisions and orders of the Constitutional Court.

Secretary of the Constitutional Court issues orders concerning implementation of the financial plan of the Court.

Qualifications and requirements:

- B.A. in law, managing experience, bar exam, 10 years of legal experience.

number of officers: 1
rank: executive

II. LEGAL ADVISER TO THE CONSTITUTIONAL COURT, CHIEF OF STAFF OF THE PRESIDENT OF THE CONSTITUTIONAL COURT, TRANSLATOR AND LAW CLERK

1. Legal Adviser to the Constitutional Court

Handles petitions and appeals to the Constitutional Court; participates in preparation of articles and other materials for the Constitutional Court publications; prepares written reports, assessments and information for the Constitutional Court; performs legal tasks relating to preparation and holding of hearings and preparation of draft decisions; studies events relevant to implementation of constitutionality and legality and prepares written materials, opinions and proposals; prepares draft proposals and opinions which are given by the Constitutional Court to the Parliament of the Federation and other federal institutions; performs other duties specified by the Constitutional Court.

Qualifications and requirements:

- B.A. in law, bar exam, 8 years of legal experience on same or similar type of work, ability to work independently and analyze issues in the area of constitutional law.

number of officers: 9
rank: high government official

2. Chief of Staff of the President of the Constitutional Court

Manages the Office of the President of the Constitutional Court; organizes and supervises work of the staff members in the Office of the President of the Constitutional Court; participates in organizing meetings for the President of the Constitutional Court and provides certain materials for the meetings; performs simultaneous interpreting services during the meetings with foreign delegations and submits reports; upon request of the President of the Constitutional Court meets with delegations or individuals on behalf of the President of the Constitutional Court; cooperates with translators of the Constitutional Court; handles protocol matters for the President and justices of the Constitutional Court; performs other duties assigned by the President of the Constitutional Court.

Qualifications and requirements:

- B.A. in law or political sciences with fluency in English or B.A. in English, 5 years experience.

number of officers: 1

rank: high government official

3. Translator

Performs simultaneous interpreting from foreign languages into Bosniak or Croatian and vice versa; translates written Court materials into foreign languages and performs all other translating tasks, including business correspondence with foreigners; is held accountable for correctness of translations.

Qualifications and requirements:

- B.A. in English or German or French or Arabic, 3 years experience.

number of officers: 2

4. Law Clerk

Handles less complex petitions and motions and prepares written reports; performs legal tasks relating to preparation and holding of hearings and preparation of draft decisions; keeps minutes during conferences and other meetings; performs other duties assigned by the Secretary of the Constitutional Court.

Qualifications and requirements:

- B.A. in law, bar exam, 3 years experience in same or similar type of work.

number of officers: 2

III. OFFICE FOR COURT DOCUMENTS AND LIBRARY

1. Head of Office for Court Documents and Library

Organizes and manages the Office for Court Documents and Library; processes, analyzes and provides information on case law; reviews and selects articles and other information of significance to the Court; prepares information on cases and decisions of other constitutional courts, legal articles and other relevant materials; informs the Constitutional Court about events that are relevant to implementation of constitutionality and legality; participates in conferences, hearings and meetings of the Court; establishes contact and cooperates with other libraries and archives; is responsible for information system operation; performs other duties assigned by the Constitutional Court.

Qualifications and requirements:

- B.A. in law, bar exam, 5 years of legal experience, ability to operate and manage information systems.

number of officers: 1

rank: high government official

2. Law Clerk in the Office for Court Documents and Library

Prepares documents for review of constitutionality and legality; prepares analysis, reports and other legal materials concerning case law; prepares information for case law index; performs computer data processing of case law; keeps minutes at the conferences of the Court; performs other duties assigned by the Secretary of the Constitutional Court and Head of Office for Court Documents and Library.

Qualifications and requirements:

- B.A. in law, bar exam, 3 years of experience in same or similar type of work, computer skills.

number of officers: 2

3. Editor

Prepares and edits Constitutional Court Bulletin, edits and proofreads decisions, orders, reports and other written materials.

Qualifications and requirements:

- B.A. in Bosniak or Croatian, 3 years of experience in same or similar type of work.

number of officers: 2

4. Registry Clerk

Processes, classifies and handles Court documents; keeps statistics for the Bulletin; prepares information on documents filed with the Court; keeps registry books established by the Court and manages archives of the Court; performs data processing tasks; performs other duties assigned by the Secretary of the Constitutional Court and Head of Office for Court Documents and Library.

Qualifications and requirements:

- junior college degree, 2 years of experience in same or similar type of work.

number of officers: 1

IV. GENERAL SERVICES

1. Senior Accountant

2. Accountant

3. File Clerk

Receives documents to be filed with the Court; processes motions filed with the Court and distributes them for signature; certifies copies of the Court issued documents; prepares data for annual reports on cases; has custody of the Court's seal.

Qualifications and requirements:

- high school diploma, 1 year of experience in same or similar type of work.

number of officers: 1

4. Administrative Secretary of the President of the Constitutional Court

5. Typist

V. OTHER SERVICES

1. Copy machine clerk

2. Driver

3. Messenger

Article 7

Constitutional Court may hire a trainee law clerk, which will be regulated separately.

Article 8

Constitutional Court will hold a public competition for the position of a Translator, Law Clerk and Registry Clerk. All other positions will be filled on the basis of a public announcement of a vacancy.

Article 9

This Regulation enters into force 8 days after being posted on the Bulletin Board of the Constitutional Court of the Federation of Bosnia and Herzegovina.

President of the Constitutional Court
of the Federation of Bosnia and Herzegovina.

Constitutional Court of the Federation of Bosnia and Herzegovina, in its conference held on _____ 1995, issued the following

**DECISION
ON ORGANIZATION OF THE CONSTITUTIONAL COURT
OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

I. GENERAL PROVISIONS

Article 1

This Decision regulates organization of the Constitutional Court of the Federation of Bosnia and Herzegovina (hereinafter "Constitutional Court") and its Administration (hereinafter "Administration").

Article 2

(crossed out in the original text)¹

Constitutional Court enforces its rights and performs its duties in accordance with the Constitution of the Federation of Bosnia and Herzegovina, Law on the Procedure Before the Constitutional Court, Rules of the Court and this Decision.

Article 3

Rules of the Court specify additional procedural rules based on which Constitutional Court performs its duties set forth in the Constitution of the Federation of Bosnia and Herzegovina.

Where other matters in the jurisdiction of the Constitutional Court are concerned the Court issues decisions.

Rules of the Court and decisions of the Constitutional Court are published in the "Official Gazette of the Federation of B&H".

Decisions are issued by a majority vote of all members of the Constitutional Court.

¹. Translator's remark.

II. RIGHTS AND OBLIGATIONS OF THE CONSTITUTIONAL COURT, PRESIDENT OF THE COURT² AND JUSTICES OF THE COURT

Article 4

In addition to enforcing its rights and performing its duties in accordance with the Constitution of the Federation of B&H, Constitutional Court in its conferences:

- makes decisions on matters concerning status of the President and justices of the Constitutional Court;
- elects President of the Constitutional Court and his deputy, elects chairmen, members and secretaries of the committees and other working groups;
- establishes committees and other working groups of the Constitutional Court;
- nominates, appoints and removes Secretary of the Constitutional Court, Legal Advisers to the Constitutional Court, Chief of Staff of the President of the Constitutional Court and Head of the Office for Court Documents and Library;
- makes decisions concerning internal organization of the Administration of the Constitutional Court;
- makes decisions concerning Constitutional Court's annual objectives and their implementation;
- makes decisions concerning financial plan and year-end financial statement of the Constitutional Court;
- makes decisions on all other matters specified in this Decision and other general legal regulations.

Article 5

In addition to the President and justices of the Court (hereinafter "members of the Constitutional Court"), Secretary of the Constitutional Court and other professional staff members invited by the Secretary participate in the conferences of the Constitutional Court when the Court decides on matters specified in this Decision.

Article 6

Constitutional Court makes annual and quarterly objectives.
Constitutional Court evaluates on a quarterly basis implementation of objectives.
Constitutional Court evaluates its work in the preceding calendar year by analyzing annual report of the Court, annual reports of the committees and other working groups of the Constitutional Court.

². President of the Court is an equivalent of the Chief Justice in the U.S. judicial system (translator's remark).

Article 7

Constitutional Court may also conduct its work through standing and ad hoc committees and other working groups of the Constitutional Court.

Standing committees are:

- Committee for Monitoring and Studying Events Relevant to Implementation of Constitutionality and Legality;
- Editorial Committee;
- Publishing Committee;
- Committee for Organizational and Personnel Matters;
- Committee for Editing Constitutional Court Bulletin;
- Committee for Information Systems.³

Article 8

Committee for Monitoring and Studying events Relevant to Implementation of Constitutionality and Legality monitors and studies issues and events that are significant for protection of constitutionality and legality, and expresses its views, assessments and proposals in the conferences of the Constitutional Court so that, after the discussion, draft proposals and opinions of the Constitutional Court may be made; prepares written materials for seminars and other meetings.

Committee has a president and two or four members (three justices and two legal advisers).

Article 9

Editorial Committee conducts professional and technical editing of the text of the decisions.

Committee has a president and four members.

Article 10

Committee for Organizational and Personnel Matters monitors and studies organization and operating methods of the Constitutional Court and its committees and gives proposals and opinions on salary levels, status and other matters concerning the members of the Constitutional Court, Secretary of the Constitutional Court and other staff members that are nominated and appointed by the Constitutional Court, analyzes other personnel matters and gives proposals and opinions to the Constitutional Court.

³. This item was crossed out in the original text. (Translator's remark.)

Committee has a president and two members.

Article 11

Committee for Editing Constitutional Court Bulletin participates in publishing court decisions in the Bulletin, studies articles on other constitutional courts published in the press, scientific and professional publications, and selects subscriptions to professional publications.

Committee has a president and two members.

Article 12

Committee for Information Systems is involved in development, utilization and improvement of the Constitutional Court's information system and coordinates its operation with public and other information systems.

Committee has a president and two members.

Article 13

Presidents of the standing committees are elected among the justices of the Constitutional Court; committee members are elected among justices of the Constitutional Court and legal advisers.

Committee may appoint a secretary if necessary.

President and members of the standing committees are elected for a two year term and may be reelected.

Article 14

Constitutional Court cooperates with other courts of the Federation and constitutional courts of other countries.

Constitutional Court may organize meetings and seminars and participate in meetings and seminars where issues of significant importance for the Constitutional Court are discussed.

Article 15

Rights and duties of the members of the Constitutional Court are set forth in the Constitution of the Federation of Bosnia and Herzegovina, Law on Procedure Before the Constitutional Court of the Federation of Bosnia and Herzegovina, Rules of the Court, this Decision and other decisions of the Constitutional Court.

Article 16

President of the Constitutional Court represents Constitutional Court, establishes cooperation with other institutions and organizations and conducts other affairs in accordance with the Constitution, legislation and Constitutional Court decisions.

Article 17

President of the Constitutional Court is elected by a secret majority vote of all justices.

President of the Constitutional Court is elected for a one year term. After that, a member of a different constituent nation is elected for a president of the Constitutional Court.

ALTERNATIVE FOR ARTICLE 17, PARAGRAPH 2 (crossed out in the original text)⁴

President of the Constitutional Court is elected for a one year term. After that, a member of a different nation is elected for a president of the Constitutional Court.

Article 18

In case of an absence or temporary disability of the President of the Court, his duties will be performed by a justice elected by the Constitutional Court.

Article 19

Members of the Constitutional Court have a right and a duty to be present at the conference, participate in the work and decision-making process of the Constitutional Court and those working groups of the Court whose members they are.

Members of the Constitutional Court have a right to participate in the work of working groups even if they are not their members.

Article 20

Members of the Constitutional Court have a right to bring up for discussion various matters during the conferences of the Court.

⁴. Translator's remark.

Article 21

Members of the Constitutional Court have a right to be regularly informed on all matters which are relevant to rights and duties of the Constitutional Court and its functioning.

President and Secretary of the Constitutional Court ensure distribution of information to all members of the Constitutional Court.

Article 22

When members of the Constitutional Court participate on behalf of the Constitutional Court in the work of other institutions and organizations they must act in accordance with authorities, policies and views of the Constitutional Court and inform the Constitutional Court on the most important decisions and policies of those institutions and organizations.

Article 23

Members of the Constitutional Court may not hold a position of a director general or member of an executive organ of a political organization, legislative or executive bodies or their agencies.

Members of the Constitutional Court may not be employed elsewhere.

Article 24

Members of the Constitutional Court are granted immunity in accordance with the Constitution of the Federation of Bosnia and Herzegovina.

Issues involving immunity of the members of the Constitutional Court will be decided by the Constitutional Court.

Article 25

President and justices of the Constitutional Court will be issued a special identification document.

The form and manner of issue of the special identification document will be regulated by the Minister of Justice of the Federation of Bosnia and Herzegovina.

Article 26

Federal administrative regulations defining status of high government officials will be applied to President of the Constitutional Court, unless provided otherwise by legislation.

Employment rights of the members of the Constitutional Court are defined by regulations which apply to high government officials who head federal administrative agencies, unless provided

otherwise by legislation.

Constitutional Court decides on individual employment rights of the members of the Constitutional Court upon receiving a proposal from Committee for Organizational and Personnel Matters.

III. ADMINISTRATION OF THE CONSTITUTIONAL COURT

Article 27

Administrative and other services for the Constitutional Court will be provided by the Administration of the Constitutional Court.

Certain accounting, financial and technical services for the Constitutional Court will be provided by the General Administrative Office of the federal government.

Article 28

Secretary of the Constitutional Court is the Head of the Administration of the Constitutional Court.

Secretary of the Constitutional Court organizes and coordinates the work of the Administration of the Constitutional Court.

Secretary of the Constitutional Court has the rights, duties and responsibilities of a high government official who heads a federal administrative agency, unless provided otherwise by decision of the Constitutional Court.

Article 29

Secretary of the Constitutional Court is appointed and removed by the Constitutional Court.

Secretary of the Constitutional Court is appointed, without public announcement of the vacancy, for a four year term and may be reappointed.

Article 30

Constitutional Court appoints Legal Advisers to the Constitutional Court, Chief of Staff of the President of the Constitutional Court and Head of Office for Court Documents and Library.

The above-mentioned persons are appointed by the Constitutional Court, without public announcement of the vacancy, for a four year term and may be reappointed.

Legal Adviser to the Constitutional Court has status that corresponds to that of a secretary of the ministry of the Federation of Bosnia and Herzegovina.

Chief of Staff of the President of the Constitutional Court and Head of Office for Court Documents and Library have status that corresponds to that of an assistant minister.

Article 31

Organization of the Administration of the Constitutional Court is defined in the Internal Regulation of the Constitutional Court.

Regulation from paragraph 1 of this Article specifies in detail organization and objectives of the Court Administration, classification of positions and job descriptions, required qualifications, as well as other matters of importance for the operation of Administration and rights, duties and responsibilities of its staff members.

Article 32

Administration of the Constitutional Court will be organized in such a way as to provide professional and efficient services for the Constitutional Court, its working groups and members.

Internal organization of the Administration of the Constitutional Court is based on volume, type and complexity of its tasks and ensures rational organization of work and optimal distribution of assignments.

Article 33

Legal and organizational matters within the Administration of the Constitutional Court are examined by Legal Council.

Legal Council consists of: Secretary of the Constitutional Court, Legal Advisers to the Constitutional Court, Chief of Staff of the President of the Constitutional Court, Head of Office for Court Documents and Library and law clerks.

Secretary of the Constitutional Court schedules, chairs and sets the agenda of the Legal Council meetings.

Justices of the Constitutional Court are informed about Legal Council meetings.

Proceedings of the Legal Council meetings will be recorded in the minutes.

Article 34

Rights, duties and responsibilities of employees of the Administration of the Constitutional Court

are defined by regulations that apply to employees of the federal administrative agencies, unless provided otherwise by decision or order of the Constitutional Court.

Article 35

Financial operation of the Constitutional Court is defined by regulations that apply to federal administrative agencies.

Secretary of the Constitutional Court issues orders concerning operating fund of the Constitutional Court and its Administration.

Article 36

Regulations on day-to-day operation, office hours and ethic rules for the federal administrative agencies are applied to the Constitutional Court, unless otherwise provided by legislation or decision of the Constitutional Court.

IV. FINAL PROVISIONS

Article 37

This Decision enters into force eight days after publication in the "Official Gazette of the Federation of Bosnia and Herzegovina".

President of the Constitutional Court
of the Federation of B&H

Analysis of the Decision on Organization of the Constitutional Court and of the Internal Regulation of the Organization of Court Administration for the Federation of Bosnia and Herzegovina

I. Introduction

Both the Decision on Organization of the Constitutional Court and the Internal Regulation of the Organization of Court Administration demonstrate the desire of the Federation of Bosnia and Herzegovina to ensure that the Constitutional Court (the "Court") is effectively organized and efficiently operated. These two drafts essentially accomplish these objectives. However, there are certain provisions of these drafts that the Court should seriously consider amending in order to further improve the Court's organization and operation. The following analysis examines these provisions and proposes amendments to limit, if not overcome, their potential shortcomings.

II. Decision on Organization of the Constitutional Court

A. Judicial Independence

1. Authority Over the Budget

The Court should amend Article 4, which enumerates the rights and obligations of the Court, to enhance the Court's independence by adding a provision that explicitly affirms its authority to develop its annual budget and to submit and defend that budget before the legislative body charged with appropriating government funds. The Court should not rely on a ministry or agency within another branch of the government to perform these functions; instead, the Court should do so itself. Once the Court has developed its annual budget, it may want to join the other two Federation courts in preparing a budgetary request that encompasses the needs of all three courts and present that joint request as the judicial branch's request.

2. Administrative Independence

The Court should not rely on the General Administrative Office of the federal government for accounting, financial management, and technical services, as Article 27 provides, but should establish an independent Administrative Office of the Federation Courts to provide such services. An autonomous administrative office creates administrative independence. Administrative independence, in turn, fosters the separation of powers. Thus, establishing the Court's own administrative office will minimize its dependence on administrative structures located in other governmental branches and will, therefore, enhance the Court's political and jurisdictional independence.

3. Issuance of Special Identification Documents

The Court should reconsider part two of Article 25, which provides that the Minister of Justice will regulate the issuance of special identification documents to each member of the Court. To maintain its independence, the Court should not consign to another governmental branch the authority to determine what kind of special identification documents the president and justices of the Court should be issued; rather, the Court should retain such authority. The justices have no interest in determining what kind of identification the Minister of Justice carries—so, too, should he or she leave to the justices the question of what kind of identification they carry.

4. Separate Regulations for Judicial Officials

To further emphasize the independence of the judicial branch, the Court should consider amending Article 26 to include separate regulations governing high-level judicial branch officials in conjunction with the administrative regulations that define the status and employment rights of government officials in general. Moreover, the Court should clarify the term "status" in Article 26, which holds that "federal administrative regulations defining status of high government officials will be applied to the President of the Constitutional Court"¹ It is unclear, for example, whether "status" refers only to pay and benefits or to other aspects, such as transfer and removal. The term "status" also occurs in Article 4, which provides that it is the right and obligation of the Court to make "decisions concerning the status of the President and justices of the Constitutional Court."² Again, it is unclear whether this term refers to removing justices from certain cases, from the Court, or both.

B. Rights and Obligations of the Court

1. Standing Committees

The Court should include, in Article 7, committees on the following matters: budget and finance; space, facilities, and office equipment; and rules of the court. While Article 7 lists important standing committees through which the Court has a right to conduct its work, the article fails to include these additional committees, which, if included, will increase the Court's efficiency and independence.

Moreover, the Court should carefully reconsider including the Committee for Information Systems, which, according to the translator of the draft, was crossed out of the original text.³ Although the Court does not presently have sophisticated computer and information systems, it

¹Decision Article 26.

²Decision Article 4.

³See Decision at translator's footnote 3.

is important that the Court begin to plan for such systems. Failure to plan at an early stage in the development of the Court for the use of automated information systems will make it much more difficult to convert from manual procedures once the Court is able to do so.⁴

The Court should also include an article describing the jurisdiction and membership of the Publishing Committee. Among the standing committees listed in Article 7, the Publishing Committee is the only committee that does not have a subsequent article describing its jurisdiction and membership.

2. Cooperation Between Courts of the Federation

While Article 14 provides that the Court is obligated to cooperate with other Federation courts, the article does not specify how this should occur. Thus, the Decision should outline more specifically the ways in which the Court must cooperate with the other courts of the Federation. Three Federation courts will comprise the judicial branch of the Federation. Ideally, the presidents of the three courts should, with the assistance of the other justices, develop an organizational plan whereby the three courts cooperate on matters of common interest, such as budget requests, court automation, judicial ethics and conduct, and rules of court. Moreover, the presidents should meet on a regular basis to address problems and issues affecting the judicial branch, as the presidents will have to establish close working relationships in order for the judicial branch to assert its independence.

C. The President of the Court

1. Term Length

The president should not be limited to a one-year, non-consecutive term as Article 17 now provides. While appreciating the Court's desire to rotate the presidency of the Court among the constituent nations, one year is too short to permit a president to have a meaningful impact on the operation of the Court. A longer term would allow a president to better manage the administrative aspects of the Court, oversee long-term projects, and operate as more than a mere figurehead.

2. Line of Succession

In the case of an absence or temporary disability of the president of the Court, rather than requiring the Court to elect a justice to perform the president's duties, Article 18 should establish a line of succession among the justices that the president's absence or disability would

⁴With the cost of personal computers continuing to fall as their processing power increases, it is likely that the Court will be in a position relatively soon to purchase a basic system with which it can begin the process of automating its records and administrative procedures.

automatically trigger. This line of succession will avoid any potential problems of discontinuity in the Court that might arise if different justices were elected each time. A line of succession will also allow the Court to continue without the interruption of an election, which may be particularly important in emergencies when the president's absence or disability cannot be anticipated.

If the Court does not amend Article 18 to establish a line of succession, some mechanism should be provided to determine which justice should act in place of the president in the event there is a tie vote among the eight voting justices.

3. Deputy to the President

The Court should amend the Decision to specify the duties and responsibilities of the deputy to the president. Article 4 indicates that the president will have a deputy; however, there is no further reference to the position of deputy in the Decision or in the Internal Regulations.

D. Justices of the Court

1. Ethical Regulations

The Court should expand Article 23 to either set forth the specific ethical and professional regulations and guidelines to which justices of the court are subject or, alternatively, make reference to those regulations and guidelines—such as the judicial code of conduct, code of professional responsibility, and those specific statutes that address such matters as judicial disqualification, behavior, and ethics. At a minimum, the Court should consider adding more specific provisions to Article 23 to clarify the ethical obligations of the justices; as it stands, the article leaves too much to the discretion of the individual justices, which could lead to improper conduct.

2. Conflicts of Interest

The Court should not allow justices to be members of the other government branches or to participate in politics other than by voting. However, Article 23 seems to allow such practices. Article 23 bars members of the Court from being a director or member of an executive organization, a political organization, legislature, or executive body. This prohibition seems to allow justices to be working members of a political party or even legislative or executive branch workers as long as they are not part of its executive organ. To allow such practices may expose the Court to potential conflicts of interest and decreased judicial independence.⁵

⁵For an example of how United States Federal courts address this issue, see Canon 7 of the United States Code of Appeals for the District of Columbia in Appendix D.

The Court should also consider amending Article 19 so that justices are not allowed to participate in working groups of which they are not members. To allow otherwise will likely lead to confusion and inefficiency in the working groups.

While justices should not be allowed to be members of other governmental branches or to participate in certain working groups, the Court should allow the justices to teach and lecture and be reimbursed for their services. It is beneficial to the judiciary for judges to be involved in academic, bar, and civic matters.

E. Court Administration

1. Term Length of the Secretary

A four-year term for the secretary of the Constitutional Court, as provided in Article 29, may prove problematic. First, a four-year term may politicize what is a high-level administrative position. Second, limiting the term to four years may lead to discontinuity, which is particularly troublesome given that the position requires the long-term development of a strong working knowledge of the court and stable working relationships with the staff. Third, a four-year term may lead to ineffective and inefficient administration of the Court—if a hired secretary proves inept, the Court may be powerless to remove him or her until the term's end. An alternative to a four-year term may be for all of the justices to appoint the secretary and retain him or her subject to performance.

2. Secretary's Scope of Authority

Article 33 creates some ambiguity with regard to the scope of the secretary's authority to act on matters without consulting the legal counsel. Although Article 28 states that the secretary of the Court is the head of the administration of the Constitutional Court, Article 33 states that legal and organizational matters are examined by the legal counsel. Thus, it is unclear when the secretary must consult with the legal counsel in performing his or her duties. Therefore, the Court should amend Article 33 to clearly indicate the extent of the secretary's authority to act independently of the legal counsel.

3. Legal Counsel

The Court should consider imposing on the legal counsel requirements similar to those imposed on the Court under Article 6, which specify that the Court will make annual and quarterly objectives, evaluate quarterly implementation of its objectives, and annually evaluate its work in the preceding calendar year.

4. Position Vacancies

It is unclear why Articles 29 and 30 prohibit the Court from publicly announcing the vacancy of the secretary of the Constitutional Court, the chief of staff of the president of the Constitutional Court, and the head of the Office for Court Documents and Library. The Court should reconsider barring such public announcements.

5. Power of Appointment

The Court should consider granting the president power to appoint the chief of staff of the president of the Court. Article 30 provides that the chief of staff shall be appointed by the whole Court, not the president. If the Court intends to limit the president's discretion to manage the Court's affairs, then giving the appointment power to the Court rather than the president makes sense. However, if the president is expected to act as president of the Board of Judges, then he or she should have the power to appoint this key assistant because it is essential that they work well together in executing the policies of the Court.

6. External Services

The administration of the Court should be organized to provide efficient and professional service not only for the Constitutional Court, as Article 32 requires, but for members of the bar and the public. This may include organizing the administration to provide effective media relations to educate the general public about the Court's purposes, how it works, and its legitimacy as an independent branch in the government.

F. General Provisions

1. Terms and Definitions

To show respect, the term "Justice(s)" should be capitalized throughout the Decision. The Decision, while capitalizing "President," "Secretary," and other Court officials, does not capitalize the term "Justice(s)."

With regard to the standing committees enumerated and discussed in Article 7 through Article 13, each should be headed by a "chair" rather than a "president." Articles 7 through 13 state that each committee has a "president." However, Article 4 refers not to committee "presidents" but to committee "chairmen." The term "chair" is preferable to "president" in reference to this committee position for consistency and to avoid confusion with the president of the Court.

The Court may also want to consider amending the Decision in gender-neutral terms when referring to officials and other positions in the Court.

2. Publication of Court Rules and Decisions

The Court should amend Article 3 to clarify that, while the Rules of the Court and its decisions must be published in the Official Gazette, they may also be published in other official and independent publications.⁶ The Court should make available sets of the rules in pamphlet format to attorneys, law schools, and the public. Moreover, as the Court develops and the rule of law progresses, private publishers may want to publish both the rules and the decisions, and the Court should be in a position to authorize them to do so.

III. Internal Regulation of the Organization of Court Administration

A. Secretary of the Court

1. Records Management

The Court should include in Article 5(I) three additional responsibilities for the secretary regarding record management. First, the secretary should manage and secure case records of the Court. Second, the secretary should prepare various case management and statistical reports and profiles regarding case information for the president and justices of the court. Third, the secretary should oversee Court information systems.

With regard to information systems, Article 5(III) provides that the Head of Office for Court Documents and Library is responsible for such systems. The Court should raise the responsibility for the information systems to the higher-level position of secretary because information systems, particularly automated systems, are essential elements of judicial administration. The secretary should be responsible for supervising the staff that the Court hires to develop, implement, and maintain automated information systems. If the Court does not make the information systems the responsibility of the secretary, it should make such systems a major responsibility, not of the Head of Office for Court Documents and Library, but of a senior Court officer or it should operate these systems as an independent office directly under the president of the Court.

2. Scope of Authority

The Court should amend Article 5(I) to specify the relationship between the secretary and the chief of staff of the president of the Court. In particular, the Court should specify whether the secretary reports to the president, the Court, or the chief of staff.

⁶The ambiguity stems from the third paragraph of Article 3, which provides that the rules and decisions of the Court "are published in the Official Gazette of the Federation of B&H."

B. Qualifications of the Legal Advisor to the Court

The Court should consider reducing the requirement of eight years experience to become a legal advisor, as provided in Article 5(II)(1). Requiring eight years of experience for nine legal advisors seems extreme. In contrast, the United States Supreme Court relies on legal advisors with only one to two years of experience and United States federal courts use law clerks who usually have no experience. The chief legal advisor, perhaps, may need more than two years, but the rest of the legal advisors probably do not.

C. General Services

1. Senior Accountant

The Court should enhance the position of senior accountant, as provided in Article 5(), to include the duties of a professional financial manager or budget administrator rather than solely the duties of a senior accountant. This position should require experience in using computers for financial and budgetary work and in preparing financial and budgetary status reports for the president and the justices of the Court. This position should also include responsibility not only for accounting but also for preparing the Court's annual budget, working with the other two Federation courts to prepare a joint budget for the judicial branch as a whole, and defending the budget before the government authorities over funding.

2. Information Systems Specialist

The Court should add to Article 5(IV) a computer information systems specialist. Assuming that the Court will implement the use of computers, it will be important to have a technical specialist on the staff who can work with the secretary to establish procedures for tracking Court operations by computer in the areas of paper flow, case management, financial and budgetary management, and attorney registration. It is important to prepare for computer information systems early on in order to facilitate the conversion to an automated system.

D. Suggested Additions

1. Attorney Admissions and Discipline

The Court should include in the Internal Regulation provisions regarding attorney admissions and discipline. With regard to admissions, the Court should consider establishing its own bar, complete with admissions requirements and a code of ethics or professional

responsibility.⁷ At a minimum, the Court will want to know the status of the attorneys who appear before it, for example, whether those attorneys have met the requirements for admission to the professional bar association for the Federation or some other country, whether they have been disciplined or disbarred for unprofessional behavior, and whether they have been criminally convicted.

The Court should also include in the Internal Regulation certain discipline procedures to which attorneys who engage in improper conduct are subject. For example, the judges of the Court should determine in a formal hearing whether an attorney has violated the Court's code of conduct and take action to discipline or even disbar the attorney.

2. Public Affairs

The Court should amend the Internal Regulation to include an office of public affairs within the Court's administration. In time, the Court will hear high-profile or high-publicity cases that will generate significant media attention. A public affairs office will insulate the justices and preserve the dignity of the Court by acting as a liaison between the Court and the media. A public affairs office should also conduct a public information campaign to develop a positive image in the public of the Court and to establish confidence in the judiciary as an independent branch of the government. The Court should also consider providing for a Curator and a Historical Office, in addition to the Public Information Office, none of which are included in the Internal Regulation.

3. Court Security

The Court should amend the Internal Regulation to provide for Court security. No provisions of the draft govern the interaction between the Court and the judicial police as provided for in the Constitution. To overcome this shortcoming, the Court should either provide a Court security officer or a liaison/supervisor who can coordinate with the judicial police to ensure Court security. For example, the Court may assign its secretary to act as the Court security officer who is responsible, in tandem with the judicial police, for overall security of the Court and its records. The Court should also include provisions that govern the interaction between the Court and the police. These provisions should specify with whom the director or chief of the judicial police will coordinate scheduling and other matters and to whom in the Court the director or chief will report.

Furthermore, as the Court automates its records through the use of information management systems, some individual will need to be responsible to ensure that outside parties do not tamper with electronic records.

⁷In the federal courts of the United States, for example, each federal trial and appellate court, including the Supreme Court, has established its own bar, including its own admissions requirements and code of ethics or professional responsibility.